

# Agenda



## County of Inyo Board of Supervisors

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

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**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.

### March 1, 2022 - 8:30 A.M.

1. **PUBLIC COMMENT ON CLOSED SESSION ITEM(S)**

#### CLOSED SESSION

2. **CONFERENCE WITH LEGAL COUNSEL – EXISTING LITIGATION – Pursuant to paragraph (1) of subdivision (d) of Government Code §54956.9 – The City of Los Angeles, acting by and through its Department of Water and Power v. County of Inyo, Kern County Superior Court Case No. BCV-18-101513-KCT, CA Court of Appeal (5th Dist.) Case No. F081389, CA Supreme Court Case No. S271309; Inyo County v. Los Angeles Department of Water and Power, Kern County Superior Court Case Nos. BCV-18-101260-TSC, BCV-18-101261-TSC, and BCV-18-101262-TSC.**

**OPEN SESSION** (With the exception of timed items, all open-session items may be considered at any time and in any order during the meeting in the Board's discretion.)

- 10 A.M.**
3. **PLEDGE OF ALLEGIANCE**
  4. **REPORT ON CLOSED SESSION AS REQUIRED BY LAW**

5. **INTRODUCTIONS** - The following new employees will be introduced to the Board: Mark Kalin, Psychotherapist, and Selena Gonzalez Jimenez, Office Clerk, HHS; and Kayla Pendleton, Rehabilitation Specialist, Probation.
6. **PUBLIC COMMENT** (*Comments may be time-limited*)
7. **COUNTY DEPARTMENT REPORTS**

**CONSENT AGENDA** (Items that are considered routine and are approved in a single motion; approval recommended by the County Administrator)

8. **County Administrator - Personnel** - Request Board approve Resolution No. 2022-07, titled, "A Resolution of the Inyo County Board of Supervisors, County of Inyo Authorizing Amendment and Restatement of Retirement Plan via Adoption of Valic Retirement Services Company Retirement Plan for Governmental Employers," and authorize the Chairperson to sign.
9. **Health & Human Services** - Request Board ratify and approve the Subcontract Agreement and HIPAA Privacy Compliance Agreement between the County of Inyo and Advocates for Human Potential of Sudbury, MA in the amount of \$200,000 for the period of September 15, 2021 through February 14, 2023, contingent upon the Board's approval of future budgets, and authorize Marilyn Mann, HHS Director/Interim Behavioral Health Director, to sign the Subcontractor Agreement, Certificate Regarding Lobbying, Subcontractor Certification, and HIPAA Privacy Agreement.
10. **Health & Human Services** - Request Board approve the payment of \$6,956.95 to Southern Inyo Hospital for medical services provided to an Inyo County Jail inmate in January 2022.
11. **Health & Human Services - Behavioral Health** - Request Board appoint HHS Deputy Director - Behavioral Health Kimball Pier as the Local Mental Health Director and the authorized LPS (Lanterman-Petris-Short) Conservator, and authorize the County Administrator to sign a Local Mental Health Director Appointment Letter.
12. **Health & Human Services - Behavioral Health** - Request Board, consistent with California Health and Safety Code Section 11800, approve the appointment of HHS Deputy Director - Behavioral Health Kimball Pier as the Inyo County Alcohol and Drug Program Administrator.
13. **Probation** - Request Board: A) declare American Security Group a sole-source provider; B) approve the contract between the County of Inyo and American Security Group for the maintenance of the security system between County of Inyo and American Security Group for the period of July 1, 2022 to June 30, 2023 in an amount not to exceed \$23,490.00 with an option to renew a second and third year, contingent on the adoption of future fiscal year budgets and; C) authorize the Chairperson to sign the contract.
14. **Public Works** - Request Board ratify and approve Amendment No. 1 to the lease agreement between the County of Inyo and Federal Express Corporation of Memphis, TN for a portion of the real property described as 703 Airport Road, extending the term end date from October 31, 2021 to October 31, 2025, and authorize the Chairperson to sign, contingent upon all appropriate signatures being obtained.

15. **Public Works** - Request Board approve the plans and specifications for the Lone Pine Solid Waste Solar Project and authorize the Public Works Director to advertise the project.
16. **Public Works - Recycling & Waste Management** - Request Board: A) approve and ratify Amendment No. 1 to the contract between the County of Inyo and Shred Pro, Inc. of Mammoth Lakes, CA, to add additional locations for document shredding pickup and increase the not-to-exceed amount from 116,952 to \$126,456, contingent upon the Board's approval of future budgets; and B) authorize the Chairperson to sign, contingent upon all appropriate signatures being obtained.
17. **Water Department** - Request Board consider the Letter of Interest received for re-appointment to the Water Commission and appoint one Water Commissioner with a term ending December 31, 2025.
18. **Water Department** - Request Board authorize the Water Director to sign a Letter of Intent between the County of Inyo and Sierra Nevada Alliance for the provision of two (2) Field Assistants from the Sierra Nevada AmeriCorps Membership in an amount not to exceed \$19,000 for the period of April 15, 2022 through September 30, 2022.

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

19. **Probation** - Request Board: A) approve a proclamation titled, "A Proclamation of the Board of Supervisors, County of Inyo, State of California, Commending Deputy Probation Officer Lisa Vetter for her Outstanding Contributions to the Inyo County Probation Department and Service to the Citizens of Inyo County and for Being Awarded the Employee of the Year by the Chief Probation Officers of California;" and B) present the proclamation to Deputy Probation Officer Vetter.
20. **Clerk of the Board** - Request Board approve the minutes of the regular Board of Supervisors meetings of February 8 and February 22, 2022 and the special meeting of February 15, 2022.

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

21. ***PUBLIC COMMENT*** (*Comments may be time-limited*)

**BOARD MEMBERS AND STAFF REPORTS**



# County of Inyo



## County Administrator - Personnel

### CONSENT - ACTION REQUIRED

**MEETING:** March 1, 2022

**FROM:** Sue Dishion

**SUBJECT:** Approval of Resolution

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**RECOMMENDED ACTION:**

Request Board approve Resolution No. 2022-07, titled, "A Resolution of the Inyo County Board of Supervisors, County of Inyo Authorizing Amendment and Restatement of Retirement Plan via Adoption of Valic Retirement Services Company Retirement Plan for Governmental Employers," and authorize the Chairperson to sign.

**SUMMARY/JUSTIFICATION:**

Approving this resolution will keep the Valic Retirement Plan in compliance with all IRS requirements for 401(a) and 401(K) plans. The ISR requires the plan be restated every six years to incorporate legislative updates into the plan document.

**BACKGROUND/HISTORY OF BOARD ACTIONS:**

**ALTERNATIVES AND CONSEQUENCES OF NEGATIVE ACTION:**

Your Board could choose to not approve the resolution, however this is not recommended as Inyo County would not be in compliance.

**OTHER AGENCY INVOLVEMENT:**

County Counsel

**FINANCING:**

There are no financial impacts.

**ATTACHMENTS:**

1. Resolution No. 2022-07
2. Valic Retirement Services Company Retirement Plan for Governmental Employers

**APPROVALS:**

Denelle Carrington  
Darcy Ellis

Created/Initiated - 2/24/2022  
Approved - 2/24/2022



Sue Dishion  
John Vallejo  
Sue Dishion  
John Vallejo

Approved - 2/24/2022  
Approved - 2/24/2022  
Approved - 2/24/2022  
Final Approval - 2/24/2022

**RESOLUTION NO 2022- \_\_\_\_**

**RESOLUTION OF THE INYO COUNTY BOARD OF SUPERVISORS, COUNTY OF INYO AUTHORIZING AMENDMENT AND RESTATEMENT OF RETIREMENT PLAN VIA ADOPTION OF VALIC RETIREMENT SERVICES COMPANY RETIREMENT PLAN FOR GOVERNMENTAL EMPLOYERS**

**WHEREAS**, Inyo County (hereinafter, the "Employer"), previously established the Inyo County Defined Contribution Retirement Plan (hereinafter, the "Plan") for the exclusive benefit of its employees and their beneficiaries, which Plan was originally effective as of April 1, 2002; and

**WHEREAS**, the Employer retained the power to amend and/or terminate the Plan; and

**WHEREAS**, the Employer now desires to amend and restate the Plan by adopting the VALIC Retirement Services Company Retirement Plan for Governmental Employers document; and

**NOW, THEREFORE, THE BOARD OF SUPERVISORS OF THE COUNTY OF INYO** RESOLVES that: the Employer hereby amends and restates that Plan, effective January 1, 2016, by adopting the document titled "VALIC Retirement Services Company Retirement Plan for Governmental Employers," in the form and substance as the document heretofore presented to the governing body of the Employer; and

**RESOLVED FURTHER**, that the appropriate representatives of the Employer be, and the same hereby are, authorized and directed to: (i) execute the adoption agreement to the VALIC Retirement Services Company Retirement Plan for Governmental Employers document as approved; (ii) execute all other documents and to do all other things as may be necessary or appropriate to make the VALIC Retirement Services Company Retirement Plan for Governmental Employers document effective January 1, 2016, including the execution of any amendments required by the Internal Revenue Service in order to continue and maintain the qualified and exempt status of the Plan; and (iii) execute any other documents required to obtain reliance on advisory letters issued to the VALIC Retirement Services Company Retirement Plan for Governmental Employers by the Internal Revenue Service.

**PASSED, APPROVED and ADOPTED** this 1<sup>st</sup> day of March 2022, by the following vote of the Inyo County Board of Supervisors:

AYES:

NOES:

ABSENT:

ABSTAIN:

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Chairperson, Inyo County Board of Supervisors

ATTEST: Leslie Chapman  
Clerk of the Board

By: \_\_\_\_\_  
Assistant Clerk of the Board

**VALIC RETIREMENT SERVICES COMPANY  
RETIREMENT PLAN FOR GOVERNMENTAL EMPLOYERS  
Basic Plan Document**

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ARTICLE I  
DEFINITIONS

As used in this Plan, the following words and phrases shall have the meanings set forth herein unless a different meaning is clearly required by the context:

1.01 “Administrator” means the Employer or such person(s) or entity designated by the Employer pursuant to Section 2.02 to administer the Plan on behalf of the Employer.

1.02 “Adoption Agreement” means the separate Agreement which is executed by the Employer and accepted by the Insurer (or Trustee, if applicable) and sets forth the elective provisions of this Plan and Trust as specified by the Employer.

1.03 “Affiliated Employer” means the Employer and any other entity that is required to be aggregated with the Employer under the provisions of the Code (or the Regulations or other IRS guidance) applicable to qualified retirement plans under Section 401(a) and/or Section 403(a) of the Code.

1.04 “Aggregate Account” means with respect to each Participant, the value of all accounts maintained on behalf of a Participant, whether attributable to Employer or Employee contributions.

1.05 “Anniversary Date” means the anniversary date specified in the Adoption Agreement.

1.06 “Beneficiary” means any person to whom a share of a deceased Participant’s interest in the Plan is payable, subject to Sections 6.02 and 6.06.

1.07 “Code” means the Internal Revenue Code of 1986, as amended or replaced from time to time.

1.08 “Compensation” with respect to any Participant means one of the following definitions, as selected in the Adoption Agreement:

(a) Compensation on Form W-2. Compensation is defined as wages, as defined in Code Section 3401(a), and all other payments of Compensation to an Employee by the Employer (in the course of the Employer’s trade or business) for which the Employer is required to furnish the Employee a written statement under Code Sections 6041(d),6051(a)(3) and 6052. Compensation must be determined without regard to any rules under Code Section 3401(a) that limit the remuneration included in wages based on the nature or location of the employment or the services performed (such as the exception for agricultural labor in Code Section 3401(a)(2)).

(b) Code Section 3401(a) Wages. Compensation is defined as wages within the meaning of Code Section 3401(a) for the purposes of income tax withholding at the source but determined without regard to any rules that limit the remuneration included in wages based on the nature or location of the employment or the services performed (such as the exception for agricultural labor in Code Section 3401(a)(2)).

(c) 415 Safe-Harbor Compensation. Compensation is defined as wages, salaries, and fees for professional services and other amounts received (without regard to whether or not an amount is paid in cash) for personal services actually rendered in the course of employment with the Employer maintaining the Plan to the extent that the amounts are includible in gross income (including, but not limited to, commissions paid salesmen, compensation for services on the basis of a percentage of profits, commissions on insurance premiums, tips, bonuses, fringe benefits, and reimbursements, or other expense allowances under a nonaccountable plan (as described in Regulation Section 1.62-2(c)), and excluding the following:

(1) Employer contributions to a plan of deferred compensation which are not includible in the Employee’s gross income for the taxable year in which contributed, or Employer



contributions under a simplified employee pension plan to the extent such contributions are deductible by the Employee, or any distributions from a plan of deferred compensation;

(2) Amounts realized from the exercise of a nonqualified stock option, or when restricted stock (or property) held by the Employee either becomes freely transferable or is no longer subject to a substantial risk of forfeiture;

(3) Amounts realized from the sale, exchange or other disposition of stock acquired under a qualified stock option; and

(4) Other amounts which received special tax benefits, or contributions made by the Employer (whether or not under a salary reduction agreement) towards the purchase of an annuity contract described in Section 403(b) of the Internal Revenue Code (whether or not the contributions are actually excludable from the gross income of the Employee).

If so elected in the Adoption Agreement, Compensation shall be adjusted, as set forth herein and as otherwise elected in the Adoption Agreement, for the following types of compensation paid after a Participant's severance from employment with the Employer maintaining the Plan (or any other entity that is treated as the Employer pursuant to Code Section 414(b), (c), (m) or (o)). However, amounts described in subsections (d) and (e) below may only be included in Compensation to the extent such amounts are paid by the later of 2 1/2 months after severance from employment or by the end of the limitation year that includes the date of such severance from employment. Any other payment of compensation paid after severance of employment that is not described in the following types of compensation is not considered Compensation, even if payment is made within the time period specified above.

(d) Regular pay. Unless otherwise elected in the Adoption Agreement, Compensation shall include regular pay after severance of employment if:

(1) The payment is regular compensation for services during the Participant's regular working hours, or compensation for services outside the Participant's regular working hours (such as overtime or shift differential), commissions, bonuses, or other similar payments; and

(2) The payment would have been paid to the Participant prior to a severance from employment if the participant had continued in employment with the Employer.

(e) Leave cashouts and deferred compensation. Leave cashouts shall be included in Compensation, unless otherwise elected in the Adoption Agreement, if those amounts would have been included in the definition of Compensation if they were paid prior to the participant's severance from employment, and the amounts are payment for unused accrued bona fide sick, vacation, or other leave, but only if the Participant would have been able to use the leave if employment had continued. In addition, deferred compensation shall be included in Compensation, unless otherwise elected in the Adoption Agreement, if the compensation would have been included in the definition of Compensation if it had been paid prior to the participant's severance from employment, and the compensation is received pursuant to a nonqualified unfunded deferred compensation plan, but only if the payment would have been paid at the same time if the participant had continued in employment with the Employer and only to the extent that the payment is includible in the participant's gross income.

(f) Salary continuation payments for military service participants. Compensation does not include, unless otherwise elected in the Adoption Agreement, payments to an individual who does not currently perform services for the Employer by reason of qualified military service (as that term is used in Code Section 414(u)(1)) to the extent those payments do not exceed the amounts the individual would have received if the individual had continued to perform services for the Employer rather than entering qualified military service.

(g) Salary continuation payments for disabled Participants. Unless otherwise elected in the Adoption Agreement, Compensation does not include compensation paid to a participant who is permanently and totally disabled (as defined in Code Section 22(e)(3)). If elected, this provision shall apply to all participants for the period specified in the Adoption Agreement.

In addition, if specified in the Adoption Agreement, Compensation for all Plan purposes shall also include any elective deferral (as defined in Code Section 402(g)(3)), and any amount which is contributed or deferred by the Employer at the election of the Employee and which is not includible in the gross income of the Employee by reason of Code Section 125 or 457, and 132(f)(4).

If specified in the Adoption Agreement, amounts under Code Section 125 include any amounts not available to a Participant in cash in lieu of group health coverage because the participant is unable to certify that he or she has other health coverage (deemed Code Section 125 compensation). An amount will be treated as an amount under Code Section 125 only if the Employer does not request or collect information regarding the Participant's other health coverage as part of the enrollment process for the health plan.

The annual compensation of each Participant taken into account in determining allocations for any Plan Year shall not exceed \$200,000, as adjusted for cost-of-living increases in accordance with Section 401(a)(17)(B) of the Code (the "annual compensation limit"). Annual compensation means Compensation during the Plan Year or such other consecutive 12-month period over which compensation is otherwise determined under the Plan (the determination period). The cost-of-living adjustment in effect for a calendar year applies to annual compensation for the determination period that begins with or within such calendar year. If a determination period consists of fewer than twelve (12) months, the "annual compensation limit" will be multiplied by a fraction, the numerator of which is the number of months in the determination period, and the denominator of which is twelve (12).

Notwithstanding the previous paragraph, the "annual compensation limit" for "eligible participants" shall be the greater of (i) the "annual compensation limit" as described in the previous paragraph, or (ii) the amount of compensation that was allowed to be taken into account under the Plan as in effect on July 1, 1993. Therefore, if the Plan as in effect on July 1, 1993 determined benefits without any limit on compensation, then the "annual compensation limit" in effect under this Section 1.08 will not apply to any "eligible participant" in any future year. For purposes of this paragraph, an "eligible participant" is an individual who first became a participant in the Plan prior to the first day of the first Plan Year beginning after the earlier of: (i) the last day of the Plan Year by which a plan amendment to reflect the requirements of Section 13212 of the Omnibus Budget Reconciliation Act of 1993 was both adopted and effective; or (ii) December 31, 1995. However, this paragraph shall not apply unless (i) the Plan was in effect on July 1, 1993, and (ii) the Plan was amended to incorporate by reference the annual compensation limitation under Section 401(a)(17) of the Code, effective (with respect to all participants other than the "eligible participants") for Plan Years beginning after December 31, 1995 (or earlier, if the Plan so provided). Any reference in any other section of this Plan to the limitation under Code Section 401(a)(17) shall mean the "annual compensation limit" set forth in this Section 1.08, but taking into account the special provisions of this paragraph.

Notwithstanding the following paragraph or any election in the Adoption Agreement, if the Plan is a 401(k) plan, then participants may not make elective deferrals with respect to amounts that are not 415 Compensation. However, for this purpose, 415 Compensation is not limited to the annual compensation limit of Code Section 401(a)(17).

Compensation for purposes of allocations (hereinafter referred to as Plan Compensation) shall be adjusted, unless otherwise elected in the Adoption Agreement, in the same manner as 415 Compensation pursuant to Section 4.04, except in applying Section 4.04, the term "limitation year" shall be replaced with the term "plan year" and the term "415 Compensation" shall be replaced with the term "Plan Compensation."

The provisions of the two preceding paragraphs (and the provisions above regarding post-severance compensation) shall apply for Plan Years beginning more than ninety (90) days after the close of the first regular legislative session (of the legislative body with authority to amend the Plan) that begins on or after July 1, 2007, unless an earlier effective date is specified in the Adoption Agreement.

1.09 “Contract” means any annuity contract (group or individual) issued by the Insurer. In the event of any conflict between the terms of this Plan and the terms of any Contract purchased hereunder, the Plan provisions shall control.

1.10 “Designated Investment Alternative” means a specific investment identified by name by the Employer (or such other responsible party who has been given the authority to select investment options) as an available investment under the Plan in which Plan assets may be invested by the Insurer (or Trustee, if applicable) pursuant to the investment direction of the Participant.

1.11 “Directed Investment Option” means one or more of the following to be acquired or disposed of pursuant to the investment direction of a Participant:

(a) a Designated Investment Alternative as defined in Section 1.10, or

(b) any other investment permitted by the Plan and the Participant Direction Procedures as set forth in Section 4.09.

1.12 “Early Retirement Age” means the date at which the Participant satisfies the age or service requirement, selected in the Adoption Agreement, at which time a Participant’s Account shall become fully vested.

1.13 “Employee” means any person who is employed by the Employer, but excludes any person who is providing services as an independent contractor. The term Employee shall also include Leased Employees as provided in Code Sections 414(n) or 414(o).

Employees of Affiliated Employers will not participate unless the Affiliated Employer becomes a Participating Employer as defined in Section 9.01.

1.14 “Employer” means the entity specified in the Adoption Agreement, any Participating Employer (as defined in Section 9.01) which shall adopt this Plan, any successor which shall maintain this Plan and any predecessor which has maintained this Plan.

1.15 “Fiscal Year” means the Employer’s accounting year as set forth in the Adoption Agreement.

1.16 “Forfeiture” means that portion of a Participant’s Account that is not Vested, and occurs upon the distribution (or deemed distribution) of the entire Vested portion of a Participant’s Account.

In the case of a Terminated Participant whose Vested benefit is zero, such Terminated Participant shall be deemed to have received a distribution of such Terminated Participant’s Vested benefit upon termination of employment. In addition, the term Forfeiture shall also include amounts deemed to be Forfeitures pursuant to any other provision of this Plan.

1.17 “Former Participant” means a person who has been a Participant, but who has ceased to be a Participant for any reason.

1.18 “Hour of Service” means (1) each hour for which an Employee is directly or indirectly compensated or entitled to compensation by the Employer for the performance of duties during the applicable computation period; (2) each hour for which an Employee is directly or indirectly compensated or entitled to compensation by the Employer (irrespective of whether the employment relationship has terminated) for reasons other than performance of duties (such as vacation, holidays, sickness, jury duty, disability, lay-off, military duty or leave of absence) during the applicable computation period; (3) each hour for which back pay is awarded or agreed to by the Employer without regard to mitigation of damages. The same Hours of Service shall not be credited both under (1) or (2), as the case may be, and under (3). These hours will be credited to the Employee for the computation period or periods to which the award or agreement pertains rather than the computation period in which the award, agreement or payment is made.

Notwithstanding the above, (i) no more than 501 Hours of Service are required to be credited to an Employee on account of any single continuous period during which the Employee performs no duties (whether or not such period occurs in a single computation period); (ii) an hour for which an Employee is directly or indirectly paid, or entitled to payment, on account of a period during which no duties are performed is not required to be credited to the Employee if such payment is made or due under a plan maintained solely for the purpose of complying with applicable worker's compensation, or unemployment compensation or disability insurance laws; and (iii) Hours of Service are not required to be credited for a payment which solely reimburses an Employee for medical or medically related expenses incurred by the Employee.

For purposes of this Section, a payment shall be deemed to be made by or due from the Employer regardless of whether such payment is made by or due from the Employer directly, or indirectly through, among others, a trust fund, or insurer, to which the Employer contributes or pays premiums and regardless of whether contributions made or due to the trust fund, insurer, or other entity are for the benefit of particular Employees or are on behalf of a group of Employees in the aggregate.

Hours of Service must be counted for the purpose of determining a Year of Service, a year of participation for purposes of accruing benefits, a 1-Year Break in Service, and employment commencement date (or reemployment commencement date).

Hours of Service will be credited for employment with all Affiliated Employers and for any individual considered to be a Leased Employee pursuant to Code Sections 414(n) or 414(o) and the Regulations thereunder.

Hours of Service will be determined on the basis of the method selected in the Adoption Agreement. If "actual hours" is selected, an Employee shall be credited on the basis of actual hours for which such Employee is paid or entitled to payment. If "days worked" is selected, an Employee shall be credited with ten (10) Hours of Service if under the Plan such Employee would be credited with at least one Hour of Service during the day. If "months worked" is selected, an Employee will be credited with one hundred ninety (190) Hours of Service if under the Plan such Employee would be credited with at least one (1) Hour of Service during the month.

Hours of Service with any predecessor Employer which maintained this Plan shall be recognized. Hours of Service with any other predecessor Employer shall be recognized as specified in the Adoption Agreement.

1.19 "Insurer" means The Variable Annuity Life Insurance Company (VALIC) and any affiliate or subsidiary thereof, or any legal reserve insurance company which shall issue one or more Contracts under the Plan.

1.20 "Leased Employee" means any person (other than an Employee of the Employer) who pursuant to an agreement between the Employer and any other person ("leasing organization") has performed services for the Employer (or for the Employer and related persons determined in accordance with Code Section 414(n)(6)) on a substantially full-time basis for a period of at least one year, and such services are performed under primary direction or control by the Employer. Contributions or benefits provided a leased employee by the leasing organization which are attributable to services performed for the Employer shall be treated as provided by the Employer.

A leased employee shall not be considered an Employee of the Employer if:

- (a) such employee is covered by a money purchase pension plan providing:
  - (1) a nonintegrated employer contribution rate of at least ten percent (10%) of compensation, as defined in Code Section 415(c)(3), but including amounts contributed pursuant to a salary reduction agreement which are excludable from the employee's gross income under Code Sections 125, 402(e)(3), 402(h)(1)(B) or 403(b), or for Plan Years beginning on or after January 1, 2001, 132(f)(4), and
  - (2) immediate participation, and

(3) full and immediate vesting; and

(b) leased employees do not constitute more than twenty percent (20%) of the Employer's nonhighly compensated workforce.

1.21 "Month of Service" means a calendar month during which an Employee completes at least one Hour of Service.

1.22 "Normal Retirement Age" means the date at which the Participant satisfies the age or service requirement specified in the Adoption Agreement, at which time a Participant's Account shall become fully Vested.

1.23 "1-Year Break in Service" means the applicable computation period specified in the Adoption Agreement during which an Employee has not completed more than one-half (1/2) of the number of Hours of Service specified in the Adoption Agreement for a Year of Service with the Employer. However, for purposes of provisions utilizing the elapsed time method, the term "1-Year Break in Service" means a 12-consecutive month period beginning on the severance from service date or any anniversary thereof and ending on the next succeeding anniversary of such date; provided, however, that the Employee during such 12-consecutive month period does not complete an Hour of Service.

Further, solely for the purpose of determining whether a Participant has incurred a 1-Year Break in Service, Hours of Service shall be recognized for "authorized leaves of absence" and "maternity and paternity leaves of absence."

"Authorized leave of absence" means an unpaid, temporary cessation from active employment with the Employer pursuant to an established nondiscriminatory policy, whether occasioned by illness, military service, or any other reason.

A "maternity or paternity leave of absence" means an absence from work for any period by reason of the Employee's pregnancy, birth of the Employee's child, placement of a child with the Employee in connection with the adoption of such child, or any absence for the purpose of caring for such child for a period immediately following such birth or placement. For this purpose, Hours of Service shall be credited for the computation period in which the absence from work begins, only if credit therefore is necessary to prevent the Employee from incurring a 1-Year Break in Service, or, in any other case, in the immediately following computation period. The Hours of Service credited for a "maternity or paternity leave of absence" shall be those which would normally have been credited but for such absence, or, in any case in which the Administrator is unable to determine such hours normally credited, eight (8) Hours of Service per day. The total Hours of Service required to be credited for a "maternity or paternity leave of absence" shall not exceed the number of Hours of Service needed to prevent the Employee from incurring a 1-Year Break in Service.

1.24 "Participant" means any Employee who has satisfied the requirements of Section 3.01 and has not become a Former Participant.

1.25 "Participant Direction Procedures" means such instructions, guidelines or policies, the terms of which are incorporated herein, as shall be established pursuant to Section 4.09 and observed by the Administrator and applied and provided to Participants who have Participant Directed Accounts.

1.26 "Participant('s) Account" means the account established and maintained by the Administrator for each Participant with respect to such Participant's total interest under the Plan resulting from the Employer's contributions. If this is a Profit Sharing Plan which includes assets transferred (other than by a rollover) from a Money Purchase Plan, then a separate accounting shall be maintained with respect to that portion of the Participant's Account attributable to the Money Purchase Plan.

1.27 "Part-time Employee" means any Employee who normally works twenty (20) hours or less per week. For purposes of this definition, a teacher employed by a post-secondary institution is not considered part-time

if the teacher normally teaches classroom hours of one-half or more of the number of classroom hours normally considered to be full time employment.

1.28 “Period of Service” means (except for periods of service which may be disregarded on account of the “rule of parity” described in Section 6.04(e)) the aggregate of all periods commencing with the Employee’s first day of employment or reemployment with the Employer or Affiliated Employer and ending on the date a “Break in Service” begins. The first day of employment or reemployment is the first day the Employee performs an “Hour of Service.” An Employee will also receive credit for any Period of Severance of less than twelve (12) consecutive months. Fractional periods of a year will be expressed in terms of days.

For purposes of this Section, “Hour of Service” means each hour for which an Employee is paid or entitled to payment for the performance of duties for the Employer and “Break in Service” means a Period of Severance of at least twelve (12) consecutive months.

Periods of Service with any predecessor Employer which maintained this Plan shall be recognized. Periods of Service with any other predecessor Employer shall be recognized as specified in the Adoption Agreement.

Periods of Service with any Affiliated Employer shall be recognized.

1.29 “Period of Severance” means a continuous period of time during which the Employee is not employed by the Employer. Such period begins on the date the Employee retires, quits or is discharged, or if earlier, the twelve (12) month anniversary of the date on which the Employee was otherwise first absent from service.

In the case of an individual who is absent from work for maternity or paternity reasons, the 12-consecutive month period beginning on the first anniversary of the first day of such absence shall not constitute a Period of Severance. For purposes of this paragraph, an absence from work for maternity or paternity reasons means an absence (a) by reason of the pregnancy of the individual, (b) by reason of the birth of a child of the individual, (c) by reason of the placement of a child with the individual in connection with the adoption of such child by such individual, or (d) for purposes of caring for such child for a period beginning immediately following such birth or placement.

1.30 “Plan” means this instrument (hereinafter referred to as VALIC Retirement Services Company Retirement Plan for Governmental Employers Basic Plan Document) including all amendments thereto, and the Adoption Agreement as adopted by the Employer.

This Plan is designed to qualify as a governmental plan as defined in Code Section 414(d). This Plan is established and maintained as a plan that is exempt from the requirements of Title I of the Employee Retirement Income Security Act (ERISA), as provided by Section 4 of such statute. While some provisions of the Plan may mirror provisions of ERISA, such provisions are included for the benefit of the Participants and are not intended to provide ERISA status or ERISA rights to Participants or their Beneficiaries.

1.31 “Plan Year” means the Plan’s accounting year as specified in the Adoption Agreement.

1.32 “Qualified Voluntary Employee Contribution Account” means the account established and maintained by the Administrator for each Participant with respect to such Participant’s total interest under the Plan resulting from the Participant’s tax-deductible qualified voluntary Employee contributions made pursuant to Section 4.08.

1.33 “Regulation” means the Income Tax Regulations as promulgated by the Secretary of the Treasury or such Secretary of the Treasury’s delegate, and as amended from time to time.

1.34 “Reclassified Employee” means an individual (including, but not limited to, independent contractors, persons the Employer pays outside of its payroll system and out-sourced workers) the Employer does not treat as an Employee for federal income tax withholding purposes under Code Section 3401(a), but who is later

reclassified, pursuant to a binding determination by a court or a governmental entity (other than the Employer), as an Employee or a Leased Employee of the Employer.

1.35 “Retired Participant” means a person who has been a Participant, but who has become entitled to retirement benefits under the Plan.

1.36 “Retirement Date” means the date as of which a Participant retires for reasons other than Total and Permanent Disability, whether such retirement occurs on a Participant’s Early or Normal Retirement age, or on a later date (see Section 6.01).

1.37 “Rollover Account” means the account established and maintained by the Administrator for each Employee with respect to such Employee’s total interest in the Plan resulting from amounts transferred from another employer plan or individual retirement account in accordance with Section 4.06. A separate account will also be maintained for any prior voluntary (after-tax) Employee contributions of each Participant.

1.38 “Seasonal Employee” means any Employee who normally works on a full-time basis less than five (5) months in a year.

1.39 “Short Plan Year” means, if specified in the Adoption Agreement, that the Plan Year shall be less than a twelve (12) month period. If chosen, the following rules shall apply in the administration of this Plan. In determining whether an Employee has completed a Year of Service for benefit accrual purposes in the Short Plan Year, the number of the Hours of Service required shall be proportionately reduced based on the number of days in the Short Plan Year. In the event a Plan amendment changes a vesting computation period, the first vesting computation period established under such amendment shall begin before the last day of the preceding vesting computation period and an Employee who is credited with the requisite Hours of Service to be credited with a Year of Service for vesting purposes in both the vesting computation period under the Plan before the amendment and the first vesting computation period under the Plan as amended shall be credited with two (2) Years of Service for those vesting computation periods.

1.40 “Sick Leave Day” means a day (as determined under a separate plan or program maintained by the Employer or pursuant to applicable local or state law) for which the Employee is entitled to payment of one day’s compensation by the Employer, when the Employee is physically or mentally unable to perform his or her duties or is otherwise absent from work for medical reasons.

1.41 “Special Pay Day” means accrued but unused Sick Leave Days or Vacation Pay Days, but only if such Special Pay Day represents leave for which the Employee has no right to request a cash payment.

1.42 “Tax-exempt” means exempt from Federal income tax under Code Section 501(a).

1.43 “Temporary Employee” means any Employee who performs services under a contractual arrangement that is expected to last two (2) years or less.

1.44 “Terminated Participant” means a person who has been a Participant, but whose employment has been terminated for any reason including death, Total and Permanent Disability or normal or early retirement.

1.45 “Total and Permanent Disability” means (unless the Employer elects a different definition in the Adoption Agreement) the inability to engage in any substantial gainful activity by reason of any medically determinable physical or mental impairment that can be expected to result in death or which has lasted or can be expected to last for a continuous period of not less than twelve (12) months. The permanence and degree of such impairment shall be supported by medical evidence. The determination shall be applied uniformly to all Participants.

1.46 “Trustee” (applies only to trusteed portion of the Plan) means the person or entity, if any, named in the Adoption Agreement and any successors.

1.47 “Trust Fund” (applies only to trustee portion of the Plan) means the assets of the Plan held in the Plan’s Trust as the same shall exist from time to time.

1.48 “Vacation Pay Day” means a day (as determined under a separate plan or program maintained by the Employer or pursuant to applicable local or state law) for which the Employee is entitled to payment of one day’s compensation by the Employer when the Employee is absent from work for vacation or holiday. Excluded from the term Vacation Pay Day is any day in which the Employee is entitled to the payment of compensation by the Employer while absent from work on account of jury duty, active military service, training or sabbatical.

1.49 “Valuation Date” means the Anniversary Date and each other date or dates deemed necessary or appropriate by the Administrator for the valuation of Participants’ Accounts during the Plan Year, which may include any day that the Insurer (or Trustee, if applicable), any transfer agent appointed by the Trustee or the Employer, or any stock exchange used by such agent, are open for business.

1.50 “Vested” means the nonforfeitable portion of any account maintained on behalf of a Participant.

1.51 “Volume Submitter Practitioner” means VALIC Retirement Services Company, a wholly-owned subsidiary of The Variable Annuity Life Insurance Company (“VALIC”).

1.52 “Voluntary Contribution Account” means the account established and maintained by the Administrator for each Participant with respect to such Participant’s total interest in the Plan resulting from the Participant’s nondeductible voluntary Employee contributions described in Section 4.07.

1.53 “Year of Service” means, except as otherwise specified in the Adoption Agreement and in the case of a Short Plan Year, the computation period of twelve (12) consecutive months, as herein set forth and in the Adoption Agreement, and during which an Employee has completed at least the number of Hours of Service specified in the Adoption Agreement.

The initial computation period shall begin with the date on which the Employee first performs an Hour of Service (employment commencement date). The computation period beginning after a 1-Year Break in Service shall be measured as elected in the Adoption Agreement. If an election is made to shift to the Plan Year, then after the initial computation period, the computation period shall shift to the current Plan Year which includes the anniversary of the date on which the Employee first performed an Hour of Service. An Employee who is credited with the number of Hours of Service specified in the Adoption Agreement in both the initial computation period and the first Plan Year which commences prior to the first anniversary of the Employee’s initial computation period, will be credited with two Years of Service.

Years of Service and breaks in service will be measured on the same computation period.

Years of Service with any predecessor Employer which maintained this Plan shall be recognized. Years of Service with any other predecessor Employer shall be recognized as specified in the Adoption Agreement.

Years of Service with any Affiliated Employer shall be recognized.

Notwithstanding any provision of the Plan to the contrary, contributions, benefits and service credit with respect to qualified military service will be provided in accordance with Code Section 414(u).



## ARTICLE II ADMINISTRATION

### 2.01 POWERS AND RESPONSIBILITIES OF THE EMPLOYER

(a) The Employer shall be empowered to appoint and remove the Insurer (or Trustee, if applicable), and Administrator from time to time as it deems necessary for the proper administration of the Plan to assure that the Plan is being operated for the exclusive benefit of the Participants and their Beneficiaries in accordance with the terms of the Plan and the Code.

(b) The Employer shall periodically review the performance of the Trustee, the Plan Administrator, or any other person to whom duties have been delegated or allocated by it under the provisions of this Plan or pursuant to procedures established hereunder. This requirement may be satisfied by formal periodic review by the Employer or by a qualified person specifically designated by the Employer, through day-to-day conduct and evaluation, or through other appropriate ways.

(c) Unless the Employer has elected to have a discretionary Trustee, the Employer (or its delegate) shall have the power and authority to select and monitor the investment alternatives under the Plan. Furthermore, unless the Employer elects under Section 4.09 to allow Participants to direct the investment of their Accounts, the Employer (or its delegate) shall direct the Insurer (or Trustee, if applicable) with respect to the investment of the assets of the Plan. If the Employer elects under Section 4.09 to allow Participants to direct the investment of their accounts, the Employer shall direct the Insurer (or Trustee, if applicable) with respect to the investment of any contributions which are forwarded to the Insurer (or Trustee) prior to the date on which the Participant completes the necessary paperwork with the Insurer or Trustee or takes such other action or actions as may be necessary to direct the investment of such amounts. Such direction shall be communicated to the Insurer (or Trustee) by means of an Employer-Directed Account Agreement between the Employer and the Insurer (or Trustee), which agreement will include a default investment option and a default beneficiary designation. This direction shall be effective only until such time as such Participant exercises his or her right to direct the investment of such amounts.

### 2.02 DESIGNATION OF ADMINISTRATIVE AUTHORITY

The Administrator of the Plan shall be the Employer unless the Employer appoints another person to serve as Administrator. Any person, including, but not limited to, the Employees of the Employer, shall be eligible to serve as an Administrator. Any person so appointed shall signify acceptance by filing written acceptance with the Employer. An Administrator may resign by delivering a written resignation to the Employer or be removed by the Employer by delivery of written notice of removal, to take effect at a date specified therein, or upon delivery to the Administrator if no date is specified.

The Employer, upon the resignation or removal of an Administrator, shall promptly designate in writing a successor to this position. If the Employer does not appoint an Administrator, the Employer will function as the Administrator.

### 2.03 ALLOCATION AND DELEGATION OF RESPONSIBILITIES

If more than one person is appointed as Administrator, the responsibilities of each Administrator may be specified by the Employer and accepted in writing by each Administrator. In the event that no such delegation is made by the Employer, the Administrators may allocate the responsibilities among themselves, in which event the Administrators shall notify the Employer and the Insurer (or Trustee, if applicable) in writing of such action and specify the responsibilities of each Administrator. The Insurer (or Trustee, if applicable) thereafter shall accept and rely upon any documents executed by the appropriate Administrator until such time as the Employer or the Administrators file with the Insurer (or Trustee, if applicable) a written revocation of such designation.

## 2.04 POWERS AND DUTIES OF THE ADMINISTRATOR

The primary responsibility of the Administrator is to administer the Plan for the exclusive benefit of the Participants and their Beneficiaries, subject to the specific terms of the Plan. The Administrator shall administer the Plan in accordance with its terms and shall have the power and discretion to construe the terms of the Plan and determine all questions arising in connection with the administration, interpretation, and application of the Plan. Any such determination by the Administrator shall be conclusive and binding upon all persons. The Administrator may establish procedures, correct any defect, supply any information, or reconcile any inconsistency in such manner and to such extent as shall be deemed necessary or advisable to carry out the purpose of the Plan; provided, however, that any procedure, discretionary act, interpretation or construction shall be done in a nondiscriminatory manner based upon uniform principles consistently applied and shall be consistent with the intent that the Plan shall continue to be deemed a qualified plan under the terms of Code Sections 401(a) or 403(a), as amended from time to time. The Administrator shall have all powers necessary or appropriate to accomplish its duties under this Plan.

The Administrator shall be charged with the duties of the general administration of the Plan, including, but not limited to, the following:

- (a) to determine in the Administrator's sole discretion, all questions relating to the eligibility of Employees to participate or remain a Participant hereunder and to receive benefits under the Plan;
- (b) to compute, certify, and direct the Insurer (or Trustee, if applicable) with respect to the amount and the kind of benefits to which any Participant shall be entitled hereunder;
- (c) to authorize and direct the Insurer (or Trustee, if applicable) with respect to all nondiscretionary or otherwise directed disbursements from the Plan assets;
- (d) to maintain all necessary records for the administration of the Plan;
- (e) to interpret the provisions of the Plan and to make and publish such rules for regulation of the Plan as are consistent with the terms hereof;
- (f) to compute and certify to the Employer from time to time the sums of money necessary or desirable to be contributed to the Plan;
- (g) to consult with the Employer and to direct the Insurer (or Trustee, if applicable) regarding the short- and long-term liquidity needs of the Plan in order to implement those objectives;
- (h) if the Employer elects to allow Participants to direct the investment of their accounts under the Plan, to act as the party responsible for communications with Participants, including, but not limited to, the receipt and transmitting of Participants' directions as to the investment of their accounts under the Plan and the formulation of policies, rules, and procedures pursuant to which Participants may give investment instructions with respect to the investment of their accounts;
- (i) to assist Participants regarding their rights, benefits, or elections available under the Plan;  
and
- (j) to determine the validity of, and take appropriate action with respect to, any domestic relations order received by it.

## 2.05 RECORDS AND REPORTS

The Administrator shall keep a record of all actions taken and shall keep all other books of account, records, and other data that may be necessary for proper administration of the Plan and shall be responsible for supplying all information and reports to the Internal Revenue Service, Participants, Beneficiaries and others as required by law.

## 2.06 APPOINTMENT OF ADVISERS

The Administrator may appoint counsel, specialists, advisers, and other persons as the Administrator deems necessary or desirable in connection with the administration of this Plan, including, but not limited to, advisers to assist with the administration and management of the Plan, and thereby to provide, among such other duties as the Administrator may appoint, assistance with maintaining Plan records and the providing of investment information to the Plan's Fiduciaries and to Plan Participants.

## 2.07 INFORMATION FROM EMPLOYER

To enable the Administrator to perform its functions, the Employer shall supply full and timely information to the Administrator on all matters relating to the Compensation of all Participants, their Hours of Service, their Years of Service or Periods of Service, their retirement, death, disability, or termination of employment, and such other pertinent facts as the Administrator may require; and the Administrator shall advise the Insurer (and/or the Trustee if applicable) of such of the foregoing facts as may be pertinent to the Insurer's (or the Trustee's) duties under the Plan. The Administrator may rely upon such information as is supplied by the Employer and shall have no duty or responsibility to verify such information. In turn, the Insurer (or Trustee) may rely upon such information as may be provided by the Administrator, and shall have no duty or responsibility to verify such information.

## 2.08 PAYMENT OF CONTRACT FEES

All fees and charges relating to any Contracts issued pursuant to the Plan shall be paid from the portion of the Participant's Account that is invested in such Contracts unless the Employer and the Insurer agree for such expenses to be paid by the Employer.

## 2.09 PAYMENT OF EXPENSES

Expenses of administration may be paid out of the Plan assets unless paid by the Employer. Such expenses shall include any expenses incident to the functioning of the Administrator, including, but not limited to, fees of accountants, counsel, and other specialists and their agents, and other costs of administering the Plan. Until paid, the expenses shall constitute a liability of the Plan. Contract fees shall be paid in accordance with Section 2.08.

## 2.10 MAJORITY ACTIONS

Except where there has been an allocation and delegation of administrative authority pursuant to Section 2.03, if there shall be more than one Administrator, they shall act by a majority of their number, but may authorize one or more of them to sign all papers on their behalf.

## 2.11 CLAIMS PROCEDURE

Claims for benefits under the Plan may be filed in writing with the Administrator. Notice of the disposition of a claim shall be provided to the claimant within ninety (90) days after the claim is filed. If the claim is denied, the claimant must follow the claims review procedures in Section 2.12 before the claimant may take any legal action against the Plan.

## 2.12 CLAIMS REVIEW PROCEDURE

Any Participant, former Participant, or Beneficiary of either, who has been denied a benefit by a decision of the Administrator pursuant to Section 2.11 shall be entitled to request the Administrator to give further consideration to a claim by filing with the Administrator a written request for review of the claim (i.e., an appeal). Such request, together with a written statement of the reasons why the claimant believes such claims should be allowed, shall be filed with the Administrator no later than sixty (60) days after receipt of the notification provided for in Section 2.11. A final decision as to the allowance of the claim shall be made by the Administrator and communicated to the claimant within ninety (90) days of receipt of the written appeal (unless there has been an extension of up to ninety

(90) days due to special circumstances, provided the delay and the special circumstances occasioning it are communicated to the claimant within the ninety (90) day period).

## ARTICLE III ELIGIBILITY

### 3.01 CONDITIONS OF ELIGIBILITY

Any Employee who is not in an excluded classification of Employees (as set forth in the Adoption Agreement) shall be eligible to participate hereunder on the date such Employee has satisfied the age and service requirements specified in the Adoption Agreement. However, if this Plan is a restatement or amendment of a prior plan, any Employee who was a Participant in the Plan prior to the effective date of this amendment or restatement shall continue to be a Participant. No minimum age or service is required for contributions under Section G.3.b. of the Adoption Agreement, on behalf of Part-time, Seasonal and Temporary Employees.

For purposes of this section and any Adoption Agreement elections, the term “union employees” refers to Employees whose employment is governed by a collective bargaining agreement between the Employer and “employee representatives” under which retirement benefits were the subject of good faith bargaining. The term “non-resident aliens” refers to Employees who are non-resident aliens (within the meaning of Code Section 7701(b)(1)(B)) who received no earned income (within the meaning of Code Section 911(d)(2)) from the Employer which constitutes income from sources within the United States (within the meaning of Code Section 861(a)(3)). The term “reclassified employees” refers to workers who are treated by the Employer as Leased Employees or independent contractors but are later determined to be common law Employees of the Employer.

For purposes of this section and any Adoption Agreement elections, the term “elapsed time crediting method” means that service for purposes of eligibility or vesting will be based on Periods of Service (as defined in Section 1.28) and Periods of Severance (as defined in Section 1.29).

### 3.02 EFFECTIVE DATE OF PARTICIPATION

An Employee shall become a Participant as of the Effective Date of Participation specified in the Adoption Agreement. If said Employee is not employed on such date, but is reemployed before a 1-Year Break in Service has occurred, then such Employee shall become a Participant on the date of reemployment or, if later, the date the Employee would have otherwise entered the Plan had the Employee not terminated employment.

If an Employee, who has satisfied the Plan’s age and service requirements and would otherwise have become a Participant, shall change from an excluded classification of Employees to an included classification of Employees, such Employee shall become a Participant on the date such Employee is no longer in an excluded classification of Employees.

If an Employee, who has satisfied the Plan’s age and service requirements and would otherwise have become a Participant, shall become a member of an excluded classification of Employees and has not incurred a 1-Year Break in Service, such Employee shall become a Participant on the date such Employee again is not a member of an excluded classification of Employees. If such Employee does incur a 1-Year Break in Service, eligibility will be determined under the rules in Section 6.04(e).

### 3.03 DETERMINATION OF ELIGIBILITY

The Administrator shall determine the eligibility of each Employee for participation in the Plan. Such determination shall be conclusive and binding upon all persons, as long as the same is made pursuant to the Plan. Such determination shall be subject to review pursuant to Section 2.11.

### 3.04 TERMINATION OF ELIGIBILITY

In the event a Participant shall become a member of an excluded classification of Employees, such Former Participant shall continue to vest in the Plan for each Year of Service (or Period of Service if the Elapsed Time Method is used) completed until such time as the Participant’s Account shall be forfeited or distributed pursuant to

the terms of the Plan. Additionally, the Former Participant's interest in the Plan shall continue to share in the earnings.

### 3.05 ELECTION NOT TO PARTICIPATE

An Employee may, subject to the approval of the Employer, elect voluntarily not to participate in the Plan. The election not to participate must be communicated to the Employer, in writing, at least thirty (30) days before the beginning of a Plan Year. However, if the Employer elects, in Section G.3.b. of the Adoption Agreement, to make contributions for Part-time, Seasonal and Temporary Employees, such Employees may not elect not to participate. Furthermore, the foregoing election not to participate must be irrevocable and made either at Plan inception or when the Employee is first eligible to participate.

ARTICLE IV  
CONTRIBUTION AND ALLOCATION

4.01 FORMULA FOR DETERMINING EMPLOYER'S CONTRIBUTION

(a) For a Money Purchase Plan –

On behalf of each Participant eligible to share in allocations, for each year of such Participant's participation in this Plan, the Employer shall contribute the amount specified in the Adoption Agreement. All contributions by the Employer shall be made in cash.

(b) For a Profit Sharing Plan –

For each Plan Year, the Employer, in its sole discretion, may contribute to the Plan such amount as specified in the Adoption Agreement, which may be either a discretionary amount (to be determined in the Employer's sole discretion) or a fixed dollar or percentage amount. All contributions by the Employer shall be made in cash.

(c) 414(h) pick up contributions –

If selected in the Adoption Agreement, eligible Employees who become Participants under this Plan in accordance with the provisions of Article III shall be deemed to have authorized the Employer to deduct from such Participant's Compensation, prior to its payment, a percentage of such Participant's Compensation, as a nonelective contribution to the Plan. The amount of the nonelective contribution shall be picked up by the Participant's Employer as provided for in Section 414(h)(2) of the Code. The Participant shall not have the option to receive this picked up contribution directly and such contributions shall be paid by the Employer directly to the Insurer (or Trustee, if applicable).

(d) Employer matching contributions –

If specified in the Adoption Agreement, the Employer shall make a matching contribution equal to the percentage of elective deferrals specified for each Participant eligible to share in the allocations of the matching contribution. The Employer must specify in the Adoption Agreement the plan to which the elective deferral contributions being matched shall be made.

(e) Contributions for Part-time, Seasonal and Temporary Employees –

If specified in the Adoption Agreement, the Employer shall make a contribution in the amount of 7.5% of Compensation, reduced by Employee Nonelective Contributions, for each Participant who is also a Part-time, Seasonal or Temporary Employee.

(f) Special Pay contributions –

If specified in the Adoption Agreement, the Employer shall make a nonelective "leave conversion" contribution for each Participant eligible to share in such contributions equal to the Participant's current daily rate of pay multiplied by the number of unused accumulated Special Pay days that the Participant has accumulated, as of the end of the Plan Year, in excess of the minimum number of Special Pay days set forth in the Adoption Agreement. The Employer may elect in the Adoption Agreement to make such Special Pay contributions on account of accumulated Vacation Pay Days, accumulated Sick Leave Days, or both Vacation Pay Days and Sick Leave Days. The Employer may also elect, in the Adoption Agreement, to convert unused accumulated Special Pay Days to employer Special Pay contributions each Plan Year (including the Plan Year in which the Participant terminates employment with the Employer), or solely in the Plan Year in which the Participant terminates employment.

(g) Offset for contributions to certain merged plans –

Notwithstanding any other provision of the Plan or the Adoption Agreement, if one or more qualified defined contribution plans (“Merged Plans”) is/are merged into (or onto) this Plan after the first day of a Plan Year, any Employer contribution obligation under this Section 4.01 and/or Section G of the Adoption Agreement for the Plan Year of the merger that is based on a Participant’s Compensation for the entire Plan Year shall be offset by any substantially similar Employer contributions that are made to, or on account of, the Merged Plans for such Plan Year.

#### 4.02 TIME OF PAYMENT OF EMPLOYER’S CONTRIBUTION

The Employer shall pay to the Insurer (or Trustee, if applicable) its contribution to the Plan as soon as administratively feasible, but no later than the time required by law to be considered an Annual Addition (as defined in Section 4.04(d)) for the Plan Year to which the Employer contribution is attributed. For purposes of this section, contributions must be made to the Plan no later than the 15<sup>th</sup> day of the tenth calendar month following the end of the Plan Year with or within which the limitation year ends, or such other time as specified under Code Section 415 and the Regulations thereunder.

#### 4.03 ALLOCATION OF CONTRIBUTIONS, FORFEITURES AND EARNINGS

(a) The Administrator shall establish and maintain an account in the name of each Participant to which the Administrator shall credit, as of each Anniversary Date, or other Valuation Date, all amounts allocated to each such Participant as set forth herein.

(b) The Employer shall provide the Administrator with all information required by the Administrator to make a proper allocation of the Employer’s contributions, if any, for each Plan Year. Within a reasonable period of time after the date of receipt by the Administrator of such information, the Administrator shall allocate such contribution as follows:

(1) For a Money Purchase Plan:

(i) The Employer’s contribution shall be allocated to each Participant’s Account in the manner set forth in Section 4.01 herein and as specified in the Adoption Agreement.

(ii) Except, however, if elected in the Adoption Agreement for any Plan Year, the Employer shall not contribute on behalf of a Participant who performs less than the Hours of Service set forth in the Adoption Agreement during any Plan Year. The Employer may not make such an election for Employer nonelective contributions (other than matching contributions) if the Employer has elected to make Special Pay contributions.

(2) For a Profit Sharing Plan:

(i) If the Employer elects (in the Adoption Agreement) a discretionary profit sharing contribution formula, the Employer’s contribution shall be allocated to each Participant’s Account in the same proportion that each such Participant’s Compensation for the Plan Year bears to the total Compensation of all Participants for such Plan Year. If the Employer elects (in the Adoption Agreement) a fixed profit sharing contribution formula, the Employer’s contribution shall be allocated in accordance with such formula. In the event that the Employer elects (in the Adoption Agreement) to make separate discretionary contributions for separate classifications of Participants, the Employer will annually notify the Trustee (or Insurer), in writing, of the amounts of the contribution(s), if any, that it is making for each classification of Participants described in the Adoption Agreement for the Plan Year. The Plan Administrator will allocate and credit for the Plan Year the Employer contribution (and forfeitures, if any) for a particular classification to the account of each Participant within



the classification who is entitled to a contribution for the Plan Year in the manner selected in the Adoption Agreement.

(ii) Except, however, if elected in the Adoption Agreement, a Participant who performs less than the Hours of Service set forth in the Adoption Agreement during any Plan Year shall not share in the Employer's contribution for that Plan Year. The Employer may not make such an election for Employer nonelective contributions (other than matching contributions) if the Employer has elected to make Special Pay Contributions.

(3) Notwithstanding anything herein to the contrary, any Participant who terminated employment during the Plan Year shall or shall not share in the allocations of the Employer's contributions and Forfeitures, based on whether the Participant completed the requirements set forth in the Adoption Agreement.

(c) Except as provided in Section 4.09(b), as of each Anniversary Date or other Valuation Date, before allocation of Employer contributions and Forfeitures, any earnings or losses (net appreciation or net depreciation) in the value of the Plan's assets (exclusive of assets segregated for distribution) shall be allocated in the same proportion that each Participant's and Former Participant's nonsegregated accounts bear to the total of all Participants' and Former Participants' nonsegregated accounts as of such date. If any nonsegregated account of a Participant has been distributed prior to the Anniversary Date or other Valuation Date subsequent to a Participant's termination of employment, no earnings or losses shall be credited to such account.

(d) Participants' Accounts shall be debited for annuity payments made, if any, and credited with any dividends or interest earned on Contracts.

(e) As of each Anniversary Date any amounts which became Forfeitures since the last Anniversary Date shall first be made available to satisfy any contribution that may be required pursuant to Section 6.09 or be used to pay any administrative expenses of the Plan. The remaining Forfeitures, if any, shall be treated in accordance with the Adoption Agreement. Provided, however, that in the event the allocation of Forfeitures provided herein shall cause the "Annual Addition" (as defined in Section 4.04) to any Participant's Account to exceed the amount allowable by the Code, the excess shall be reallocated in accordance with Section 4.04(a)(4). Except, however, if elected in the Adoption Agreement, a Participant who fails to satisfy the conditions set forth in the Adoption Agreement during any Plan Year shall not share in the Plan Forfeitures for that year.

(f) If a Former Participant is reemployed after five (5) consecutive 1-Year Breaks in Service, then separate accounts shall be maintained as follows:

(1) one account for nonforfeitable benefits attributable to pre-break service; and

(2) one account representing the Former Participant's employer derived account balance in the Plan attributable to post-break service.

#### 4.04 MAXIMUM ANNUAL ADDITIONS

(a) (1) If the Participant does not participate in, and has never participated in another qualified plan maintained by the Employer, or a welfare benefit fund (as defined in Code Section 419(e)), maintained by the Employer, or an individual medical account (as defined in Code Section 415(l)(2)) maintained by the Employer, or a simplified employee pension, as defined in Code Section 408(k), maintained by the Employer which provides "Annual Additions," the amount of "Annual Additions" which may be credited to the Participant's Accounts for any "Limitation Year" shall not exceed the lesser of the "Maximum Permissible Amount" or any other limitation contained in this Plan. If the Employer contribution that would otherwise be contributed or

allocated to the Participant's accounts would cause the "Annual Additions" for the "Limitation Year" to exceed the "Maximum Permissible Amount," the amount contributed or allocated will be reduced so that the "Annual Additions" for the "Limitation Year" will equal the "Maximum Permissible Amount."

(2) Prior to determining the Participant's actual "415 Compensation" for the "Limitation Year," the Employer may determine the "Maximum Permissible Amount" for a Participant on the basis of a reasonable estimation of the Participant's "415 Compensation" for the "Limitation Year," uniformly determined for all Participants.

(3) As soon as is administratively feasible after the end of the "Limitation Year," the "Maximum Permissible Amount" for such "Limitation Year" shall be determined on the basis of the Participant's actual "415 Compensation" for such "Limitation Year."

(b) (1) This subsection (b) applies if, in addition to this Plan, the Participant is covered under another qualified defined contribution plan maintained by the Employer, or a welfare benefit fund (as defined in Code Section 419(e)) maintained by the Employer, or an individual medical account (as defined in Code Section 415(1)(2)) maintained by the Employer, or a simplified employee pension as defined in Code Section 408(k) maintained by the Employer which provides "Annual Additions" during any "Limitation Year." The "Annual Additions" which may be credited to a Participant's accounts under this Plan for any such "Limitation Year" shall not exceed the "Maximum Permissible Amount" reduced by the "Annual Additions" credited to a Participant's accounts under the other plans and welfare benefit funds, individual medical accounts, and simplified employee pensions for the same "Limitation Year." If the "Annual Additions" with respect to the Participant under other defined contribution plans, welfare benefit funds, individual medical accounts and simplified employee pensions maintained by the Employer are less than the "Maximum Permissible Amount" and the Employer contribution that would otherwise be contributed or allocated to the Participant's accounts under this Plan would cause the "Annual Additions" for the "Limitation Year" to exceed this limitation, the amount contributed or allocated will be reduced so that the "Annual Additions" under all such plans and welfare benefit funds for the "Limitation Year" will equal the "Maximum Permissible Amount." If the "Annual Additions" with respect to the Participant under such other defined contribution plans, welfare benefit funds, individual medical accounts and simplified employee pensions in the aggregate are equal to or greater than the "Maximum Permissible Amount," no amount will be contributed or allocated to the Participant's account under this Plan for the "Limitation Year."

(2) Prior to determining the Participant's actual "415 Compensation" for the "Limitation Year," the Employer may determine the "Maximum Permissible Amount" for a Participant in the manner described in Section 4.04(a)(2).

(3) As soon as is administratively feasible after the end of the "Limitation Year," the "Maximum Permissible Amount" for the "Limitation Year" will be determined on the basis of the Participant's actual "415 Compensation" for the "Limitation Year."

(4) If, pursuant to Section 4.04(b)(3) or Section 4.05, a Participant's "Annual Additions" under this Plan and such other plans would result in an "Excess Amount" for a "Limitation Year," the "Excess Amount" will be deemed to consist of the "Annual Additions" last allocated, except that "Annual Additions" attributable to a simplified employee pension will be deemed to have been allocated first, followed by "Annual Additions" to a welfare benefit fund or individual medical account, and then by "Annual Additions" to a plan subject to Code Section 412, regardless of the actual allocation date.

(5) If an "Excess Amount" was allocated to a Participant on an allocation date of this Plan which coincides with an allocation date of another plan, the "Excess Amount" attributed to this Plan will be the product of:

(i) the total "Excess Amount" allocated as of such date, times;

(ii) the ratio of (1) the "Annual Additions" allocated to the Participant for the "Limitation Year" as of such date under this Plan to (2) the total "Annual Additions" allocated to the Participant for the "Limitation Year" as of such date under this and all the other qualified defined contribution plans.

(6) Any "Excess Amount" attributed to this Plan will be disposed in the manner described in Section 4.04(a)(4).

(c) For purposes of applying the limitations of Code Section 415, the transfer of funds from one qualified plan to another is not an "Annual Addition." In addition, the following are not Employee contributions for the purposes of Section 4.04(d)(1):

(1) rollover contributions (as defined in Code Sections 402(c)(4), 403(a)(4), 403(b)(8), 408(d)(3) and 457(e)(16)); and

(2) Employee contributions to a simplified employee pension excludable from gross income under Code Section 408(k)(6).

(d) For purposes of this Section, the following terms shall be defined as follows:

(1) "Annual Additions" means the sum credited to a Participant's accounts for any Limitation Year of:

(i) Employer contributions (including elective deferrals and Employee nonelective contributions that are picked up pursuant to Section 414(h) of the Code);

(ii) Employee (after-tax) contributions;

(iii) Forfeitures;

(iv) amounts allocated, after March 31, 1984, to an individual medical account, as defined in Code Section 415(l)(2), which is part of a pension or annuity plan maintained by the Employer;

(v) amounts derived from contributions paid or accrued after December 31, 1985, in taxable years ending after such date, which are attributable to post-retirement medical benefits allocated to the separate account of a key employee (as defined in Code Section 419A(d)(3)) under a welfare benefit fund (as defined in Code Section 419(e)) maintained by the Employer; and

(vi) allocations under a simplified employee pension.

Except, however, the 415 Compensation percentage limitation referred to in paragraph (e)(7)(ii) below shall not apply to:

(1) any contribution for medical benefits (within the meaning of Code Section 419A(f)(2)) after separation from service which is otherwise treated as an "Annual Addition," or

(2) any amount otherwise treated as an "Annual Addition" under Code Section 415(l)(1).

For this purpose, any “Excess Amount” applied under Sections 4.04(a)(4) and 4.04(b)(6) in the “Limitation Year” to reduce Employer contributions shall be considered “Annual Additions” for such “Limitation Year.”

Effective for Limitation Years beginning more than ninety (90) days after the close of the first regular legislative session (of the legislative body with authority to amend the Plan) that begins on or after July 1, 2007, the Plan’s definition of “Annual Additions” is modified as follows:

(1) Restorative payments. Annual additions for purposes of Code Section 415 shall not include restorative payments. A restorative payment is a payment made to restore losses to a plan resulting from actions by a fiduciary for which there is reasonable risk of liability for breach of a fiduciary duty under applicable federal or state law, where participants who are similarly situated are treated similarly with respect to the payments. Generally, payments are restorative payments only if the payments are made in order to restore some or all of the plan’s losses due to an action (or a failure to act) that creates a reasonable risk of liability for such a breach of fiduciary duty (other than a breach of fiduciary duty arising from failure to remit contributions to the plan). This includes payments to a plan made pursuant to a court approved settlement to restore losses to a qualified defined contribution plan on account of the breach of fiduciary duty (other than a breach of fiduciary duty arising from failure to remit contributions to the plan). Payments made to the Plan to make up for losses due merely to market fluctuations and other payments that are not made on account of a reasonable risk of liability for breach of a fiduciary duty are not restorative payments and generally constitute contributions that are considered Annual Additions.

(2) Other Amounts. Annual additions for purposes of Code Section 415 shall not include: (i) The direct transfer of a benefit or employee contributions from a qualified plan to this Plan; (ii) Rollover contributions (as described in Code Section 401(a)(31), 402(c)(1), 403(a)(4), 403(b)(8), 408(d)(3), and 457(e)(16)); (iii) Repayments of loans made to a participant from the Plan; and (iv) Repayments of amounts described in Code Section 411(a)(7)(B) (in accordance with Code § 411(a)(7)(C)) and Code Section 411(a)(3)(D) or repayment of contributions to a governmental plan (as defined in Code Section 414(d)) as described in Code Section 415(k)(3), as well as Employer restorations of benefits that are required pursuant to such repayments.

(3) Date of tax-exempt Employer contributions. Notwithstanding anything in the Plan to the contrary, in the case of an Employer that is exempt from Federal income tax (including a governmental employer), Employer contributions are treated as credited to a Participant’s Account for a particular Limitation Year only if the contributions are actually made to the Plan no later than the 15th day of the tenth calendar month following the end of the calendar year or fiscal year (as applicable, depending on the basis on which the Employer keeps its books) with or within which the particular Limitation Year ends.

(2) “415 Compensation” means a Participant’s Compensation as elected in the Adoption Agreement. However, regardless of any selection made in the Adoption Agreement, 415 Compensation shall include any elective deferral (as defined in Code Section 402(g)(3)), and any amount which is contributed or deferred by the Employer at the election of the Employee and which is not includible in the gross income of the Employee by reason of Sections 125, 457, and 132(f)(4). Any exclusions from Compensation selected in the Adoption Agreement shall not apply for purposes of the definition of 415 Compensation.

Effective for Limitation Years beginning more than ninety (90) days after the close of the first regular legislative session (of the legislative body with authority to amend the Plan) that begins on or after July 1, 2007, 415 Compensation shall be adjusted, as set forth herein and as otherwise elected in the Adoption Agreement, for the following types of compensation paid after a Participant's severance from employment with the Employer maintaining the Plan (or any other entity that is treated as the Employer pursuant to Code Section 414(b), (c), (m) or (o)). However, amounts described in subsections (i) and (ii) below may only be included in 415 Compensation to the extent such amounts are paid by the later of 2 1/2 months after severance from employment or by the end of the limitation year that includes the date of such severance from employment. Any other payment of compensation paid after severance of employment that is not described in the following types of compensation is not considered 415 Compensation within the meaning of Code Section 415(c)(3), even if payment is made within the time period specified above.

(i) Regular pay. 415 Compensation shall include regular pay after severance of employment if:

(1) The payment is regular compensation for services during the participant's regular working hours, or compensation for services outside the participant's regular working hours (such as overtime or shift differential), commissions, bonuses, or other similar payments; and

(2) The payment would have been paid to the participant prior to a severance from employment if the participant had continued in employment with the Employer.

(ii) Leave cashouts and deferred compensation. Leave cashouts shall be included in 415 Compensation, unless otherwise elected in the Adoption Agreement, if those amounts would have been included in the definition of 415 Compensation if they were paid prior to the participant's severance from employment, and the amounts are payment for unused accrued bona fide sick, vacation, or other leave, but only if the participant would have been able to use the leave if employment had continued. In addition, deferred compensation shall be included in 415 Compensation, unless otherwise elected in the Adoption Agreement, if the compensation would have been included in the definition of 415 Compensation if it had been paid prior to the participant's severance from employment, and the compensation is received pursuant to a nonqualified unfunded deferred compensation plan, but only if the payment would have been paid at the same time if the participant had continued in employment with the Employer and only to the extent that the payment is includible in the participant's gross income.

(iii) Salary continuation payments for military service participants. 415 Compensation does not include, unless otherwise elected in the Adoption Agreement, payments to an individual who does not currently perform services for the Employer by reason of qualified military service (as that term is used in Code Section 414(u)(1)) to the extent those payments do not exceed the amounts the individual would have received if the individual had continued to perform services for the Employer rather than entering qualified military service.

(iv) Salary continuation payments for disabled Participants. Unless otherwise elected in the Adoption Agreement, 415 Compensation does not include compensation paid to a participant who is permanently and totally disabled (as defined in Code Section 22(e)(3)). If elected, this provision shall apply to all participants for the period specified in the Adoption Agreement.

415 Compensation for a Limitation Year shall not include, unless otherwise elected in the Adoption Agreement, amounts earned but not paid during the limitation year solely because of the timing of pay periods and pay dates. However, if elected in the Adoption Agreement, 415

Compensation for a limitation year shall include amounts earned but not paid during the limitation year solely because of the timing of pay periods and pay dates, provided the amounts are paid during the first few weeks of the next limitation year, the amounts are included on a uniform and consistent basis with respect to all similarly situated participants, and no compensation is included in more than one limitation year.

If the Plan's definition of Compensation for purposes of Code Section 415 is the definition in Regulation Section 1.415(c)-2(b) (Regulation Section 1.415-2(d)(2) under the Regulations in effect for Limitation Years beginning prior to July 1, 2007) and the simplified compensation definition of Regulation Section 1.415(c)-2(d)(2) (Regulation Section 1.415-2(d)(10) under the Regulations in effect for Limitation Years prior to July 1, 2007) is not used, then 415 Compensation shall include amounts that are includible in the gross income of a Participant under the rules of Code Section 409A or Code Section 457(f)(1)(A) or because the amounts are constructively received by the Participant. [Note if the Plan's definition of Compensation is W-2 wages or wages for withholding purposes, then these amounts are already included in Compensation.]

(3) "Defined Contribution Dollar Limitation" means \$40,000 (as adjusted for increases in the cost-of-living under Code Section 415(d)).

(4) "Employer" means the Employer that adopts this Plan and all Affiliated Employers, except that for purposes of this Section, Affiliated Employers shall be determined pursuant to the modification made by Code Section 415(h).

(5) "Excess Amount" means the excess of the Participant's "Annual Additions" for the "Limitation Year" over the "Maximum Permissible Amount."

(6) "Limitation Year" means the Compensation year (a twelve (12) consecutive month period) as elected by the Employer in the Adoption Agreement. All qualified plans maintained by the Employer must use the same Limitation Year. If the Limitation Year is amended to a different twelve (12) consecutive month period, the new Limitation Year must begin on a date within the Limitation Year in which the amendment is made.

The Limitation Year may only be changed by a Plan amendment. Furthermore, if the Plan is terminated effective as of a date other than the last day of the Plan's limitation year, then the Plan is treated as if the Plan had been amended to change its limitation year.

(7) "Maximum Permissible Amount" means the maximum "Annual Addition" that may be contributed or allocated to a Participant's account under the Plan for any "Limitation Year." Except to the extent permitted under Section 414(v) of the Code, if applicable, the Annual Addition that may be contributed or allocated to a Participant's account under the Plan for any Limitation Year shall not exceed the lesser of:

- (i) the "Defined Contribution Dollar Limitation" or
- (ii) 100 percent of the Participant's 415 Compensation for the Limitation Year.

The compensation limit referred to in (ii) shall not apply to any contribution for medical benefits after separation from service (within the meaning of Section 401(h) or Section 419A(f)(2) of the Code) which is otherwise treated as an Annual Addition.

If a short "Limitation Year" is created because of an amendment changing the "Limitation Year" to a different twelve (12) consecutive month period, the Maximum Permissible Amount will not exceed the "Defined Contribution Dollar Contribution" multiplied by the following fraction:

Number of months in the short “Limitation Year”

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(e) For purposes of applying the limitations of Code Section 415, all defined contribution plans (without regard to whether a plan has been terminated) ever maintained by the Employer (or a “predecessor employer”) under which the Participant receives Annual Additions are treated as one defined contribution plan. The “Employer” means the Employer that adopts this Plan and all members of a controlled group or an affiliated service group that includes the Employer (within the meaning of Code Section 414(b), (c), (m) or (o)), except that for purposes of this Section, the determination shall be made by applying Code Section 415(h), and shall take into account tax-exempt organizations under Regulation Section 1.414(c)-5, as modified by Regulation Section 1.415(a)-1(f)(1). For purposes of this Section:

(1) A former Employer is a “predecessor employer” with respect to a participant in a plan maintained by an Employer if the Employer maintains a plan under which the participant had accrued a benefit while performing services for the former Employer, but only if that benefit is provided under the plan maintained by the Employer. For this purpose, the formerly affiliated plan rules in Regulation Section 1.415(f)-1(b)(2) apply as if the Employer and predecessor Employer constituted a single employer under the rules described in Regulation Section 1.415(a)-1(f)(1) and (2) immediately prior to the cessation of affiliation (and as if they constituted two, unrelated employers under the rules described in Regulation Section 1.415(a)-1(f)(1) and (2) immediately after the cessation of affiliation) and cessation of affiliation was the event that gives rise to the predecessor employer relationship, such as a transfer of benefits or plan sponsorship.

(2) With respect to an Employer of a participant, a former entity that antedates the Employer is a “predecessor employer” with respect to the participant if, under the facts and circumstances, the employer constitutes a continuation of all or a portion of the former entity.

(f) For purposes of aggregating plans for Code Section 415, a “formerly affiliated plan” of an employer is taken into account for purposes of applying the Code Section 415 limitations to the employer, but the formerly affiliated plan is treated as if it had terminated immediately prior to the “cessation of affiliation.” For purposes of this paragraph, a “formerly affiliated plan” of an employer is a plan that, immediately prior to the cessation of affiliation, was actually maintained by one or more of the entities that constitute the employer (as determined under the employer affiliation rules described in Regulation Section 1.415(a)-1(f)(1) and (2)), and immediately after the cessation of affiliation, is not actually maintained by any of the entities that constitute the employer (as determined under the employer affiliation rules described in Regulation Section 1.415(a)-1(f)(1) and (2)). For purposes of this paragraph, a “cessation of affiliation” means the event that causes an entity to no longer be aggregated with one or more other entities as a single employer under the employer affiliation rules described in Regulation Section 1.415(a)-1(f)(1) and (2) (such as the sale of a subsidiary outside a controlled group), or that causes a plan to not actually be maintained by any of the entities that constitute the employer under the employer affiliation rules of Regulation Section 1.415(a)-1(f)(1) and (2) (such as a transfer of plan sponsorship outside of a controlled group).

(g) Two or more defined contribution plans that are not required to be aggregated pursuant to Code Section 415(f) and the Regulations thereunder as of the first day of a limitation year do not fail to satisfy the requirements of Code Section 415 with respect to a participant for the limitation year merely because they are aggregated later in that limitation year, provided that no annual additions are credited to the participant’s account after the date on which the plans are required to be aggregated.

(h) The limitations, adjustments and other requirements prescribed in this section shall at all times comply with the provisions of Code Section 415 and the Regulations thereunder.

4.05 ADJUSTMENT FOR EXCESSIVE ANNUAL ADDITIONS

If as a result of:

- (a) the allocation of Forfeitures,
- (b) a reasonable error in estimating a Participant's annual 415 Compensation,
- (c) a reasonable error in determining the amount of elective deferrals (within the meaning of Code Section 402(g)(3)) that may be made with respect to a Participant,
- (d) or other facts and circumstances to which Regulation Section 1.415-6(b)(6) shall be applicable, the "Annual Additions" under this Plan would cause the maximum provided in Section 4.04 to be exceeded, the Administrator shall treat the excess in accordance with Section 4.04(a)(4).

Notwithstanding any provision of the Plan to the contrary, if the Annual Additions (within the meaning of Code Section 415) are exceeded for any Participant, then the Plan may only correct such excess in accordance with the Employee Plans Compliance Resolution System (EPCRS) as set forth in Revenue Procedure 2008-50 or any superseding guidance, including, but not limited to, the preamble of the final Section 415 regulations.

#### 4.06 TRANSFERS AND ROLLOVERS FROM OTHER EMPLOYER PLANS

(a) As specified in the Adoption Agreement and with the consent of the Administrator, amounts may be transferred or rolled over on behalf of any Employee from other employer plans or individual retirement accounts, provided that the employer plan or account from which such funds are transferred permits the transfer to be made and, in the opinion of legal counsel for the Employer, the transfer or rollover will not jeopardize the qualified status of the Plan (or the Tax-exempt status of the related Trust, if applicable) or create adverse tax consequences for the Employer. The amounts transferred or rolled over shall be set up in a separate account herein referred to as a Rollover Account. Such account shall be fully Vested at all times and shall not be subject to Forfeiture for any reason. No amounts attributable to deductible Employee contributions (as defined in Code Section 219) may be rolled over or transferred to this Plan.

(b) Amounts in a Rollover Account shall be held by the Insurer (or Trustee, if applicable) pursuant to the provisions of this Plan and may not be withdrawn by, or distributed to the Employee, in whole or in part, except as provided in Paragraphs (c), (d), (e) of this Section.

(c) Amounts attributable to elective contributions (as defined in Regulation Section 1.401(k)-1(g)(3), or for Plan Years beginning on or after January 1, 2006, Regulations section 1.401(k)-6), including amounts treated as elective contributions, which are transferred from another employer plan in a plan-to-plan transfer shall be subject to the distribution limitations provided for in Regulation Section 1.401(k)-1(d).

(d) A separate account will be maintained by the Administrator for any transferred voluntary Employee contributions of each Participant, and earnings and losses on such voluntary Employee contributions will be allocated to the separate account. A Participant may, upon a written request submitted to the Administrator, withdraw all or a portion of such transferred voluntary Employee contributions at any time. Such written request must be consistent with and satisfy all notice requirements of Code Section 402(f) and the Regulations thereunder.

(e) At Normal Retirement Age, or such other date when the Employee or the Employee's Beneficiary shall be entitled to receive benefits as set forth in the Plan and Adoption Agreement, the fair market value of the Rollover Account shall be used to provide additional benefits to the Employee or the Employee's Beneficiary. If elected in the Adoption Agreement, distributions of rollovers may be made at any time, even if there is no distributable event which permits distribution of other accounts. Any distributions of amounts held in a Rollover Account shall be made in a manner which is consistent with and satisfies the provisions of Section 6.05, including, but not limited to, all notice requirements of Code



Section 402(f). Furthermore, such amounts shall be considered as part of an Employee's benefit in determining whether an involuntary cash-out of benefits without such Employee's consent may be made.

(f) For purposes of this section, the term "employer plan" shall mean any tax-qualified plan under Code Section 401(a), 403(a), 403(b), or 457(b) maintained by a state or local governmental entity. The term "amounts transferred or rolled over from other employer plans" shall mean:

(1) amounts transferred to this Plan directly from another employer plan by means of a trustee-to-insurer (or trustee-to-trustee or insurer-to-insurer) transfer; and

(2) eligible rollover distributions payable to or received by an Employee from another employer plan which are eligible for tax-free rollover to an employer plan and which are directly transferred to this Plan or are transferred by the Employee to this Plan within sixty (60) days following such Employee's receipt thereof. .

(g) Prior to accepting any transfers to which this section applies, the Administrator may require the Employee to establish that the amounts to be transferred to this Plan meet the requirements of this section and may also require the Employee to provide an opinion of counsel satisfactory to the Employer that the amounts to be transferred meet the requirements of this section.

(h) If the Employer has elected in the Adoption Agreement to allow rollovers from other plans, the Employer, operationally and on a nondiscriminatory basis, may limit the source of rollover contributions that may be accepted by this Plan.

#### 4.07 VOLUNTARY EMPLOYEE CONTRIBUTIONS (EMPLOYEE AFTER-TAX CONTRIBUTIONS)

(a) If this is an amendment or restatement of a plan that previously permitted voluntary nondeductible (after-tax) Employee contributions, then such voluntary Employee contributions shall be held in a separate account as defined in Section 1.52.

(b) The balance in each Participant's Voluntary Contribution Account shall be fully Vested at all times and shall not be subject to Forfeiture for any reason.

(c) A Participant may elect to withdraw nondeductible voluntary Employee contributions from such Participant's Voluntary Contribution Account and the actual earnings thereon in a manner which is consistent with and satisfies the provisions of Section 6.05, including, but not limited to, all notice requirements of Code Section 402(f). If the Administrator maintains sub-accounts with respect to nondeductible voluntary Employee contributions (and earnings thereon) which were made on or before a specified date, a Participant shall be permitted to designate which sub-account shall be the source for the withdrawal. No Forfeitures shall occur solely as a result of an Employee's withdrawal of nondeductible voluntary Employee contributions.

(d) At Normal Retirement Age, or such other date when the Participant or such Participant's Beneficiary shall be entitled to receive benefits, the fair market value of the Voluntary Contribution Account shall be used to provide additional benefits to the Participant or the Participant's Beneficiary.

#### 4.08 QUALIFIED VOLUNTARY EMPLOYEE CONTRIBUTIONS

(a) If this is an amendment or restatement of a Plan that previously permitted deductible voluntary Employee contributions, then each Participant who made a qualified voluntary employee contribution within the meaning of Code Section 219(e)(2) as it existed prior to the enactment of the Tax Reform Act of 1986, shall have such Participant's contribution held in a separate Qualified Voluntary Employee Contribution Account which shall be fully Vested at all times. Such contributions, however, shall not be permitted if they are attributable to taxable years beginning after December 31, 1986.

(b) A Participant may, upon written request delivered to the Administrator, make withdrawals from such Participant's Qualified Voluntary Employee Contribution Account. Any distribution shall be made in a manner which is consistent with and satisfies the provisions of Section 6.05, including, but not limited to, all notice requirements of Code Section 402(f).

(c) At Normal Retirement Age, or such other date when the Participant or the Participant's Beneficiary shall be entitled to receive benefits, the fair market value of the Qualified Voluntary Employee Contribution Account shall be used to provide additional benefits to the Participant or the Participant's Beneficiary.

#### 4.09 DIRECTED INVESTMENT ACCOUNT

(a) If elected in the Adoption Agreement, except as provided below, all Participants may direct the investment of all or a portion of their individual account balances within limits set by the Employer. Participants may direct the Insurer (or Trustee, if applicable) in writing to invest their account in specific assets, specific funds or other investments permitted under the Plan and the Participant Direction Procedures. That portion of the interest of any Participant which is subject to investment direction of such Participant will be considered a Participant Directed Investment Account. With respect to Participants under age 18 (or the applicable age of majority), the Administrator may direct that such Participant's accounts be invested in the Designated Investment Option available under the Plan that has the lowest risk of loss.

(b) As of each Valuation Date, all Participant Directed Investment Accounts shall be charged or credited with the net earnings, gains, losses and expenses as well as any appreciation or depreciation in the market value using publicly listed fair market values when available or appropriate as follows:

(1) To the extent that the assets in a Participant Directed Investment Account are accounted for as pooled assets or investments, the allocation of earnings, gains and losses of each Participant's Account shall be based upon the total amount of funds so invested, in a manner proportionate to the Participant's share of such pooled investment.

(2) To the extent that the assets in the Participant Directed Account are accounted for as segregated assets, the allocation of earnings, gains and losses from such assets shall be made on a separate and distinct basis.

(c) Any information regarding investments available under the Plan, to the extent not required to be described in the Participant Direction Procedures, may be provided to the Participant in one or more written documents which are separate from the Participant Direction Procedures and are not thereby incorporated by reference into this Plan.

(d) The Administrator may, at its discretion, include in or exclude by amendment or other action from the Participant Direction Procedure such instructions, guidelines or policies as it deems necessary or appropriate to ensure proper administration of the Plan, and may interpret the same accordingly.

ARTICLE V  
TRUSTEE AND CUSTODIAN  
(APPLICABLE ONLY TO TRUSTEED PLAN  
OR PORTION OF PLAN ASSETS HELD IN TRUST OR CUSTODIAL ACCOUNT)

5.01 BASIC RESPONSIBILITIES OF THE TRUSTEE

In the event this is a Trusteed Plan, the Trustee shall have the responsibilities in this Article V with respect to any assets which are not held in Annuity Contracts subject to the terms of Article X. If a discretionary Trustee is selected in the Adoption Agreement, then the Trustee has full discretion and authority with regard to the investment of the Plan assets, except with respect to assets under the control or direction of an investment manager, the Employer, the Administrator or a Participant. If a nondiscretionary Trustee is selected in the Adoption Agreement, then the Trustee will not have any discretion or authority with regard to the Plan assets, but must act solely as a directed Trustee of funds contributed. A nondiscretionary Trustee is authorized and empowered with the following rights, powers, and duties, each of which the nondiscretionary Trustee exercises solely as directed Trustee in accordance with the written direction of the investment manager, the Employer, the Administrator or a Participant. If the nondiscretionary Trustee should be directed but is not, the Employer is responsible for providing necessary direction.

The nondiscretionary Trustee has no duty to review or to make recommendations regarding investments made at the written direction of the investment manager, Employer or Participant. The nondiscretionary Trustee must retain any investment obtained at the written direction of the investment manager, Employer or Participant until further directed in writing to dispose of such investment. The nondiscretionary Trustee is not liable in any manner or for any reason for making, retaining or disposing of any investment pursuant to any written direction described in this paragraph. Furthermore, to the extent permitted by law, the Employer agrees to indemnify and to hold the nondiscretionary Trustee harmless from any damages, costs or expenses, including reasonable counsel fees, which the nondiscretionary Trustee may incur as a result of any claim asserted against the nondiscretionary Trustee arising out of the nondiscretionary Trustee's compliance with any written direction described in this paragraph.

(a) The Trustee shall have the power to invest, manage, and control the Plan assets subject, however, to the direction of the Employer, the Administrator, a Participant or any agent of the Employer as to all or a portion of the assets of the Plan as follows:

(1) To the extent and in the manner permitted by the Participant Direction Procedures, if permitted in the Adoption Agreement, a Participant may direct the Trustee with respect to the investment or reinvestment of the Participant's Accounts under the Plan in such pooled investments (including, but not limited to the pooled funds of the Trustee) as are made available by agreement between the Trustee and the Employer.

(2) The Employer may by written agreement or designation appoint at its option an investment adviser or other agent to provide direction to the Trustee with respect to any or all of the Plan assets. Such appointment shall be given by the Employer in writing in a form acceptable to the Trustee and shall specifically identify the Plan assets with respect to which the agent shall have authority to direct the investment.

(3) In the event that the Trustee shall be directed by a Participant (pursuant to the Participant Direction Procedures), the Employer, or other agent appointed by the Employer with respect to the investment of any or all Plan assets, the Trustee shall have no liability with respect to the investment of such assets, but shall be responsible only to execute such investment instruction as so directed.

(4) The Trustee shall be entitled to rely fully on the written instructions of a Participant pursuant to the Participant Direction Procedures, the Employer, or any fiduciary or nonfiduciary agent of the Employer, in the discharge of such duties, and shall not be liable for any loss or other liability resulting from such direction (or lack of direction) of the investment of any part of the Plan assets.

(5) The Trustee may delegate the duty to execute such instructions to any nonfiduciary agent, which may be an affiliate of the Trustee or any Plan representative.

(6) The Trustee may refuse to comply with any direction from the Participant in the event the Trustee, in its sole and absolute discretion, deems such instructions improper by virtue of applicable law. The Trustee shall not be responsible or liable for any loss or expense which may result from the Trustee's refusal or failure to comply with any directions from the Participant.

(7) Any costs and expenses related to compliance with the Participant's directions shall be borne by the Participant Directed Investment Account, unless paid by the Employer.

(i) At the direction of the Administrator, the Trustee shall have the power to pay benefits required under the Plan to be paid to Participants, or, in the event of their death, to their Beneficiaries;

(ii) The Trustee shall maintain records of receipts and disbursements and furnish to the Employer and/or Administrator for each Plan Year a written annual report per Section 5.06; and

(iii) If there shall be more than one Trustee, they shall act by a majority of their number, but may authorize one or more of them to sign papers on their behalf.

## 5.02 INVESTMENT POWERS AND DUTIES OF THE TRUSTEE

The Trustee shall have the following investment powers and duties, which shall be exercisable in the Trustee's sole discretion (if the Trustee is a discretionary Trustee), or at the direction of the Employer, the Administrator, a designated investment manager or a Participant (if the Trustee is a directed, nondiscretionary Trustee):

(a) The Trustee shall, except as otherwise provided in this Plan, invest and reinvest the Trust Fund to keep the Trust Fund invested without distinction between principal and income and in such securities or property, real or personal, wherever situated, as the Trustee shall deem advisable, including, but not limited to, stocks, common or preferred, bonds and other evidences of indebtedness or ownership, and real estate or any interest therein. The Trustee shall at all times in making investments of the Trust Fund consider, among other factors, the short and long-term financial needs of the Plan on the basis of information furnished by the Employer. In making such investments, the Trustee shall not be restricted to securities or other property of the character expressly authorized by the applicable law for trust investments; however, the Trustee shall give due regard to any limitations imposed by the Code so that at all times this Plan may qualify as a qualified Plan and Trust.

(b) The Trustee may employ a bank or trust company pursuant to the terms of its usual and customary bank agency agreement, under which the duties of such bank or trust company shall be of a custodial, clerical and record-keeping nature.

(c) With respect to assets in a Participant's Directed Investment Account, the Participant or Beneficiary shall direct the Trustee with regard to any voting, tender and similar rights associated with the ownership of such assets, (i.e., the "Stock Right(s)") as follows:

(1) Each Participant or Beneficiary shall direct the Trustee to vote or otherwise exercise such Stock Rights in accordance with the provisions, conditions and terms of any such Stock Right(s);

(2) Such directions shall be provided to the Trustee by the Participant or Beneficiary in accordance with the procedure as established by the Administrator. The Trustee shall vote or

otherwise exercise such Stock Right(s) with respect to which it has received directions to do so under this Section; and

(3) To the extent to which a Participant or Beneficiary does not instruct the Trustee to vote or otherwise exercise such Stock Right(s), such Participants or Beneficiaries shall be deemed to have directed the Trustee that such Stock Rights remain nonvoted and unexercised.

(d) The Trustee may from time to time transfer to a common, collective, or pooled trust fund maintained by any corporate Trustee hereunder pursuant to Revenue Ruling 81-100, all or such part of the Trust Fund as the Trustee may deem advisable, and such part or all of the Trust Fund so transferred shall be subject to all the terms and provisions of the common, collective, or pooled trust fund which contemplate the commingling for investment purposes of such trust assets with trust assets of other trusts. The Trustee may withdraw from such common, collective, or pooled trust fund all or such part of the Trust Fund as the Trustee may deem advisable.

(e) Amounts attributable to contributions for Part-time, Seasonal and Temporary Employees pursuant to Section 4.01(e) shall be held in a separate account that is subject to general fiduciary standards, and these amounts shall be credited with the actual earnings of the assets held in such account.

### 5.03 OTHER POWERS OF THE TRUSTEE

The Trustee, in addition to all powers and authorities under common law, statutory authority and other provisions of this Plan, shall have the following powers and authorities, except as otherwise provided in this Plan, exercisable at the Trustee's sole discretion (if the Trustee is a discretionary trustee), or at the direction of the Employer, the Administrator, or designated investment manager or Participant (if the Trustee is a directed nondiscretionary Trustee):

(a) To purchase, or subscribe for, any securities or other property and to retain the same. In conjunction with the purchase of securities, margin accounts may be opened and maintained;

(b) To sell, exchange, convey, transfer, grant options to purchase, or otherwise dispose of any securities or other property held by the Trustee, by private contract or at public auction. No person dealing with the Trustee shall be bound to see to the application of the purchase money or to inquire into the validity, expediency, or propriety of any such sale or other disposition, with or without advertisement;

(c) To vote upon any stocks, bonds, or other securities; to give general or special proxies or powers of attorney with or without power of substitution; to exercise any conversion privileges, subscription rights or other options, and to make any payments incidental thereto; to oppose, or to consent to, or otherwise participate in, corporate reorganizations or other changes affecting corporate securities, and to delegate discretionary powers, and to pay any assessments or charges in connection therewith; and generally to exercise any of the powers of an owner with respect to stocks, bonds, securities, or other property. However, the Trustee shall not vote proxies relating to securities for which it has not been assigned full investment management responsibilities. In those cases where another party has such investment authority or discretion, the Trustee will deliver all proxies to said party who will then have full responsibility for voting those proxies;

(d) To cause any securities or other property to be registered in the Trustee's own name or in the name of one or more of the Trustee's nominees, and to hold any investments in bearer form, but the books and records of the Trustee shall at all times show that all such investments are part of the Trust Fund;

(e) To borrow or raise money for the purposes of the Plan in such amount, and upon such terms and conditions, as the Trustee shall deem advisable; and for any sum so borrowed, to issue a promissory note as Trustee, and to secure the repayment thereof by pledging all, or any part, of the Trust Fund; and no person lending money to the Trustee shall be bound to see to the application of the money lent or to inquire into the validity, expediency, or propriety of any borrowing;

- (f) To keep such portion of the Trust Fund in cash or cash balances as the Trustee may, from time to time, deem to be in the best interests of the Plan, without liability for interest thereon;
- (g) To accept and retain for such time as it may deem advisable any securities or other property received or acquired by it as Trustee hereunder, whether or not such securities or other property would normally be purchased as investments hereunder;
- (h) To make, execute, acknowledge, and deliver any and all documents of transfer and conveyance and any and all other instruments that may be necessary or appropriate to carry out the powers herein granted;
- (i) To settle, compromise, or submit to arbitration any claims, debts, or damages due or owing to or from the Plan, to commence or defend suits or legal or administrative proceedings, and to represent the Plan in all suits and legal and administrative proceedings;
- (j) To employ suitable agents and counsel and to pay their reasonable expenses and compensation, and such agent or counsel may or may not be agent or counsel for the Employer;
- (k) To apply for and procure from the Insurer as an investment of the Trust Fund such Contracts as the Administrator shall deem proper; to exercise, at any time or from time to time, whatever rights and privileges may be granted under such Contracts; to collect, receive, and settle for the proceeds of all such Contracts as and when entitled to do so under the provisions thereof;
- (l) To invest funds of the Trust in time deposits or savings accounts bearing a reasonable rate of interest in the Trustee's bank;
- (m) To invest in Treasury Bills and other forms of United States government obligations;
- (n) To sell, purchase and acquire put or call options if the options are traded on and purchased through a national securities exchange registered under the Securities Exchange Act of 1934, as amended, or, if the options are not traded on a national securities exchange, are guaranteed by a member firm of the New York Stock Exchange;
- (o) To deposit monies in federally insured savings accounts or certificates of deposit in banks or savings and loan associations;
- (p) To pool all or any of the Trust Fund, from time to time, with assets belonging to any other qualified employee pension benefit trust created by the Employer or any Affiliated Employer, and to commingle such assets and make joint or common investments and carry joint accounts on behalf of this Plan and such other trust or trusts, allocating undivided shares or interests in such investments or accounts or any pooled assets of the two or more trusts in accordance with their respective interests;
- (q) To appoint an agent or agents to assist the Trustee in carrying out any investment instructions of Participants and any fiduciary or responsible party;
- (r) To do all such acts and exercise all such rights and privileges, although not specifically mentioned herein, as the Trustee may deem necessary to carry out the purposes of the Plan.
- (s) To invest in shares of investment companies registered under the Investment Company Act of 1940.
- (t) Directed Investment Account. If elected in the Adoption Agreement, each Participant may direct the Trustee to separate and keep separate all or a portion of such Participant's interest in the Plan; and further each Participant is authorized and empowered, in such Participant's sole and absolute discretion, to give directions to the Trustee in such form as the Trustee may require concerning the

investment of the Participant's Directed Investment Account, which directions must be followed by the Trustee. Neither the Trustee nor any other persons including the Administrator or otherwise shall be under any duty to question any such direction of the Participant or to review any securities or other property, real or personal, or to make any suggestions to the Participant in connection therewith, and the Trustee shall comply as promptly as practicable with directions given by the Participant hereunder. Any such direction may be of a continuing nature or otherwise and may be revoked by the Participant at any time in such form as the Trustee may require. The Trustee may refuse to comply with any direction from the Participant in the event the Trustee, in its sole and absolute discretion, deems such directions improper by virtue of applicable law, and in such event, the Trustee shall not be responsible or liable for any loss or expense which may result. Any costs and expenses related to compliance with the Participant's directions shall be borne by the Participant Directed Investment Account.

Notwithstanding anything hereinabove to the contrary, the Trustee shall not invest any portion of a Participant Directed Investment Account in "collectibles" within the meaning of that term as employed in Code Section 408(m).

#### 5.04 DUTIES OF THE TRUSTEE REGARDING PAYMENTS

At the direction of the Administrator, the Trustee shall, from time to time, in accordance with the terms of the Plan, make payments out of the Plan assets. The Trustee shall not be responsible in any way for the application of such payments.

#### 5.05 TRUSTEE'S COMPENSATION AND EXPENSES AND TAXES

The Trustee shall be paid such reasonable compensation as set forth in the Trustee's fee schedule (if the Trustee has such a schedule) or as agreed upon in writing by the Employer and the Trustee. An individual serving as Trustee who already receives full-time pay from the Employer shall not receive compensation from this Plan. In addition, the Trustee shall be reimbursed for any reasonable expenses, including reasonable counsel fees incurred by it as Trustee. Such compensation and expenses shall be paid from the Trust Fund unless paid or advanced by the Employer. All taxes of any kind and all kinds whatsoever that may be levied or assessed under existing or future laws upon, or in respect of, the Trust Fund or the income thereof, shall be paid from the Trust Fund.

#### 5.06 ANNUAL REPORT OF THE TRUSTEE

Within a reasonable period of time after the later of the Anniversary Date or receipt of the Employer's contribution for each Plan Year, the Trustee, or its agent, shall furnish to the Employer and Administrator a written statement of account with respect to the Plan Year for which such contribution was made setting forth:

- (a) the net income, or loss, of the Trust Fund;
- (b) the gains, or losses, realized by the Trust Fund upon sales or other disposition of the assets;
- (c) the increase, or decrease, in the value of the Trust Fund;
- (d) all payments and distributions made from the Trust Fund; and
- (e) such further information as the Trustee and/or Administrator deems appropriate. The Employer, forthwith upon its receipt of each such statement of account, shall acknowledge receipt thereof in writing and advise the Trustee and/or Administrator of its approval or disapproval thereof. Failure by the Employer to disapprove any such statement of account within sixty (60) days after its receipt thereof shall be deemed an approval thereof. The approval by the Employer of any statement of account shall be binding as to all matters embraced therein as between the Employer and the Trustee to the same extent as if the account of the Trustee had been settled by judgment or decree in an action for a judicial settlement of its account in a court of competent jurisdiction in which the Trustee, the Employer and all persons having

or claiming an interest in the Plan were parties; provided, however, that nothing herein contained shall deprive the Trustee of its right to have its accounts judicially settled if the Trustee so desires.

#### 5.07 RESIGNATION, REMOVAL AND SUCCESSION OF TRUSTEE

(a) The Trustee may resign at any time by delivering to the Employer, at least sixty (60) days before its effective date, a written notice of resignation.

(b) The Employer may remove the Trustee by mailing by registered or certified mail, addressed to such Trustee at the Trustee's last known address, at least sixty (60) days before its effective date, a written notice of such Trustee's removal.

(c) Upon the death, resignation, incapacity, or removal of any Trustee, a successor may be appointed by the Employer; and such successor, upon accepting such appointment in writing and delivering same to the Employer, shall, without further act, become vested with all the estate, rights, powers, discretions, and duties of the predecessor with like respect as if such Trustee were originally named as a Trustee herein. Until such a successor is appointed, the remaining Trustee or Trustees shall have full authority to act under the terms of the Plan.

(d) The Employer may designate one or more successors prior to the death, resignation, incapacity, or removal of a Trustee. In the event a successor is so designated by the Employer and accepts such designation, the successor shall, without further act, become vested with all the estate, rights, powers, discretions, and duties of such successor's predecessor with the like effect as if such successor were originally named as Trustee herein immediately upon the death, resignation, incapacity, or removal of the predecessor.

(e) Whenever any Trustee hereunder ceases to serve as such, the Trustee shall furnish to the Employer and Administrator a written statement of account with respect to the portion of the Plan Year during which the individual or entity served as Trustee. This statement shall be either (i) included as part of the annual statement of account for the Plan Year required under Section 5.06 or (ii) set forth in a special statement. Any such special statement of account should be rendered to the Employer no later than the due date of the annual statement of account for the Plan Year. The procedures set forth in Section 5.06 for the approval by the Employer of annual statements of account shall apply to any special statement of account rendered hereunder and approval by the Employer of any such special statement in the manner provided in Section 5.06 shall have the same effect upon the statement as the Employer's approval of an annual statement of account. No successor to the Trustee shall have any duty or responsibility to investigate the acts or transactions of any predecessor who has rendered all statements of account required by Section 5.06 and this subsection.

#### 5.08 TRUSTEE INDEMNIFICATION

To the extent permitted by law, the Employer agrees to indemnify and save harmless the Trustee against any and all claims, losses, damages, expenses and liabilities the Trustee may incur in the exercise and performance of the Trustee's powers and duties hereunder, unless the same are determined to be due to gross negligence or willful misconduct.

#### 5.09 VALUATION OF THE TRUST FUND

The Administrator shall direct the Trustee, as of each Valuation Date, to determine the net worth of the assets comprising the Trust Fund as it exists on the Valuation Date prior to taking into consideration any contribution to be allocated for that Plan Year. In determining such net worth, the Trustee shall value the assets comprising the Trust Fund at their fair market value as of the Valuation Date.



#### 5.10 METHOD OF VALUATION

In determining the fair market value of securities held in the Trust Fund which are listed on a registered stock exchange, the Administrator shall direct the Trustee to value the same at the prices they were last traded on such exchange preceding the close of business on the Valuation Date. If such securities were not traded on the Valuation Date, or if the exchange on which they are traded was not open for business on the Valuation Date, then the securities shall be valued at the prices at which they were last traded prior to the Valuation Date. Any unlisted security held in the Trust Fund shall be valued at its bid price next preceding the close of business on the Valuation Date, which bid price shall be obtained from a registered broker or an investment banker. In determining the fair market value of assets other than securities for which trading or bid prices can be obtained, the Trustee may appraise such assets itself or employ one or more appraisers for that purpose and rely on the values established by such appraiser or appraisers.

#### 5.11 USE OF CUSTODIAL ACCOUNT

In the event that the Employer elects, in Section D.1.b. of the Adoption Agreement, to have all or a portion of the Plan's assets held in trust by a nondiscretionary Trustee, the Employer may, in lieu of or in addition to appointing a Trustee and creating a trust, appoint a bank (as defined in Code Section 408(n)), or another person who meets the requirements for a non-bank custodian under Code Section 401(f)(2), to serve as the custodian ("Custodian") of such assets, and may direct the Custodian to hold such assets in an account ("Custodial Account") that, but for the fact that it is not a trust, would otherwise constitute a qualified trust under Code Section 401(a). If the Employer makes the election described in this Section 5.11, the Custodial Account shall, for all purposes under the Plan, be treated as the Plan's Trust Fund (as described in Section 1.47), and the Custodian shall, for all purposes under the Plan, be treated as the nondiscretionary trustee of such Trust Fund. Consequently, any reference in the Plan to the Trustee shall be treated as a reference to the Custodian of the Custodial Account, and the Custodian shall have all the powers, duties and responsibilities of a nondiscretionary Trustee as set forth under Article V; provided, however, that the Custodian shall not have the power to, and shall not be permitted to, invest the assets of the Trust Fund in a common, collective or pooled trust fund maintained by a corporate Trustee, as described in Section 5.02(d).

ARTICLE VI  
DETERMINATION AND DISTRIBUTION OF BENEFITS

6.01 DETERMINATION OF BENEFITS UPON RETIREMENT

Upon the Participant's attainment of Normal Retirement Age or Early Retirement Age, all amounts credited to a Participant's Account shall become fully Vested. However, a Participant may postpone the termination of employment with the Employer to a later date, in which event the participation of such Participant in the Plan, including the right to receive allocations pursuant to Section 4.03, shall continue until such Participant's Retirement Date. Upon a Participant's Retirement Date, or as soon thereafter as is practicable, all amounts credited to such Participant's Account shall be distributable in accordance with Section 6.05.

6.02 DETERMINATION OF BENEFITS UPON DEATH

(a) Upon the death of a Participant before the Participant's Retirement Date or other termination of employment, all amounts credited to such Participant's Account shall, if elected in the Adoption Agreement, become fully Vested. The Administrator shall direct the Insurer (or Trustee, if applicable), in accordance with the provisions of Sections 6.06 and 6.07, to distribute the value of the deceased Participant's Vested accounts to the Participant's Beneficiary.

(b) Upon the death of a Former Participant, the Administrator shall direct, in accordance with the provisions of Sections 6.06 and 6.07, the Insurer (or Trustee, if applicable), to distribute the value of any remaining Vested amounts credited to the accounts of such deceased Former Participant to such Former Participant's Beneficiary.

(c) The Administrator may require such proper proof of death and such evidence of the right of any person to receive payment of the value of the account of a deceased Participant or Former Participant as the Administrator may deem desirable. The Administrator's determination of death and of the right of any person to receive payment shall be conclusive.

(d) The designation of a Beneficiary shall be made on a form satisfactory to the Administrator. A Participant may at any time revoke a designation of a Beneficiary or change a Beneficiary by filing written notice of such revocation or change with the Administrator. In the event no valid designation of Beneficiary exists at the time of the Participant's death, the death benefit shall be payable to the Participant's estate.

(e) In the event of any conflict between the terms of this Plan and the terms of any Contract issued hereunder, the Plan provisions shall control.

6.03 DETERMINATION OF BENEFITS IN EVENT OF DISABILITY

In the event of a Participant's Total and Permanent Disability prior to the Participant's Retirement Date or other termination of employment, all amounts credited to such Participant's Account shall, if elected in the Adoption Agreement, become fully Vested. In such event, the Administrator, in accordance with the provisions of Sections 6.05 and 6.07, shall direct the Insurer (or Trustee, if applicable) to distribute to such Participant all Vested amounts credited to such Participant's Account in a manner consistent with Section 6.05, including, but not limited to, all notice requirements of Code Section 402(f).

6.04 DETERMINATION OF BENEFITS UPON TERMINATION

(a) Distribution of the funds due to a Terminated Participant shall be made on the occurrence of an event which would result in the distribution had the Terminated Participant remained in the employ of the Employer (upon the Participant's death, Total and Permanent Disability, or Retirement Date). However, at the election of the Participant, the Administrator shall direct the Insurer (or Trustee, if applicable) to cause the entire Vested portion of the Terminated Participant's Account to be payable to such

Terminated Participant provided the conditions, if any, set forth in the Adoption Agreement have been satisfied.

Any distribution under this paragraph shall be made in a manner which is consistent with and satisfies the provisions of Section 6.05, including but not limited to, the notice requirements under Code Section 402(f).

(b) The Vested portion of any Participant's Account shall be a percentage of such Participant's Account determined on the basis of the Participant's number of Years of Service (or twelve month Periods of Service if the Elapsed Time Method is elected) according to the vesting schedule specified in the Adoption Agreement. Notwithstanding any other provision of this Plan to the contrary, contributions for Part-time, Seasonal and Temporary Employees pursuant to Section 4.01(e), Special Pay contributions and Employee non-elective contributions, shall be 100% immediately vested.

(c) Notwithstanding the vesting schedule above, upon any termination of the Plan or in the case of a profit sharing plan the complete discontinuance of contributions to the Plan, all amounts credited to the account of any affected Participant shall become 100% Vested and shall not thereafter be subject to Forfeiture.

(d) If this is an amended or restated Plan, then notwithstanding the vesting schedule specified in the Adoption Agreement, the Vested percentage of a Participant's Account shall not be less than the Vested percentage attained as of the later of the effective date or adoption date of this amendment and restatement. The computation of a Participant's nonforfeitable percentage of such Participant's interest in the Plan shall not be reduced as the result of any direct or indirect amendment to this Article.

(e) This subsection (e) applies if break in service rules have been selected in the Adoption Agreement.

(1) If any Former Participant shall be reemployed by the Employer before a 1-Year Break in Service occurs, the Former Participant shall continue to participate in the Plan in the same manner as if such termination had not occurred.

(2) If any Former Participant shall be reemployed by the Employer, and such Former Participant had received a distribution of the entire Vested interest prior to reemployment, the forfeited account shall not be reinstated.

(3) If any Former Participant is reemployed after a 1-Year Break in Service has occurred, Years of Service (or Periods of Service) shall include Years of Service (or Periods of Service) prior to the 1-Year Break in Service subject to the following rules:

(i) Any Former Participant who under the Plan does not have a nonforfeitable right to any interest in the Plan resulting from Employer contributions shall lose credits if the consecutive 1-Year Breaks in Service equal or exceed the greater of (A) five (5) or (B) the aggregate number of pre-break Years of Service (or Periods of Service);

(ii) After five (5) consecutive 1-Year Breaks in Service, a Former Participant's Vested Account balance attributable to pre-break service shall not be increased as a result of post-break service;

(iii) A Former Participant who is reemployed and who has not had Years of Service (or Periods of Service) before a 1-Year Break in Service disregarded pursuant to (i) above, shall participate in the Plan as of the date of reemployment.

(iv) If a Former Participant completes a Year of Service (a 1-Year Break in

Service previously occurred, but employment had not terminated), the Former Participant shall participate in the Plan retroactively from the first day of the Plan Year during which one (1) Year of Service (or Period of Service) is completed.

(f) In determining Years of Service (or Periods of Service) for purposes of vesting under the Plan, Years of Service (or Periods of Service) shall be excluded as specified in the Adoption Agreement.

#### 6.05 DISTRIBUTION OF BENEFITS

(a) The Trustee (or Insurer) will make Plan distributions in the form of cash except where (1) the Plan is a restated Plan and under the prior Plan, distribution in the form of property (“in-kind distribution”) is a Protected Benefit, or (2) the Employer is terminating the Plan, and in the reasonable judgment of the Administrator, some or all Plan assets may not within a reasonable time for making final distributions of Plan assets, be liquidated to cash or may not be so liquidated without undue loss in value. Under clause (2), the Administrator will direct the Trustee (or Insurer) to make Plan termination distributions to Participants and Beneficiaries in cash, in-kind or in a combination of these forms, in a reasonable and nondiscriminatory manner which may take into account the preferences of the distributees. All in-kind distributions will be made based on the current fair market value of the property, as determined by the Administrator.

(b) The portion of a Participant’s benefit derived from Employer contributions will generally not be paid without the Participant’s consent. If elected in the Adoption Agreement, the Administrator will distribute such benefit in a lump-sum without such Participant’s consent. If any portion of the Participant’s benefit is derived from contributions made for Part-time, Seasonal or Temporary Employees pursuant to Section 4.01(e), no distribution will be made without the Participant’s consent if the Participant’s Vested Interest is greater than the cash-out limit in effect under Code Section 411(a)(11)(A) for the Plan Year which includes the date of distribution. If, in the Adoption Agreement, the Employer elects to distribute a terminated Participant’s Vested account without the Participant’s consent, but only if the Participant’s Vested account balance does not exceed \$1,000, then the value of the Participant’s Vested account shall be determined by including the portion of the account balance that is attributable to rollover contributions (and earnings allocable thereto) within the meaning of Code Sections 402(c), 403(a)(4), 403(b)(8), 408(d)(3)(A)(ii), and 457(e)(16).

For distributions on or after March 28, 2005, in the event of a mandatory distribution greater than \$1,000 (but not greater than the cash-out limit in effect under Code Section 411(a)(11)(A)) in accordance with the provisions of this Section 6.05(b) (or any other section of the Plan relating to involuntary distributions), if the Participant does not elect to have such distribution paid directly to an eligible retirement plan specified by the Participant in a direct rollover or to receive the distribution directly, then the Administrator will direct the Trustee (or Insurer) to pay the distribution in a direct rollover to an individual retirement plan designated by the Administrator. In such event, the Administrator shall:

- (1) Select and enter into a written agreement with an IRA service provider that is willing to accept small account distributions as rollovers;
- (2) Select a default IRA investment that meets regulatory requirements;
- (3) Execute the necessary documents to establish an IRA on the Participant’s behalf; and
- (4) Ensure that Participants are provided with a detailed written explanation of the default IRA, including a description of the investment, the fees associated with the IRA, notification that the distribution may be transferred by the Participant to another individual retirement plan, as well as the name, address, and phone number of a plan contact for additional information.

(c) The Participant's consent shall not be required for any distribution required under Section 6.15, below.

(d) Notwithstanding any provision in the Plan to the contrary, distributions shall be made in accordance with Section 6.15 and shall otherwise comply with Code Section 401(a)(9) and the Regulations thereunder.

(e) All Contracts purchased for purposes of the payment of benefits under this Plan shall be non-transferable.

(f) If a distribution is made at a time when a Participant who has not terminated employment is not fully Vested in the Participant's Account and the Participant may increase the Vested percentage in such account:

(1) A separate account shall be established for the Participant's interest in the Plan as of the time of the distribution, and

(2) At any relevant time the Participant's Vested portion of the separate account shall be equal to an amount ("X") determined by the formula:

$$X \text{ equals } P(\text{AB plus } (R \times D)) - (R \times D)$$

For purposes of applying the formula: P is the Vested percentage at the relevant time, AB is the account balance at the relevant time, D is the amount of distribution, R is the ratio of the account balance at the relevant time to the account balance after distribution, and the relevant time is the time at which, under the Plan, the vested percentage in the account cannot increase .

(g) The Administrator, pursuant to the election of the Participant, shall direct the Insurer (or Trustee, if applicable) to distribute to a Participant or the Participant's Beneficiary any amount to which the Participant or Beneficiary is entitled under the Plan in one or more of the following methods which are permitted pursuant to the Adoption Agreement:

(1) One lump -sum payment in cash;

(2) Payments in monthly, quarterly, semiannual, or annual cash installments after first having:

(i) purchased a nontransferable annuity Contract for such payment, or,

(ii) if a trustee Plan, segregated the aggregate amount thereof in a separate savings account or certificate of deposit in a bank or savings and loan association, money market certificate or other liquid short-term security. The period over which such payment is to be made shall not extend beyond the Participant's life expectancy (or the life expectancy of the Participant and the Participant's designated Beneficiary);

(3) Payments in the form of an annuity. However, such annuity may not be in any form that will provide for payments over a period extending beyond either the life of the Participant (or the lives of the Participant and the Participant's designated Beneficiary) or the life expectancy.

## 6.06 DISTRIBUTION OF BENEFITS UPON DEATH

(a) If the Participant dies before his entire Vested Account is distributed to him, his remaining Vested interest in the Plan shall be distributed to his designated Beneficiary by either of the following methods, as elected by the Participant (or, if no election has been made prior to the Participant's

death, by the Participant's Beneficiary) subject to the rules specified in Section 6.06(b) and the selections made in the Adoption Agreement:

- (1) One lump-sum payment in cash;
- (2) In the form of an annuity over the life expectancy of the Participant's Beneficiary.
- (3) In the form of installments. In the event the death benefit is payable in
- (4) installments, then, upon the death of the Participant, the Administrator may direct that the death benefit be segregated and invested separately, and that the funds accumulated in the segregated account be used for the payment of the installments.

(b) Notwithstanding the above, if the Participant's Vested account balance as of the date of death does not exceed the amount selected in the Adoption Agreement (for involuntary distributions), the entire Vested account balance shall be distributed as soon as administratively practicable in a single lump sum subject to the mandatory rollover to IRA provisions of Section 6.05(b). The value of a Participant's Vested account balance shall be determined by including the portion of the account balance that is attributable to rollover contributions (and earnings allocable thereto) within the meaning of Code Sections 402(c), 403(a)(4), 403(b)(8), 408(d)(3)(A)(ii), and 457(e)(16).

(c) Notwithstanding any provision in the Plan to the contrary, distributions upon the death of a Participant shall be made in accordance with Section 6.15 and shall otherwise comply with Code Section 401(a)(9) and the Regulations thereunder.

(d) In the event that less than 100% of a Participant's interest in the Plan is distributed to such Participant's spouse, the portion of the distribution attributable to the Participant's Voluntary Contribution Account shall be in the same proportion that the Participant's Voluntary Contribution Account bears to the Participant's total interest in the Plan.

#### 6.07 TIME OF SEGREGATION OR DISTRIBUTION

Except as limited by Sections 6.05 and 6.06, whenever the Insurer (or Trustee, if applicable) is to make a distribution or commence a series of payments on or as of an Anniversary Date, the distribution or series of payments may be made or begun on such date or as soon thereafter as is practicable.

#### 6.08 DISTRIBUTION FOR MINOR BENEFICIARY

In the event a distribution is to be made to a minor Beneficiary, then the Administrator may direct that such distribution be paid to the legal guardian or to the custodian for such Beneficiary under the applicable state Uniform Transfers (Gifts) to Minors Act, if such is permitted by the laws of the state in which said Beneficiary resides. Such a payment to the legal guardian or custodian of a minor Beneficiary shall fully discharge the Insurer (or Trustee, if applicable), Employer, and Plan from further liability on account thereof.

#### 6.09 LOCATION OF PARTICIPANT OR BENEFICIARY UNKNOWN

In the event that all, or any portion, of the distribution payable to a Participant or Beneficiary hereunder shall, at the later of the Participant's attainment of age 62 or Normal Retirement Age, remain unpaid solely by reason of the inability of the Administrator to ascertain the whereabouts of such Participant or Beneficiary, the amount so distributable may, in the sole discretion of the Administrator, either be treated as a Forfeiture or be paid directly to an individual retirement account described in Code §408(a) or an individual retirement annuity described in Code §408(b). In addition, if the Plan provides for mandatory distributions, and the amount to be distributed to a Participant or Beneficiary does not exceed \$1,000, then the amount distributable may, in the sole discretion of the Administrator, either be treated as a Forfeiture or be paid directly to an individual retirement account described in

Code §408(a) or an individual retirement annuity described in Code §408(b) at the time it is determined that the whereabouts of the Participant or the Participant's Beneficiary cannot be ascertained. In the event a Participant or Beneficiary is located subsequent to the Forfeiture, such benefit shall be restored, first from Forfeitures, if any, and then from an additional Employer contribution, if necessary. Upon Plan termination, the portion of the distributable amount that is an "eligible rollover distribution," as defined in Section 6.14(b)(1), may be paid directly to an individual retirement account described in Code §408(a) or an individual retirement annuity described in Code §408(b). However, regardless of the preceding, a benefit that is lost by reason of escheat under applicable state law is not treated as a Forfeiture for purposes of this Section nor as an impermissible forfeiture under the Code.

#### 6.10 IN-SERVICE DISTRIBUTION

For Profit Sharing Plans, if elected in the Adoption Agreement, at such time as the conditions specified in the Adoption Agreement have been satisfied, the Administrator, at the election of the Participant, shall direct the distribution of up to the entire amount then credited to the accounts maintained on behalf of the Participant. However, no such distribution from the Participant's Account shall occur prior to 100% Vesting. In the event that the Administrator makes such a distribution, the Participant shall continue to be eligible to participate in the Plan on the same basis as any other Employee. Any distribution made pursuant to this section shall be made in a manner consistent with Section 6.05, including, but not limited to, the notice requirements of Code Section 402(f) and the Regulations thereunder. The provisions of the paragraph shall not apply to contributions made pursuant to Section G.3.b. of the Adoption Agreement on behalf of Part-time, Seasonal and Temporary Employees.

Except as provided in the following paragraph, to the extent that any optional form of benefit under this Plan permits a distribution prior to the Participant's retirement, death, Total and Permanent Disability, or severance from employment, and prior to Plan termination, the optional form of benefit is not available with respect to benefits attributable to assets (including the post-transfer earnings thereon) and liabilities that are transferred, within the meaning of Code Section 414(l), to this Plan from a Money Purchase Pension Plan qualified under Code Section 401(a) (other than any portion of those assets and liabilities attributable to voluntary Employee contributions).

If elected in the Adoption Agreement, then beginning as of the date specified in the Adoption Agreement, if the Plan is a money purchase pension plan (or a profit sharing plan that has received a transfer of assets from a pension plan), a Participant who has attained age 62, but has not separated from employment, may elect to receive a distribution of up to 100% of the Vested portion of the Participant's Account (or, in the case of a transferee plan, of up to the entire amount attributable to such transferred assets).

#### 6.11 ADVANCE DISTRIBUTION FOR HARDSHIP

(a) For Profit Sharing Plans, if elected in the Adoption Agreement, the Administrator, at the election of the Participant, shall direct the distribution to any Participant in any one Plan Year up to the lesser of 100% of the Participant's Account valued as of the last Anniversary Date or other Valuation Date or the amount necessary to satisfy the immediate and heavy financial need of the Participant. Any distribution made pursuant to this section shall be deemed to be made as of the first day of the Plan Year or, if later, the Valuation Date immediately preceding the date of distribution, and the account from which the distribution is made shall be reduced accordingly. Withdrawal under this section shall be authorized only if the distribution is on account of:

- (1) Medical expenses described in Code Section 213(d) incurred by the Participant, the Participant's spouse, or any of the Participant's dependents (as defined in Code Section 152) or expenses necessary for these persons to obtain medical care;
- (2) The purchase (excluding mortgage payments) of a principal residence for the Participant;
- (3) Funeral expenses for a member of the Participant's family;

(4) Payment of tuition and related educational fees for the next twelve (12) months of post-secondary education for the Participant, the Participant's spouse, children, or dependents;

(5) The need to prevent the eviction of the Participant from the Participant's principal residence or foreclosure on the mortgage of the Participant's principal residence: or

(6) Expenses for the repair of damage to the Participant's principal residence that would qualify for the casualty deduction under Code Section 165 (determined without regard to whether the loss exceeds 10% of adjusted gross income).

(b) No such distribution shall be made from the Participant's Account until such account has become fully Vested.

(c) Any distribution made pursuant to this section shall be made in a manner which is consistent with and satisfies the provisions of Section 6.05, including, but not limited to, all notice requirements of Code Section 402(f).

(d) The provisions of the paragraph shall not apply to contributions made pursuant to Section G.3.b. of the Adoption Agreement on behalf of Part-time, Seasonal and Temporary Employees.

(e) Unless otherwise elected in the Adoption Agreement, then effective as of August 17, 2006, a Participant's hardship event, for purposes of the Plan's hardship distribution provisions, includes an immediate and heavy financial need of the Participant's primary Beneficiary under the Plan, that would constitute a hardship event if it occurred with respect to the Participant's spouse or dependent as defined under Code Section 152 (such hardship events being limited to educational expenses, funeral expenses and certain medical expenses). For purposes of this subparagraph (e), a Participant's "primary Beneficiary under the Plan" is an individual who is named as a Beneficiary under the Plan and has an unconditional right to all or a portion of the Participant's account balance under the Plan upon the Participant's death.

#### 6.12 QUALIFIED RESERVIST DISTRIBUTIONS

If elected in the Adoption Agreement, then effective as of the date specified in the Adoption Agreement, the Plan permits a Participant to elect a Qualified Reservist Distribution, as defined in this Section 6.12.

A "Qualified Reservist Distribution" is any distribution to an individual who is ordered or called to active duty after September 11, 2001, if: (i) the distribution is from amounts attributable to elective deferrals in a 401(k) plan; (ii) the individual was (by reason of being a member of a reserve component, as defined in Section 101 of Title 37, United States Code) ordered or called to active duty for a period in excess of 179 days or for an indefinite period; and (iii) the Plan makes the distribution during the period beginning on the date of such order or call, and ending at the close of the active duty period.

#### 6.13 LIMITATIONS ON BENEFITS AND DISTRIBUTIONS UNDER DOMESTIC RELATIONS ORDERS

All rights and benefits, including elections, provided to a Participant in this Plan shall be subject to the rights afforded to any "alternate payee" under a "domestic relations order" ("DRO") as defined in Code Section 414(p). Furthermore, if elected in the Adoption Agreement, a distribution to an "alternate payee" shall be permitted if such distribution is authorized by a DRO, even if the affected Participant is not yet entitled to a distribution under the terms of the Plan.

Effective April 6, 2007, a domestic relations order will not fail to be a DRO: (i) solely because the order is issued after, or revises, another domestic relations order or DRO; or (ii) solely because of the time at which the order is issued, including issuance after the annuity starting date or after the Participant's death. Such a domestic relations order is subject to the same requirements and protections that apply to DROs.



## 6.14 DIRECT ROLLOVER

(a) Notwithstanding any provision of the Plan to the contrary that would otherwise limit a distributee's election under this Section, a distributee may elect, at the time and in the manner prescribed by the Administrator, to have any portion of an eligible rollover distribution paid directly to an eligible retirement plan specified by the distributee in a direct rollover.

(b) An eligible rollover distribution is any distribution of all or any portion of the balance to the credit of the distributee, except that an eligible rollover distribution does not include: any distribution that is one of a series of substantially equal periodic payments (not less frequently than annually) made for the life (or life expectancy) of the distributee or the joint lives (or joint life expectancies) of the distributee and the distributee's designated beneficiary, or for a specified period of ten (10) years or more; any distribution that is required under Section 401(a)(9) of the Code; or any distribution which is made on account of hardship. However, the portion of any eligible rollover distribution that consists of after-tax employee contributions which are not includible in gross income may be transferred only to an individual retirement account or annuity described in Section 408(a) or (b) of the Code, or to a qualified defined contribution plan described in Section 401(a) or 403(a) of the Code that agrees to separately account for amounts so transferred, including separately accounting for the portion of such distribution which is includible in gross income and the portion of such distribution which is not so includible.

(c) An eligible retirement plan is an individual retirement account described in Section 408(a) of the Code, an individual retirement annuity described in Section 408(b) of the Code, an annuity plan described in Section 403(a) of the Code or a qualified trust described in Section 401(a) of the Code, or an annuity contract described in Section 403(b) of the Code that accepts the distributee's eligible rollover distribution. An eligible retirement plan shall also mean an eligible plan under Section 457(b) of the Code which is maintained by a state, political subdivision of a state, or any agency or instrumentality of a state or political subdivision of a state and which agrees to separately account for amounts transferred into such plan from this plan. This definition of eligible retirement plan shall also apply in the case of a distribution to a surviving spouse, or to a spouse or former spouse who is the alternative payee under a domestic relations order.

(d) A distributee includes a Participant or Former Participant. In addition, the Participant's or Former Participant's surviving spouse and the Participant's or Former Participant's spouse or former spouse who is the alternate payee under a domestic relations order, as defined in Code Section 414(p), are distributees with regard to the interest of the spouse or former spouse.

(e) A direct rollover is a payment by the Plan to the eligible retirement plan specified by the distributee.

(f) For taxable years beginning after December 31, 2006, a Participant may elect to transfer employee (after-tax) or Roth elective deferral contributions by means of a direct rollover to a qualified plan or to a 403(b) plan that agrees to account separately for amounts so transferred, including accounting separately for the portion of such distribution which is includible in gross income and the portion of such distribution which is not includible in gross income.

(g) For distributions after December 31, 2009, and unless otherwise elected in the Adoption Agreement, for distributions between January 1, 2007 and December 31, 2009, a non-spouse Beneficiary who is a "designated beneficiary" under Code Section 401(a)(9)(E) and the regulations thereunder, by a direct trustee-to-trustee transfer ("direct rollover"), may roll over all or any portion of his or her distribution to an individual retirement account the Beneficiary establishes for purposes of receiving the distribution. In order to be able to roll over the distribution, the distribution otherwise must satisfy the definition of an eligible rollover distribution. For purposes of this paragraph, the following additional provisions shall apply:

(1) Although a non-spouse Beneficiary may roll over directly a distribution as provided in this subsection (g), any distribution made prior to January 1, 2010 is not subject to the

direct rollover requirements of Code Section 401(a)(31) (including Code Section 401(a)(31)(B), the notice requirements of Code Section 402(f) or the mandatory withholding requirements of Code Section 3405(c)). If a non-spouse Beneficiary receives a distribution from the Plan, the distribution is not eligible for a “60-day” rollover.

(2) If the Participant’s named Beneficiary is a trust, the Plan may make a direct rollover to an individual retirement account on behalf of the trust, provided the trust satisfies the requirements to be a designated beneficiary within the meaning of Code Section 401(a)(9)(E).

(3) A non-spouse Beneficiary may not roll over an amount which is a required minimum distribution, as determined under applicable Treasury regulations and other Revenue Service guidance. If the Participant dies before his or her required beginning date and the non-spouse Beneficiary rolls over to an IRA the maximum amount for rollover, the beneficiary may elect to use either the 5-year rule or the life expectancy rule, pursuant to Treas. Reg. Section 1.401(a)(9)-3, A-4(c), in determining the required minimum distributions from the IRA that receives the non-spouse beneficiary’s distribution.

(h) For distributions made after December 31, 2007, a Participant may elect to roll over directly an eligible rollover distribution to a Roth IRA described in Code Section 408A(b).

#### 6.15 REQUIRED MINIMUM DISTRIBUTIONS

(a) Except as otherwise provided in Subsection (g) below, the provisions of this section will apply for purposes of determining required minimum distributions for calendar years beginning with the 2003 calendar year. The requirements of this section will take precedence over any inconsistent provisions of the Plan. All distributions required under this section will be determined and made in accordance with the Regulations under Section 401(a)(9) and the minimum distribution incidental benefit requirement of Section 401(a)(9)(G) of the Code. Notwithstanding the other provisions of this section, distributions may be made under a designation made before January 1, 1984, in accordance with Section 242(b)(2) of the Tax Equity and Fiscal Responsibility Act (TEFRA) and the provisions of the plan that relate to Section 242(b)(2) of TEFRA.

(b) The Participant’s entire interest will be distributed, or begin to be distributed, to the Participant no later than the Participant’s required beginning date. If the Participant dies before distributions begin, the Participant’s entire interest will be distributed, or begin to be distributed, no later than as follows:

(1) If the Participant’s surviving spouse is the Participant’s sole designated Beneficiary, then except as provided in subsection (f), below, distributions to the surviving spouse will begin by December 31 of the calendar year immediately following the calendar year in which the Participant died, or by December 31 of the calendar year in which the Participant would have attained age 70-1/2, if later.

(2) If the Participant’s surviving spouse is not the Participant’s sole designated Beneficiary, then except as provided in subsection (f), below, distributions to the designated Beneficiary will begin by December 31 of the calendar year immediately following the calendar year in which the Participant died.

(3) If there is no designated Beneficiary as of September 30 of the year following the year of the Participant’s death, the Participant’s entire interest will be distributed by December 31 of the calendar year containing the fifth anniversary of the Participant’s death.

(4) If the Participant’s surviving spouse is the Participant’s sole designated Beneficiary and the surviving spouse dies after the Participant but before distributions to the

surviving spouse begin, this subsection (b), other than paragraph (b)(1), will apply as if the surviving spouse were the Participant.

For purposes of this subsection (b) and subsection (d), unless paragraph (b)(4) applies, distributions are considered to begin on the Participant's required beginning date. If paragraph (b)(4) applies, distributions are considered to begin on the date distributions are required to begin to the surviving spouse under paragraph (b)(1). If distributions under an annuity purchased from an insurance company irrevocably commence to the Participant before the Participant's required beginning date (or to the Participant's surviving spouse before the date distributions are required to begin to the surviving spouse under paragraph (b)(1)), the date distributions are considered to begin is the date distributions actually commence.

Unless the Participant's interest is distributed in the form of an annuity purchased from an insurance company or in a single sum on or before the required beginning date, as of the first distribution calendar year distributions will be made in accordance with subsections (c) and (d) of this section. If the Participant's interest is distributed in the form of an annuity purchased from an insurance company, distributions thereunder will be made in accordance with the requirements of Section 401(a)(9) of the Code and the Regulations.

(c) During the Participant's lifetime, the minimum amount that will be distributed for each distribution calendar year is the lesser of:

(1) the quotient obtained by dividing the Participant's account balance by the distribution period in the Uniform Lifetime Table set forth in Section 1.401(a)(9)-9, Q&A-2 of the Regulations, using the Participant's age as of the Participant's birthday in the distribution calendar year; or

(2) if the Participant's sole designated Beneficiary for the distribution calendar year is the Participant's spouse, the quotient obtained by dividing the Participant's account balance by the number in the Joint and Last Survivor Table set forth in Section 1.401(a)(9)-9, Q&A-3 of the Regulations, using the Participant's and spouse's attained ages as of the Participant's and spouse's birthdays in the distribution calendar year.

Required minimum distributions will be determined under this subsection (c) beginning with the first distribution calendar year and up to and including the distribution calendar year that includes the Participant's date of death.

(d) (1) If the Participant dies on or after the date distributions begin and there is a designated Beneficiary, the minimum amount that will be distributed for each distribution calendar year after the year of the Participant's death is the quotient obtained by dividing the Participant's account balance by the longer of the remaining life expectancy of the Participant or the remaining life expectancy of the Participant's designated Beneficiary, determined as follows:

(i) The Participant's remaining life expectancy is calculated using the age of the Participant in the year of death, reduced by one for each subsequent year.

(ii) If the Participant's surviving spouse is the Participant's sole designated Beneficiary, the remaining life expectancy of the surviving spouse is calculated for each distribution calendar year after the year of the Participant's death using the surviving spouse's age as of the spouse's birthday in that year. For distribution calendar years after the year of the surviving spouse's death, the remaining life expectancy of the surviving spouse is calculated using the age of the surviving spouse as of the spouse's birthday in the calendar year of the spouse's death, reduced by one for each subsequent calendar year.

(iii) If the Participant's surviving spouse is not the Participant's sole designated Beneficiary, the designated Beneficiary's remaining life expectancy is calculated using the age of the Beneficiary in the year following the year of the Participant's death, reduced by one for each subsequent year.

(2) If the Participant dies on or after the date distributions begin and there is no designated Beneficiary as of September 30 of the year after the year of the Participant's death, the minimum amount that will be distributed for each distribution calendar year after the year of the Participant's death is the quotient obtained by dividing the Participant's account balance by the Participant's remaining life expectancy calculated using the age of the Participant in the year of death, reduced by one for each subsequent year.

(3) Except as provided in subsection (f) below, if the Participant dies before the date distributions begin and there is a designated Beneficiary, the minimum amount that will be distributed for each distribution calendar year after the year of the Participant's death is the quotient obtained by dividing the Participant's account balance by the remaining life expectancy of the Participant's designated Beneficiary, determined as provided in paragraphs (d)(1) and (d)(2).

(4) If the Participant dies before the date distributions begin and there is no designated Beneficiary as of September 30 of the year following the year of the Participant's death, distribution of the Participant's entire interest will be completed by December 31 of the calendar year containing the fifth anniversary of the Participant's death.

(5) If the Participant dies before the date distributions begin, the Participant's surviving spouse is the Participant's sole designated Beneficiary, and the surviving spouse dies before distributions are required to begin to the surviving spouse under paragraph (b)(1), paragraphs (d)(3) – (5) will apply as if the surviving spouse were the Participant.

(e) Definitions.

(1) "Designated Beneficiary" means the individual who is designated as the Beneficiary under Section 6.02 of the Plan and is the designated Beneficiary under Section 401(a)(9) of the Code and Section 1.401(a)(9)-4 of the Regulations.

(2) "Distribution calendar year" means a calendar year for which a minimum distribution is required. For distributions beginning before the Participant's death, the first distribution calendar year is the calendar year immediately preceding the calendar year which contains the Participant's required beginning date. For distributions beginning after the Participant's death, the first distribution calendar year is the calendar year in which distributions are required to begin under subsection (b). The required minimum distribution for the Participant's first distribution calendar year will be made on or before the Participant's required beginning date. The required minimum distribution for other distribution calendar years, including the required minimum distribution for the distribution calendar year in which the Participant's required beginning date occurs, will be made on or before December 31 of that distribution calendar year.

(3) "Life expectancy" means life expectancy as computed by use of the Single Life Table in Section 1.401(a)(9)-9, Q&A-1 of the Regulations.

(4) "Participant's account balance" means the account balance as of the last valuation date in the calendar year immediately preceding the distribution calendar year (valuation calendar year) increased by the amount of any contributions made and allocated or forfeitures allocated to the account balance as of dates in the valuation calendar year after the valuation date and decreased by distributions made in the valuation calendar year after the valuation date. The

account balance for the valuation calendar year includes any amounts rolled over or transferred to the plan either in the valuation calendar year or in the distribution calendar year if distributed or transferred in the valuation calendar year.

(5) “Required beginning date” means April 1st of the calendar year following the later of:

- (i) the calendar year in which the Participant attains age 70-1/2; or
- (ii) the calendar year in which the Participant retires.

(f) For purposes of paragraphs (b)(1), (b)(2) and (d)(3) of this Section 6.15, Participants or beneficiaries may elect on an individual basis whether the 5-year rule or the life expectancy rule applies to distributions after the death of a Participant who has a designated Beneficiary. The election must be made no later than the earlier of September 30 of the calendar year in which distribution would be required to begin under paragraphs (b)(1) or (b)(2), or by September 30 of the calendar year which contains the fifth anniversary of the Participant’s (or, if applicable, the surviving spouse’s) death. If neither the Participant nor the beneficiary makes an election under this paragraph, distributions will be made in accordance with paragraphs (b)(1) or (b)(2) and (d)(3).

#### 6.16 WAIVER OF 2009 REQUIRED MINIMUM DISTRIBUTIONS

(a) This subsection (a) applies unless the Employer elects (in the Adoption Agreement) to apply the provisions of subsection (b) or (c), below. Notwithstanding the provisions of Code Section 401(a)(9)(H), a Participant or Beneficiary who would have been required to receive required minimum distributions for 2009 but for the enactment of Code Section 401(a)(9)(H) (“2009 RMDs”), and who would have satisfied that requirement by receiving distributions that are one or more payments in a series of installments (that include 2009 RMDs), will continue to receive those distributions for 2009 unless the Participant or Beneficiary chooses not to receive such distributions. Participants and Beneficiaries described in the preceding sentence will be given the opportunity to elect not to receive the distributions that include 2009 RMDs. For all other Participants and Beneficiaries, the requirement to receive the 2009 RMD shall be suspended in accordance with Code Section 401(a)(9)(H).

(b) This subsection (b) applies if the Employer so elects in the Adoption Agreement. Notwithstanding the provisions of Code Section 401(a)(9)(H), a Participant or Beneficiary who would have been required to receive required minimum distributions for 2009 but for the enactment of Code Section 401(a)(9)(H) (“2009 RMDs”), and who would have satisfied that requirement by receiving distributions that are either (1) equal to the 2009 RMDs or (2) one or more payments in a series of installments (that include 2009 RMDs), will receive those distributions for 2009 unless the Participant or Beneficiary chooses not to receive such distributions. Participants and Beneficiaries described in the preceding sentence will be given the opportunity to elect to stop receiving the distributions described in the preceding sentence.

(c) This subsection (c) applies if the Employer so elects in the Adoption Agreement. Notwithstanding the provisions of Code Section 401(a)(9)(H), a Participant or Beneficiary who would have been required to receive required minimum distributions for 2009 but for the enactment of Code Section 401(a)(9)(H) (“2009 RMDs”), and who would have satisfied that requirement by receiving distributions that are either (1) equal to the 2009 RMDs or (2) one or more payments in a series of installments (that include the 2009 RMDs), will receive those distributions for 2009. However, Participants and Beneficiaries receiving installments will be given the opportunity to elect not to receive the distributions that include 2009 RMDs.

(d) Notwithstanding the provisions of the Plan relating to required minimum distributions under Code Section 401(a)(9), and solely for purposes of applying the direct rollover provisions of the Plan, certain additional distributions in 2009, as elected by the Employer in the Adoption Agreement, will be treated as eligible rollover distributions. If no election is made by the Employer in the Adoption

Agreement, then a direct rollover will be offered only for distributions that would be eligible rollover distributions without regard to Code Section 401(a)(9)(H).

## 6.17 PARTICIPANT DISTRIBUTION NOTIFICATION

For any distribution notice issued in Plan Years beginning after December 31, 2006, any reference to the 90-day maximum notice period prior to distribution in applying the notice requirements of Code Section 402(f) (the rollover notice) will become 180 days.

ARTICLE VII  
AMENDMENT and TERMINATION

7.01 AMENDMENT BY EMPLOYER

(a) The Employer shall have the right at any time to amend the Adoption Agreement, but limited to changes to the choice of options in the Adoption Agreement. The Employer may also add certain IRS sample or model amendments or other required good faith amendments which specifically provide that their adoption will not cause its Plan to be treated as individually designed. The Employer may specify or change the effective date of a provision as permitted under the Plan and correct obvious and unambiguous typographical errors and/or cross-references that merely correct a reference but that do not in any way change the original intended meaning of the provisions. However, no such amendment shall authorize or permit any part of the Plan's assets (other than such part as is required to pay administration expenses) to be used for or diverted to purposes other than for the exclusive benefit of the Participants or their Beneficiaries or estates; no such amendment shall cause any reduction in the account balance of any Participant or cause or permit any portion of the Plan's assets to revert to or become property of the Employer; and no such amendment which affects the rights, duties or responsibilities of the Insurer (or Trustee, if applicable) and Administrator may be made without the Insurer's (or Trustee's, if applicable) and Administrator's written consent. Any such amendment shall become effective upon delivery of a new duly executed Adoption Agreement, provided that the Insurer (or Trustee, if applicable) shall, in writing, consent to the terms of such amendment.

(b) Any other amendment of the Plan or the non-elective portions of the Adoption Agreement by the Employer shall result in this Plan's being treated as an individually-designed plan for which the Employer will have to apply to the appropriate key district of the Internal Revenue Service for a determination letter if the Employer wants assurance that the Plan meets the requirements of the Code.

7.02 AMENDMENT BY VOLUME SUBMITTER PRACTITIONER

(a) Effective as of the date of the advisory letter, the Volume Submitter Practitioner may, from time to time, amend the plan (without the Employer's consent) in order to conform the Plan to any requirement for qualification of the Plan (and the related Trust, if applicable) under the sections of the Code applicable to "governmental plans," as defined in Section 414(d) of the Code. Such amendments may address changes in the Code, the related Treasury regulations, revenue rulings, or other statements published by the Internal Revenue Service. The Volume Submitter Practitioner may not amend the Plan in any manner which would modify any election made by the Employer under the Plan without the Employer's written consent. Furthermore, the Volume Submitter Practitioner may not amend the Plan in any manner which would violate the proscriptions of Section 7.01(a), above. The Volume Submitter Practitioner's authority to amend the plan shall cease as of the date the Internal Revenue Service requires the Employer to file a Form 5300 as an individually designed plan because of substantial modifications of the specimen plan. If the Employer is required to obtain a determination letter in order to have reliance (for example, because the Employer has modified the specimen plan), the Volume Submitter Practitioner's authority to amend the Plan shall be conditioned on the Employer's plan being covered by a favorable determination letter.

(b) The Volume Submitter Practitioner shall furnish each adopting Employer with a copy of the approved Plan, copies of any subsequent amendments, and the most recently issued IRS advisory letter. The Volume Submitter Practitioner shall maintain, or have maintained on its behalf, a record of the names, business addresses and taxpayer identification numbers of all Employers that have adopted the Plan, and shall make reasonable and diligent efforts to ensure that adopting Employers have received and are aware of all Plan amendments and that such Employees adopt new documents as necessary. If the Volume Submitter Practitioner reasonably concludes that an Employer's plan may no longer be a qualified plan, the Volume Submitter Practitioner shall (i) notify the Employer accordingly, (ii) advise the Employer about the adverse tax consequences that may result from loss of the plan's qualified status, and (iii) inform the Employer about the availability of the Employee Plans Compliance Resolution System (EPCRS).



### 7.03 TERMINATION

(a) The Employer shall have the right at any time to terminate the Plan by delivering to the Insurer (or trustee, if applicable) and Administrator advanced written notice of such prospective termination. Upon termination of the Plan or, in the case of a profit sharing plan the complete discontinuance of contributions to the Plan, all amounts credited to the affected Participants' Accounts shall become 100% Vested and shall not thereafter be subject to Forfeiture, and all unallocated amounts, including Forfeitures, shall be allocated to the accounts of all Participants in accordance with the provisions hereof.

(b) Upon the termination of the Plan, the Employer shall direct the distribution of the assets to Participants in a manner which is consistent with and satisfies the provisions of Section 6.05. Distributions to a Participant shall be made in any form otherwise permitted by the Plan.

(c) Notwithstanding the foregoing, in the event this is a Money Purchase Plan which provides that Forfeitures must be used to reduce Employer contributions, any Forfeitures which cannot be reallocated may revert to the Employer. However, this provision shall not apply until the end of the fifth calendar year following the date the Plan provision was adopted.

ARTICLE VIII  
MISCELLANEOUS

8.01 EMPLOYER ADOPTIONS

(a) Any state or local governmental entity may, with the approval of the Volume Submitter Practitioner, become the Employer hereunder by executing the Adoption Agreement in a form satisfactory to the Insurer (or Trustee, if applicable) and it shall provide such additional information as the Insurer (or Trustee, if applicable) may require.

(b) Except as otherwise provided in this Plan, the adoption of this Plan by the Employer and the participation of its Participants shall be separate and apart from that of any other employer and its participants hereunder.

8.02 PARTICIPANT'S RIGHTS

This Plan shall not be deemed to constitute a contract between the Employer and any Participant or to be a consideration or an inducement for the employment of any Participant or Employee. Nothing contained in this Plan shall be deemed to give any Participant or Employee the right to be retained in the service of the Employer or to interfere with the right of the Employer to discharge any Participant or Employee at any time regardless of the effect which such discharge shall have upon the Employee as a Participant of this Plan.

8.03 ALIENATION

(a) Subject to the exceptions provided below, no benefit which shall be payable to any person (including a Participant or the Participant's Beneficiary) shall be subject in any manner to anticipation, alienation, sale, transfer, assignment, pledge, encumbrance, or charge, and any attempt to anticipate, alienate, sell, transfer, assign, pledge, encumber, or charge the same shall be void; and no such benefit shall in any manner be liable for, or subject to, the debts, contracts, liabilities, engagements, or torts of any such person, nor shall it be subject to attachment or legal process for or against such person, and the same shall not be recognized except to such extent as may be required by law.

(b) This provision shall not apply to the extent a Participant or Beneficiary is indebted to the Plan by reason of a loan made pursuant to Section 11.01. At the time a distribution is to be made to or for a Participant's or Beneficiary's benefit, such proportion of the amount to be distributed as shall equal such indebtedness shall be paid to the Plan, to apply against or discharge such indebtedness. Prior to making a payment, however, the Participant or Beneficiary must be given written notice by the Administrator that such indebtedness is to be so paid in whole or part from the Participant's Account. If the Participant or Beneficiary does not agree that the indebtedness is a valid claim against the Participant's Vested Account, the Participant or Beneficiary shall be entitled to a review of the validity of the claim in accordance with procedures provided in Sections 2.11 and 2.12.

(c) This provision shall not apply to amounts set aside or otherwise distributed to an "alternate payee" under a "domestic relations order," as defined in Code Section 414(p). The Administrator shall establish a written procedure to administer distributions under such domestic relations orders. Further, to the extent provided under a domestic relations order, a former spouse of a Participant shall be treated as the spouse or surviving spouse for all purposes under the Plan.

(d) Notwithstanding any provision of this section to the contrary, an offset to a Participant's accrued benefit against an amount that the Participant is ordered or required to pay the Plan with respect to a judgment, order, or decree issued, or a settlement entered into, on or after August 5, 1997, shall be permitted in accordance with Code Section 401(a)(13)(C) and (D).

#### 8.04 CONSTRUCTION OF PLAN

This Plan and Trust shall be construed and enforced according to the Code and the laws of the State or Commonwealth in which the Employer's principal office is located, other than its laws respecting choice of law.

#### 8.05 GENDER AND NUMBER

Wherever any words are used herein in the masculine, feminine or neutral gender, they shall be construed as though they were also used in another gender in all cases where they would so apply, and whenever any words are used herein in the singular or plural form, they shall be construed as though they were also used in the other form in all cases where they would so apply.

#### 8.06 LEGAL ACTION

In the event any claim, suit, or proceeding is brought regarding the Plan established hereunder to which the Insurer (or Trustee, if applicable) or the Administrator may be a party, and such claim, suit, or proceeding is resolved in favor of the Insurer (or Trustee, if applicable) or Administrator, they shall be entitled to be reimbursed from the Plan assets for any and all costs, attorney's fees, and other expenses pertaining thereto incurred for which the Insurer (or Trustee) or the Administrator shall have become liable.

#### 8.07 PROHIBITION AGAINST DIVERSION OF FUNDS

(a) Except as provided below and otherwise specifically permitted by law, it shall be impossible by operation of the Plan (or of the Trust, if any) by termination of either, by power of revocation or amendment, by the happening of any contingency, by collateral arrangement or by any other means, for any part of the corpus or income of any Plan assets maintained pursuant to the Plan or any funds contributed thereto to be used for, or diverted to, purposes other than the exclusive benefit of Participants, Retired Participants, or their Beneficiaries.

(b) In the event the Employer shall make a contribution under a mistake of fact, the Employer may demand repayment of such contribution at any time within one (1) year following the time of payment and the Insurer (or Trustee, if applicable) shall return such amount to the Employer within the one (1) year period. Earnings of the Plan attributable to the contributions may not be returned to the Employer but any losses attributable thereto must reduce the amount so returned.

#### 8.08 EMPLOYER'S, ADMINISTRATOR'S AND TRUSTEE'S PROTECTIVE CLAUSE

Neither the Employer nor the Administrator (nor the Trustee, if applicable) nor their successors, shall be responsible for the validity of any Contract issued hereunder or for the failure on the part of the Insurer to make payments provided by any such Contract, or for the action of any person which may delay payment or render a Contract null and void or unenforceable in whole or in part.

#### 8.09 INSURER'S PROTECTIVE CLAUSE

The Insurer who shall issue Contracts hereunder shall not have any responsibility for the validity of this Plan or for the tax or legal aspects of this Plan. The Insurer shall be protected and held harmless in acting in accordance with any written direction of the Employer or Administrator (or Trustee, if applicable), and shall have no duty to see to the application of any funds paid to the Administrator (or Trustee, if applicable), nor be required to question any actions directed by the Employer or Administrator. In the event of any conflict between the terms of this Plan and the terms of any Contract issued hereunder, the Plan provisions shall control.

#### 8.10 RECEIPT AND RELEASE FOR PAYMENTS

Any payment to any Participant, the Participant's legal representative, Beneficiary, or to any guardian or committee appointed for such Participant or Beneficiary in accordance with the provisions of this Plan, shall, to the

extent thereof, be in full satisfaction of all claims hereunder against the Insurer (or Trustee, if applicable) and the Employer, either of whom may require such Participant, legal representative, Beneficiary, guardian or committee, as a condition precedent to such payment, to execute a receipt and release thereof in such form as shall be determined by the Insurer or Employer. Any authorization of, or request for, payment directed to the Insurer shall be signed by the Administrator and/or Participant or Beneficiary.

#### 8.11 ACTION BY THE EMPLOYER

Whenever the Employer under the terms of the Plan is permitted or required to do or perform any act or matter or thing, it shall be done and performed by a person duly authorized by its legally constituted authority.

#### 8.12 RESPONSIBLE PARTIES AND ALLOCATION OF RESPONSIBILITY

(a) The “responsible parties” of this Plan are (1) the Employer, (2) the Administrator and, if there is a discretionary Trustee, the Trustee. The responsible parties shall have only those specific powers, duties, responsibilities, and obligations as are specifically given them under the Plan, including but not limited to any agreement allocating or delegating their responsibilities, the terms of which are incorporated herein by reference. Unless otherwise indicated herein or pursuant to such agreement(s), the Employer shall have the duties specified in Article II hereof, as the same may be allocated or delegated thereunder, including but not limited to the responsibility for making the contributions provided for under Section 4.01, and shall have the authority:

- (1) to appoint and remove the Insurer (or Trustee); and
- (2) to amend or terminate, in whole or in part, the Plan.

(b) The Administrator shall have the responsibility for the administration of the Plan, including but not limited to the items specified in Article II of the Plan, as the same may be allocated or delegated thereunder.

(c) The Trustee (if any) shall have the responsibility of management and control of the Plan assets that are not held in Contracts, including but not limited to the acquisition and disposition of Plan assets except to the extent it shall act under the direction of the Employer, the Administrator, or Participants pursuant to Article II and Article V of the Plan.

Each responsible party warrants that any directions given, information furnished, or action taken by it shall be in accordance with the provisions of the Plan, authorizing or providing for such direction, information or action. Furthermore, each responsible party may rely upon any such direction, information or action of another responsible party as being proper under the Plan, and is not required under the Plan to inquire into the propriety of any such direction, information or action. It is intended under the Plan that each responsible party shall be responsible for the proper exercise of its own powers, duties, responsibilities and obligations under the Plan as specified or allocated hereunder. No responsible party shall guarantee the Plan assets in any manner against investment loss or depreciation in asset value. Any person or group may serve in more than one responsible party capacity.

#### 8.13 HEADINGS

The headings and subheadings of this Plan have been inserted for convenience of reference and are to be ignored in any construction of the provisions hereof.

#### 8.14 APPROVAL BY INTERNAL REVENUE SERVICE

Notwithstanding anything herein to the contrary, if, pursuant to an application timely filed by or on behalf of the Plan, the Commissioner of Internal Revenue Service or the Commissioner’s delegate should determine that the Plan does not initially qualify as a qualified plan under Code Sections 401 and 501, and such determination is

not contested, or if contested, is finally upheld, then if the Plan is a new plan, it shall be void ab initio and all amounts contributed to the Plan, by the Employer, less expenses paid, shall be returned within one year of the date the initial qualification is denied and the Plan shall terminate, and the Insurer (or Trustee, if applicable) shall be discharged from all further obligations. If the disqualification relates to an amended plan, then the Plan shall operate as if it had not been amended and restated. For purposes of this section, an application is timely filed if filed by such date as the Secretary of the Treasury may prescribe for plans maintained by governmental employers.

#### 8.15 UNIFORMITY

All provisions of this Plan shall be interpreted and applied in a uniform, nondiscriminatory manner.

ARTICLE IX  
PARTICIPATING EMPLOYERS

9.01 ELECTION TO BECOME A PARTICIPATING EMPLOYER

Notwithstanding anything herein to the contrary, with the consent of the Employer and Insurer (or Trustee, if applicable), any Affiliated Employer that is also a state or local governmental entity may adopt this Plan and all of the provisions hereof, and participate herein and be known as a Participating Employer, by a properly executed document evidencing said intent and will of such Participating Employer.

9.02 REQUIREMENTS OF PARTICIPATING EMPLOYERS

(a) Each Participating Employer shall be required to select the same Adoption Agreement provisions as those selected by the Employer other than the Plan Year, the Fiscal Year, and such other items that must, by necessity, vary among employers.

(b) Each such Participating Employer shall be required to use the same Insurer (or Trustee, if a trustee Plan) as provided in this Plan.

(c) The Insurer (or Trustee, if applicable) may, but shall not be required to, commingle, hold and invest as one fund all contributions made by Participating Employers, as well as all increments thereof.

(d) The transfer of any Participant from or to an Employer participating in this Plan, regardless of whether the Participant is an Employee of the Employer or a Participating Employer, shall not affect such Participant's rights under the Plan, and all amounts credited to such Participant's Account as well as accumulated service time with the transferor or predecessor, and length of participation in the Plan, shall continue to the credit of such Participant.

(e) Any expenses of the Plan which are to be paid by the Employer shall be paid by each Participating Employer in the same proportion that the total amount standing to the credit of all Participants employed by such Employer bears to the total standing to the credit of all Participants.

9.03 DESIGNATION OF AGENT

Each Participating Employer shall be deemed to be a part of this Plan; provided, however, that with respect to all of its relations with the Insurer (or Trustee, if applicable) and Administrator for purposes of this Plan, each Participating Employer shall be deemed to have designated irrevocably the Employer as its agent. Unless the context of the Plan clearly indicates the contrary, the word "Employer" shall be deemed to include each Participating Employer as related to its adoption of the Plan.

9.04 EMPLOYEE TRANSFERS

It is anticipated that an Employee may be transferred between Participating Employers, and in the event of any such transfer, accumulated service and eligibility shall be carried with the Employee involved. No such transfer shall effect a termination of employment hereunder, and the Participating Employer to which the Employee is transferred shall thereupon become obligated hereunder with respect to such Employee in the same manner as was the Participating Employer from whom the Employee was transferred.

9.05 PARTICIPATING EMPLOYER'S CONTRIBUTION AND FORFEITURES

Any contribution or Forfeiture subject to allocation during each Plan Year shall be allocated among all Participants of all Participating Employers in accordance with the provisions of this Plan. On the basis of the information furnished by the Administrator, the Insurer (or Trustee, if applicable) may keep separate books and records concerning the affairs of each Participating Employer hereunder and as to the accounts and credits of the Employees of each Participating Employer. The Insurer (or Trustee, if applicable) may, but need not, register

Contracts so as to evidence that a particular Participating Employer is the interested Employer hereunder, but in the event of an Employee transfer from one Participating Employer to another, the employing Employer shall immediately notify the Insurer (or Trustee, if applicable) thereof.

#### 9.06 AMENDMENT

This Plan may be amended by the Employer at any time without any action by each and every Participating Employer hereunder. However, the Employer may only amend this Plan with the consent of the Insurer (or Trustee, if applicable) where such consent is necessary in accordance with the terms of this Plan.

#### 9.07 DISCONTINUANCE OF PARTICIPATION

Any Participating Employer shall be permitted to discontinue or revoke its participation in the Plan at any time. At the time of any such discontinuance or revocation, satisfactory evidence thereof and of any applicable conditions imposed shall be delivered to the Insurer (or Trustee, if applicable). The Insurer (or Trustee, if applicable) shall thereafter transfer, deliver and assign Contracts and other fund assets allocable to the Participants of such Participating Employer to such new Insurer (or Trustee, if applicable) as shall have been designated by such Participating Employer, in the event that it has established a separate pension plan for its Employees. If no successor is designated, the Insurer (or Trustee, if applicable) shall retain such assets for the Employees of said Participating Employer pursuant to the provisions of Article V hereof. In no such event shall any part of the corpus or income of the fund as it relates to such Participating Employer be used for or diverted for purposes other than for the exclusive benefit of the Employees of such Participating Employer.

#### 9.08 ADMINISTRATOR'S AUTHORITY

The Administrator shall have authority to make any and all necessary rules or regulations, binding upon all Participating Employers and all Participants, to effectuate the purpose of this Article.

ARTICLE X  
CONTRACTS  
(APPLIES ONLY TO ANNUITY CONTRACTS OR  
PORTION OF PLAN FUNDED WITH ANNUITY CONTRACTS)

10.01 PURCHASE OF CONTRACTS

The benefits provided under this Plan may be funded through the purchase of Contracts issued by The Variable Annuity Life Insurance Company (VALIC) or any other authorized Insurer. The provisions of this Article shall apply to any such Contracts which, as determined by the Employer, will not be held by the Trustee. The Employer shall pay within a reasonable period of time all contributions which are made to this Plan to the Insurer for the purchase of such Contracts.

10.02 EMPLOYER DESIGNATED AS OWNER

Each Contract shall designate the Employer as sole owner, with rights reserved to said Employer to exercise those rights or options contained therein that apply to the owner of the Contract. All such Contracts shall be held by the Employer who shall have the power and right to take such actions with respect to such Contracts as shall be in accordance with this Plan for purposes of providing benefits to Participants. The Employer shall be treated as trustee to the extent that the Contracts are treated as trusts pursuant to Code Section 401(f).

10.03 TYPE OF CONTRACT(S)

The Employer shall have the right to determine whether to have fixed or combination fixed and variable Contracts and whether to have group or individual Contracts. The Employer shall base its decision on which Contract(s) would be more beneficial for the Participants and on the administrative tasks imposed by each Contract. Such decision shall be in the sole discretion of the Employer.

10.04 VOTING RIGHTS

The Employer shall solicit and act in accordance with the instructions of the Participant in regard to any voting rights which pertain to a Contract for variable accumulation of benefits. During the accumulation period, Participants will have the right to instruct the Employer with respect to the votes attributable to any Vested interest they have in the Contract. All other votes entitled to be cast during the accumulation period may be cast by the Employer in its sole discretion. During the annuity period, every Participant will have the right to instruct the Employer with respect to all votes attributable to the amount of assets established in the appropriate separate account to meet the annuity obligations related to such Participant. The Insurer will provide all notices and proxy materials to the Employer for distribution to the Participants. The Employer may cast all votes for which instructions were not received in accordance with the Employer's sole discretion.

10.05 CERTIFICATE OF PARTICIPATION

The Insurer shall issue a certificate of participation and/or a Contract, as applicable, to each Participant. Each such certificate of participation shall set forth in substance the benefits or other rights to which such Participant is entitled under the Contract.

10.06 INSURER INDEMNIFICATION

To the extent permitted by law, the Employer agrees to indemnify and hold harmless the Insurer against any and all claims, losses, damages, expenses and liabilities the Insurer may incur in the exercise and performance of the Insurer's duties hereunder, unless the same are determined to be due to gross negligence or willful misconduct on the part of the Insurer.



ARTICLE XI  
LOANS, AUDITS AND TRANSFERS

11.01 LOANS TO PARTICIPANTS

(a) If specified in the Adoption Agreement, the Administrator (or Trustee, if applicable) may authorize loans to Participants or Beneficiaries under the following circumstances:

- (1) loans shall be made available to all Participants on a reasonably equivalent basis;
- (2) loans shall bear a reasonable rate of interest;
- (3) loans shall be adequately secured;
- (4) loans shall provide for periodic repayment over a reasonable period of time, as defined in subsection (d) below; and
- (5) loans shall not be made for an amount less than the minimum loan amount stated in the Contracts.

(b) Loans shall be evidenced by a legally enforceable agreement that specifies the amount and date of the loan and the repayment schedule. Such agreement must be either:

- (1) in a written paper document or
- (2) in an electronic medium under a system that is accessible to participants, and under which (i) only participants may make the loan request, (ii) participants are provided with an opportunity to review, confirm, modify or rescind their request, and (iii) the participant receives either a written or electronic confirmation of the request.

(c) Loans shall be permitted from all contribution sources, including rollovers.

(d) Loans made pursuant to this section (when added to the outstanding balance of all other loans made by the Plan to the Participant) shall be limited to the lesser of:

- (1) \$50,000 reduced by the excess (if any) of the highest outstanding balance of loans from the Plan to the Participant during the one year period ending on the day before the date on which such loan is made, over the outstanding balance of loans from the Plan to the Participant on the date on which such loan was made, or
- (2) the greater of (i) one-half (1/2) of the present value of the non-forfeitable accrued benefit of the Employee under the Plan, or (ii) \$10,000.

For purposes of this limit, all plans of the Employer shall be considered one plan.

(e) Loans shall provide for level amortization with payments to be made not less frequently than quarterly over a period not to exceed five (5) years. However, loans used to acquire any dwelling unit which, within a reasonable time, is to be used (determined at the time the loan is made) as a principal residence of the Participant shall provide for periodic repayment over a reasonable period of time that may exceed five (5) years. Loan repayments must be suspended under this Plan as permitted under Code Section 414(u)(4).

(f) An assignment or pledge of any portion of a Participant's interest in the Plan and a loan, pledge, or assignment with respect to any Contract purchased under the Plan, shall be treated as a loan under this Section.

(g) Notwithstanding anything in this Plan to the contrary, if a Participant or Beneficiary defaults on a loan made pursuant to this section that is secured by the Participant's interest in the Plan, then a Participant's interest may be offset by the amount subject to the security to the extent there is a distributable event permitted by the Code or Regulations.

(h) A Participant loan program shall be established which must include, but need not be limited to, the following:

- (1) the identity of the person or positions authorized to administer the Participant loan program;
- (2) a procedure for applying for loans;
- (3) the basis on which loans will be approved or denied;
- (4) limitations, if any, on the types and amounts of loans offered, including what constitutes a hardship or financial need if selected in the Adoption Agreement;
- (5) the procedure under the program for determining a reasonable rate of interest;
- (6) the types of collateral which may secure a Participant loan; and
- (7) the events constituting default and the steps that will be taken to preserve Plan assets.

(i) Such Participant loan program shall be contained in a separate written document. Furthermore, such Participant loan program may be modified or amended in writing from time to time without the necessity of amending this Section. In the event of any conflict between the terms of this Plan and a separate loan program, the terms of the Plan will control.

#### 11.02 TRANSFER OF INTEREST

Notwithstanding any other provision contained in this Plan, the Insurer (or Trustee, if applicable) at the direction of the Administrator may transfer the Vested interest, if any, of a Participant's Account to another trust or Contract forming part of a pension, profit sharing, or stock bonus plan meeting the requirements of Code Section 401(a) or 403(a), provided that the trust or Contract to which such transfers are made permits the transfer to be made.

ARTICLE XII  
HEART ACT PROVISIONS

12.01 DEATH BENEFITS

In the case of a death occurring on or after January 1, 2007, if a Participant dies while performing qualified military service (as defined in Code Section 414(u)), the Participant's Beneficiary is entitled to any additional benefits (other than benefit accruals relating to the period of qualified military service) provided under the Plan as if the Participant had resumed employment and then terminated employment on account of death. Moreover, the Plan will credit the Participant's qualified military service as service for vesting purposes, as though the Participant had resumed employment under USERRA immediately prior to the Participant's death.

12.02 BENEFIT ACCRUAL

If the Employer elects in the Adoption Agreement to apply this Section 12.02, then effective as of the date specified in the Adoption Agreement, for benefit accrual purposes, the Plan treats an individual who dies or becomes disabled (as defined under the terms of the Plan) while performing qualified military service with respect to the Employer as if the individual had resumed employment in accordance with the individual's reemployment rights under USERRA, on the day preceding death or disability (as the case may be) and terminated employment on the actual date of death or disability.

The Plan will determine the amount of Employee contributions and the amount of elective deferrals of an individual treated as reemployed under this Section 12.02 for purposes of applying paragraph Code Section 414(u)(8)(C) on the basis of the individual's average actual Employee contributions or elective deferrals for the lesser of: (i) the 12-month period of service with the Employer immediately prior to qualified military service; or (ii) the actual length of continuous service with the Employer.

12.03 DIFFERENTIAL WAGE PAYMENTS

For years beginning after December 31, 2008: (a) an individual receiving a differential wage payment, as defined by Code Section 3401(h)(2), is treated as an employee of the employer making the payment; (b) the differential wage payment is treated as compensation for purposes of Code Section 415(c)(3) and Treasury Reg. Section 1.415(c)-2 (e.g., for purposes of Code Section 415, top-heavy provisions of Code Section 416, determination of highly compensated employees under Code Section 414(q), and applying the 5% gateway requirement under the Code Section 401(a)(4) regulations); and (c) the Plan is not treated as failing to meet the requirements of any provision described in Code Section 414(u)(1)(C) (or corresponding plan provisions, including, but not limited to, Plan provisions related to the ADP or ACP test) by reason of any contribution or benefit which is based on the differential wage payment. The Plan Administrator operationally may determine, for purposes of the provisions described in Code Section 414(u)(1)(C), whether to take into account any deferrals, and if applicable, any matching contributions, attributable to differential wages. Differential wage payments (as described herein) will also be considered Compensation for all Plan purposes unless otherwise elected in the Adoption Agreement.

Subsection 12.03(c) above applies only if all employees of the Employer performing service in the uniformed services described in Code Section 3401(h)(2)(A) are entitled to receive differential wage payments (as defined in Code Section 3401(h)(2)) on reasonably equivalent terms and, if eligible to participate in a retirement plan maintained by the Employer, to make contributions based on the payments on reasonably equivalent terms (taking into account Code Section 410(b)(3), (4), and (5)).

12.04 DEEMED SEVERANCE

Notwithstanding subsection 12.03(a), if a Participant performs service in the uniformed services (as defined in Code Section 414(u)(12)(B)) on active duty for a period of more than 30 days, the Participant will be deemed to have a severance from employment solely for purposes of eligibility for distribution of amounts not subject to Code Section 412. However, the Plan will not distribute such a Participant's account on account of this deemed severance from employment unless (i) the Employer elects in the Adoption Agreement to allow such distributions, and (ii) the

Participant specifically elects to receive a benefit distribution hereunder. If a Participant elects to receive a distribution on account of this deemed severance, then the individual may not make an elective deferral or employee contribution to this Plan (or any other plan of the Employer) during the 6-month period beginning on the date of the distribution. If a Participant would be entitled to a distribution on account of a deemed severance, and a distribution on account of another Plan provision (such as a Qualified Reservist Distribution), then the other Plan provision will control and the 6-month suspension will not apply.



# County of Inyo



## Health & Human Services

### CONSENT - ACTION REQUIRED

**MEETING:** March 1, 2022

**FROM:** Melissa Best-Baker

**SUBJECT:** Subcontract Agreement and HIPAA Privacy Compliance Agreement between the County of Inyo and Advocates for Human Potential

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**RECOMMENDED ACTION:**

Request Board ratify and approve the Subcontract Agreement and HIPAA Privacy Compliance Agreement between the County of Inyo and Advocates for Human Potential of Sudbury, MA in the amount of \$200,000 for the period of September 15, 2021 through February 14, 2023, contingent upon the Board's approval of future budgets, and authorize Marilyn Mann, HHS Director/Interim Behavioral Health Director, to sign the Subcontractor Agreement, Certificate Regarding Lobbying, Subcontractor Certification, and HIPAA Privacy Agreement.

**SUMMARY/JUSTIFICATION:**

In October 2021, the Department of Health Care Services released a request for application (RFA) for the Crisis Care Mobile Units Program and we were allocated funding for a planning grant. We received this agreement in February, 2022 and began the approval process. The goals of this project are to develop an action plan that would improve our current crisis response system and establish partnerships with community agencies to provide a more comprehensive approach to crises. We have drafted a Request for Proposals that will be released after this agreement has been approved.

The contractor will assess the County's current crisis response process, including thorough data collection and analysis of the County's electronic health record, on-call and 24/7 access line logs, including crisis response and wait times, hospitalization log, and follow-up appointments for clients in crisis. The contractor will work with community partners, including the local hospitals, schools, law enforcement agencies and probation, the county's re-entry program, behavioral health programs, county prevention programs, and other non-profit organizations to garner stakeholder engagement and input, and develop a comprehensive, community-wide approach to crisis response. The contractor will develop pre- and –post surveys regarding staff knowledge of the current crisis response process, as well as key informant interviews.

The contractor will also conduct a community needs assessment to inform program planning, specifically assessing the needs of youth under 25 years old and individuals at risk of justice system involvement. We will purchase tablets and internet hotspots, as well as Survey Monkey (with HIPAA-compliant features) and Tableau software, to provide the proper resources for the contractor to conduct surveys at local community events, including the schools and local jail, as well as for continued use in the crisis response system. The contractor will conduct a county capacity assessment, of both resource inventory and staff, to develop a sustainable action plan for the county.

**BACKGROUND/HISTORY OF BOARD ACTIONS:**

N/A

**ALTERNATIVES AND CONSEQUENCES OF NEGATIVE ACTION:**

If we do not accept this funding for planning, we will lose the opportunity to apply for additional funding to implement the strategies identified in our needs assessment and action plan.

**OTHER AGENCY INVOLVEMENT:**

Local hospitals, schools, law enforcement agencies and probation, the county's re-entry program, behavioral health programs, county prevention programs, and other non-profit organizations

**FINANCING:**

State Funds. These funds will be recognized in the CMH Budget (045200) in the Revenue Object Code State Other (4499).

**ATTACHMENTS:**

1. Subcontract Agreement
2. HIPAA Privacy Compliance Agreement

**APPROVALS:**

Melissa Best-Baker	Created/Initiated - 2/15/2022
Darcy Ellis	Approved - 2/16/2022
Marilyn Mann	Approved - 2/22/2022
John Vallejo	Approved - 2/23/2022
Amy Shepherd	Approved - 2/23/2022
Marilyn Mann	Final Approval - 2/24/2022

# SUBCONTRACT AGREEMENT

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## SUMMARY COVER SHEET

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Contract ID	<b>7460-CA MOBILE CRISIS-INYO-01</b>
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Contract Effective Date:	<b>September 15, 2021</b>
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Contractor:	<b>ADVOCATES FOR HUMAN POTENTIAL, INC. (AHP)</b> 490-B Boston Post Road, Sudbury, MA 01776-3365 Tel: (978) 443-0055 ♦ Fax: (978) 261-1467  <b>AHP Contracting Officer:</b> Charles Galland, COO <a href="mailto:cgalland@ahpnet.com/978-261-1425">cgalland@ahpnet.com/978-261-1425</a>  <b>AHP Project Director:</b> Monica Reeves 131 N. El Molino, Suite 380 Pasadena, CA 91101 Tel: 978-261-1483 (o)/ <a href="mailto:mreeves@ahpnet.com">mreeves@ahpnet.com</a>  <b>AHP Direct Staff Contact:</b> Monica Reeves Tel: 978-261-1483 (o)/ <a href="mailto:mreeves@ahpnet.com">mreeves@ahpnet.com</a>
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Subcontractor:	<b>COUNTY OF INYO (“INYO”)</b> <b>ATTN: Marilyn Mann, HHS Director</b> 1360 North Main Street, Suite 124, Bishop, CA 93514 Phone: 760-873-3305 Email address: <a href="mailto:mmann@inyocounty.us">mmann@inyocounty.us</a>
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Prime Contract Identification:	<b>Client: California Department of Health Care Services</b> <b>Agreement No.: 21-10349</b> <b>Contract Title:</b> <i>“Behavioral Health Mobile Crisis and Non-crisis Services (Mobile Crisis)”</i>
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Subcontract Type:	Deliverable Base Type Contract
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Period of Performance:	September 15, 2021 through February 14, 2023
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Consideration/Budget:	Professional Services NTE <b>\$200,000.00</b>
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Billing Terms:	Quarterly Invoicing, see Attachment E-Payment Schedule
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Payment Terms:	Payment remitted ten (10) business days after receipt of undisputed invoice.
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**SUBCONTRACT AGREEMENT**  
**7460-CA MOBILE CRISIS-INYO-01**

This Subcontract is entered into by and between **ADVOCATES FOR HUMAN POTENTIAL, INC.**, with offices located at **490-B Boston Post Road, Sudbury, MA 01776**, ("AHP" or the "Contractor"), and **COUNTY OF INYO ("INYO")** with offices at **1360 North Main Street, Suite 124, Bishop, CA 93514** ("INYO" or "Subcontractor" or "Grantee").

**WITNESSETH:**

**WHEREAS**, AHP desires to obtain the Subcontractor's services to support "*Behavioral Health Mobile Crisis and Non-Crisis Services (Mobile Crisis)*" Project No.: 21-10349. **7460-CA MOBILE CRISIS-INYO-01**, hereinafter the "Contract," and the Subcontractor desires to assist AHP in its business by performing such services;

**NOW, THEREFORE**, based upon the foregoing premises, and in consideration of the mutual covenants and agreements herein set forth, the parties agree as follows:

This Subcontract, and its Attachments, ("Agreement") constitutes the entire agreement and understanding between the parties as to the matters set forth herein. It supersedes all prior understandings, written or oral, between the parties with respect to the subject matter hereof and has been induced by no representations, statements, or agreements other than those herein expressed. By accepting this Agreement, the Subcontractor agrees to be bound by all terms and conditions and provisions that may be incorporated by reference, and all other Attachments to this Agreement.

IN WITNESS THEREOF, the parties hereto have executed this Agreement by their duly authorized respective officers as of the day and year last written below.

**ADVOCATES FOR HUMAN  
POTENTIAL, INC.**

**COUNTY OF INYO**  
*Print or Type Name of Subcontractor*

**By:**

\_\_\_\_\_  
**CHARLES GALLAND, CHIEF  
OPERATING OFFICER**

\_\_\_\_\_  
*Signature of Authorized Entity  
Representative*

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

\_\_\_\_\_  
*Print or Type Name of Person Signing*

\_\_\_\_\_  
*Representative Title*

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



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## **SECTION 1. PRIVACY OF CONTRACT**

This Agreement is funded in whole or in part with funds from AHP's client, State of CA Department of Health Care Services ("DHCS" or "Client") which includes funding through DHCS's "*Behavioral Health Mobile Crisis and Non-Crisis Services (Mobile Crisis)*". Neither the Client (nor the US Government), nor any of its departments, agencies, or employees is or will be a party to this Agreement or any lower-tier subcontract. No privity between the Client, (or the US Government), and Subcontractor is established by this Agreement.

Except as authorized by AHP, Subcontractor shall not communicate with the Client/US Government regarding any matter which is within the scope of AHP's responsibility under the Prime Contract, or regarding matters within the scope of this Agreement. Authorization by AHP shall not be unreasonably withheld. In addition, Subcontractor shall not communicate with the Client/US Government regarding any matter of dispute with AHP, which shall be resolved strictly through the Disputes provisions of this Subcontract.

## **SECTION 2. NATURE OF THE SUBCONTRACT**

### **2.1 Type of Subcontract**

This is a **Deliverable Base** type Agreement. Subcontractor's accounting system must be capable of allocating and segregating costs applicable to this Subcontract.

### **2.2 Funding**

All amounts under this Agreement reference US dollars. No costs will be incurred except those specifically proposed by the Subcontractor to AHP, and Subcontractor shall perform the work within the funding allocations/budget, specified in **Attachment E**.

This Subcontract is entered into, and the obligation of funds is made, based upon the appropriation under the Prime Contract. Should this appropriation or any funds allocated to the Prime Contract be reduced subsequent to this Agreement, or should the scope of the work, or Statement of Work be redirected by the Client so as to affect the work envisioned to be subcontracted, AHP shall have the right to renegotiate this Agreement or to effect a termination (at its discretion) pursuant to the termination section of this Agreement.

**2.3** This Agreement hereby incorporates by reference the Application by Subcontractor as well as Notice of Funding Opportunity.

Total funds currently available for payment and allotted to this Agreement are **two hundred thousand dollars (\$200,000.00)**.

## **SECTION 3. SUBCONTRACTOR PERFORMANCE AND DELIVERY**

### **3.1 Period of Performance**

The Base performance period is **September 15, 2021 through February 14, 2023**, unless sooner terminated in accordance with the terms of this Agreement. Any extensions to the period of performance will be supported by a written modification to the Agreement, and any changes or additions to the Statement of Work/ deliverables/ days of performance shall be determined at that time.

Whenever Subcontractor knows, or reasonably should know, that any actual or potential condition is delaying, or threatens to delay, the timely performance of work, it shall,

within five (5) calendar days, provide AHP with written notice, including all relevant information with respect to the condition(s) and delay.

### **3.2 Time of the Essence**

TIME IS OF THE ESSENCE in Subcontractor's performance of its obligations under this Agreement.

### **3.3 Delivery Schedule**

Satisfactory performance of deliverables shall be deemed to occur upon delivery and acceptance by the Project Director of the items as described in the Statement of Work (SOW). All deliverables shall be submitted as directed by the Project Director. In no event shall Subcontractor submit a deliverable directly to the Client/US Government, unless specifically directed to do so by the Project Director or his/her designee.

Upon request, a copy of all written deliverables shall also be delivered to:

Mr. Charles Galland, Chief Operating Officer, General Counsel  
Advocates for Human Potential, Inc.  
490-B Boston Post Road, Sudbury, MA 01776  
[cgalland@ahpnet.com](mailto:cgalland@ahpnet.com)

### **3.4 Inspection and Acceptance**

(a) Inspection and acceptance of work will be made by the AHP Project Director, or his/her duly authorized representative. The responsibilities of the AHP Project Director includes continuous monitoring of Subcontractor's performance and providing technical inspection and acceptance as required under the prime contract.

(b) Inspection and acceptance will be performed at Advocates for Human Potential, Inc., 490-B Boston Post Road, Sudbury, MA 01776, or at such other place(s) as AHP may designate in writing.

(c) Subcontractor shall tender for acceptance those items that conform to the requirements of this Agreement. AHP reserves the right to inspect or test any supplies or services tendered under this Agreement, to the extent practicable at all reasonable places and times. The Client also has the right to inspect and evaluate the work performed or being performed under this Agreement. Inspections and tests will be performed in a manner that will not unduly delay the work. AHP may require repair or replacement of non-conforming supplies or re-performance of nonconforming services at no increase in contract price. Upon submission, AHP shall have ten (10) business days to inspect Subcontractor's work. Should AHP and/or client find the material unsatisfactory, AHP shall notify Subcontractor of the defects within the 10 day period. Subcontractor shall have 10 business days to cure said defects associated with Subcontractor's work/product. If inspection or evaluation is to be performed on the premises of Subcontractor or its lower-tier Subcontractor(s), Subcontractor shall furnish (and require its subcontractors to furnish) all reasonable facilities and assistance for the safety and convenience of these duties.

## **SECTION 4. STATEMENT OF WORK**

(a) Independently, and not as an agent of the Contractor, the US Government, or the Client, Subcontractor shall furnish to AHP all the services, qualified personnel, material, equipment, and facilities, not otherwise provided by AHP or the Client, as needed to perform the Statement of Work in **Attachment D**.

(b) Subcontractor shall maintain an internal quality control program adequate to ensure

that the requirements of this Agreement are met. The work shall be performed in accordance with high standards of professional skill, and upon delivery and acceptance of the deliverables, AHP shall pay the Subcontractor in accordance with the payment provisions of this Agreement.

## **SECTION 5. SUBCONTRACTOR TRAVEL**

- (a) Travel  is  is not authorized under this Agreement.  
(b) If travel is authorized above, refer to Travel Reimbursement Information in Attachment B-Special Subcontract Requirements.

## **SECTION 6: CONTRACT ADMINISTRATION DATA**

### **6.1 Contractor Representatives**

(a) The following individual is designated as AHP's Contracting Officer, and is authorized to direct or negotiate any changes in the statement of work, modify or extend the period of performance, change the delivery schedule, authorize reimbursement to Subcontractor of any costs incurred during the performance of this contract, or otherwise change any terms and conditions of this Agreement:

Mr. Charles Galland, Chief Operating Officer, General Counsel  
Advocates for Human Potential, Inc.  
490-B Boston Post Road, Sudbury, MA 01776  
[cgalland@ahpnet.com](mailto:cgalland@ahpnet.com) / (978) 443-0055 x425

(b) The following individual(s) is/are designated for purposes of administering the contractual progress of the Agreement, and for purposes of providing technical direction and guidance:

Monica Reeves, Project Director  
Advocates for Human Potential, Inc.  
131 N. El Molino, Suite 380  
Pasadena, CA 91101  
978-261-1483  
[mreeves@ahpnet.com](mailto:mreeves@ahpnet.com)

### **6.2 Subcontractor Representatives**

(a) The following individual is designated as Subcontractor's Contracting Officer and is authorized to conduct business, negotiate modifications and changes to any terms and conditions of this Agreement:

\_\_\_\_\_  
\_\_\_\_\_

(b) The following individual is designated as Subcontractor's Project Manager for purposes of administering this Agreement:

\_\_\_\_\_  
\_\_\_\_\_

### **6.3 Compensation, Billing Instructions, and Payment**

(a) This is a Deliverable Based type Agreement. Subcontractor shall be reimbursed in

accordance with **Attachment E**. In addition, all Subcontractor costs are subject to allowability and reasonableness and any restrictions contained in the Prime Contract, and/or under the Federal Acquisition Regulation ("FAR") if specified.

(b) Invoices may be submitted quarterly, as per payment schedule and shall provide sufficient detail, including at least the following information on each invoice:

- i. Subcontractor's name
- ii. Subcontractor's TIN/EIN
- iii. Subcontract Agreement ID: **7460-CA MOBILE CRISIS-INYO-01**
- iv. Invoice No.
- v. Invoice date
- vi. **AHP's Project & Billing Number(s) applicable to the tasks/deliverables invoiced, as per the Statement of Work attached**
- vii. Amount Due on the Invoice.
- viii. Other substantiating documentation or information as may be requested by AHP
- ix. An original signature of an authorized official of Subcontractor, with the following certification: "I hereby certify that all payments requested are for appropriate purposes and in accordance with the terms and conditions set forth in the Agreement between the parties."
- x. Name/title/telephone number of the person to contact in case of questions about the invoice
- xi. Name, title, phone number, and mailing address of official to whom payment is to be sent.

(c) The cost of overnight or courier delivery of invoices is not allowed.

(d) Invoices shall be sent electronically to: [AP2@AHPNET.COM](mailto:AP2@AHPNET.COM) . Upon receipt of an Invoice, proper in form, and accepted and approved by AHP (***approval of the Invoice shall mean that AHP's Project Director has reviewed, accepted, and signed the Invoice***), payment shall be remitted via First Class Mail within 10 business days after receipt of undisputed invoice. When requested, AHP will inform Subcontractor whether or not a specific Subcontractor invoice has been paid, or when AHP reasonably expects the Client to pay the Subcontractor invoice. All payment questions shall be addressed to AHP Accounts Payable at (978) 443-0055.

(e) Subcontractor's right to payment shall be contingent upon the Project Director's review of the deliverables, together with any attachments, and that the review shall demonstrate the achievement of satisfactory performance against the Statement of Work in **Attachment D**. Should Subcontractor's lack of satisfactory performance endanger AHP's successful prosecution of its Prime contract responsibilities, a cure notice shall be issued to Subcontractor. Subcontractor shall respond in three days with a plan to cure such notice. Should the cure not be feasible, or if the cure fails within the agreed upon time frame, AHP may terminate the Agreement immediately upon written notice.

(f) Supporting Documentation: Subcontractor shall provide supporting documentation for invoices as may be requested by AHP, or as may be necessary for compliance with AHP's billing to the Client.

(g) In satisfaction of the Subcontractor's obligation to complete the task(s) called for in **Attachment D, "Statement of Work"**, the Subcontractor shall provide within the

period of performance of this Agreement, the deliverable(s) specified. If at the end of the period of performance, the Subcontractor has not completed the deliverable(s), the fee may be reduced. In the event that the term of this Agreement expires before the Subcontractor has provided the deliverable(s), AHP shall have the right to extend the term of the Agreement to the extent necessary to permit the Subcontractor to provide the deliverable(s) specified.

#### **6.4 Final Payment and Closeout**

Subcontractor must invoice for all final costs within ninety (90) days following completion of this Agreement, and will provide all documentation necessary for a timely closeout of this Agreement including the submission of a "Final Invoice," a "Release of Claims," "Assignment of Refunds," and/or other closeout documents as may be required or reasonably requested by AHP. Payment of the invoice may be withheld, pending completion and acceptance by AHP of all work performed, submission of all required documentation and/or substantiation of all work performed or delivered, as per 6.3(g), and submission of all required administrative forms and technical reports. These rights and obligations shall survive the termination of this Subcontract.

#### **6.5 Key Personnel**

Subcontractor shall provide the skilled personnel and management necessary to meet the requirements of the Statement of Work. AHP's Project Director shall have right to disapprove all all personnel proposed by Subcontractor to perform under this Agreement. Other than personnel set forth below , prior to staffing any future Key positions, Subcontractor, if so directed by the Project Director, shall submit the names below, and provide any other requested data for the proposed Key personnel to the Project Director. Should Project Director deem any individuals who have been submitted as unacceptable, Subcontractor shall immediately remove any personnel deemed unacceptable from the assignment and replace him/her with an individual of acceptable qualifications, subject to the same submission requirement and right of disapproval above. Subcontractor shall bear all costs associated with such removal and replacement.

Key personnel essential to the work being performed is/are: Not applicable for this contract

No removals, replacements, or diversions of key personnel shall be made without the written consent of AHP's Project Director.

### **SECTION 7: CHANGES AND MODIFICATIONS**

(a) AHP may at any time make unilateral changes, within the general scope of this Agreement, in the definition, time of performance, or quantity of services to be performed.

(b) If any change causes an increase or decrease in the budgeted cost for performance of any part of the work under this Agreement, Subcontractor shall propose a new budget. Upon agreement of a revised price, a modification will be issued. Subcontractor must assert any claim for adjustment under this clause within thirty (30) days from the date of receipt.

(c) Failure to agree to any adjustment on a timely request that is submitted within the thirty (30) day period allowed shall be deemed a dispute concerning a question of fact within the meaning of the Clause of this Agreement entitled "Disputes." Notwithstanding

any failure to agree to any such adjustment, Subcontractor shall diligently proceed with the work as changed.

(d) AHP and/or DHCS may collect additional applicant documentation, signatures, missing items, or omitted information during the response review process. AHP and/or DHCS will advise the applicant orally, by fax, email or in writing of any documentation that is required and the submission timeline. Failure to submit the required documentation by the date and time indicated may cause DHCS to deem a response nonresponsive and eliminate it from further consideration.

## **SECTION 8: CONFIDENTIAL INFORMATION**

(a) *Non-Disclosure of Confidential (Proprietary) Information:* During the term of this Agreement, Subcontractor and its employees, consultants and/or lower tiered subcontractors, may receive or have access to data and information that is proprietary to AHP, DHCS, including the identity of AHP and/or DHCS clients or grantees. All such data and information made available to, disclosed to, or otherwise made known to Subcontractor, its employees, consultants and/or lower tiered subcontractors as a result of services under this Agreement shall be considered and kept confidential by the Subcontractor, and may be used only for purposes of performing the obligations hereunder. Subcontractor, its employees, consultants and/or lower tiered subcontractors shall not reveal, publish or otherwise disclose such information to any third party without the prior written consent of AHP. Subcontractor shall take all reasonable precautions to prevent any other person with whom it is or may become associated from acquiring confidential proprietary information at any time. Disclosure of the information is for purposes of completing performance under this Agreement, and shall in no way be construed to grant any rights to otherwise use this information, nor shall Subcontractor take action to obtain licenses, patents, trademarks, copyrights, or other rights to said information. Upon the expiration or earlier termination of this Agreement, or at any time that AHP so instructs, Subcontractor agrees to deliver to AHP all proprietary information supplied and delivered, (including all copies, materials, print and electronic, collected and created by Subcontractor in performance of services for AHP), and Subcontractor shall make no further use or utilization of the information. The foregoing obligations shall not apply to information which: (a) is or becomes generally available to the public other than as a result of a disclosure by Subcontractor; (b) becomes available to Subcontractor on a non-confidential basis from a third party source which is not prohibited from disclosing such information by a legal, contractual or fiduciary agreement to a third party; (c) Subcontractor develops independently without use of AHP's Confidential Information, as demonstrated by written records and evidence; or (d) is required by law to be disclosed, provided Subcontractor notifies AHP promptly and gives AHP an opportunity to seek an appropriate protective order. These obligations of confidentiality and non-disclosure shall be flowed down to consultants and/or lower tiered subcontractors, and shall survive the termination of this Agreement.

(b) *Non-Disclosure of Confidential Research and Statistical Data:* Subcontractor, and its employees, consultants and/or lower tiered subcontractors, shall be subject to all applicable Federal/state requirements concerning the protection of confidentiality of research and statistical information identifiable to a private person, and will comply with all established procedures to safeguard privacy and confidentiality.

(c) *Personally Identifiable Information.* Subcontractor shall, and shall ensure that each subcontractor, if applicable, shall, maintain reasonable security of all personally identifiable information (including but not limited to personal health information), and

comply with all applicable legal requirements relating to such information, including requirements relating to safeguarding, storing, transmitting, sharing, and destroying such information, and breach notification requirements as required in Business Associate Addendum in Attachment B-Special Subcontract Requirements.

Subcontractor shall not, and shall ensure that each subcontractor shall not, share personally identifiable information (including but not limited to personal health information) (excluding the personally identifiable information of Subcontractors or its subcontractors' directors, officers, employees, agents, affiliates, and designees, in connection with Subcontractor's performance under this Agreement).

## **SECTION 9: INTELLECTUAL PROPERTY**

(a) As between AHP and Subcontractor, AHP's ideas and requirements whether written formally or provided verbally to the Subcontractor are owned by AHP or DHCS.

(b) All writings or works of authorship, ideas, discoveries, inventions, patents, products, or other information, including without limitation, specifications, program codes, source code, framework, JAR files, ZIP files, Library's files, scripts, and all related documentation, data or technical information produced or authored by the Subcontractor or any of its employees in **the course of performing the work hereunder**, together with any copyright, trademarks (including goodwill), and any other rights in intellectual property and rights in the physical embodiment in the same ("Works"), are **works made for hire** and the property of DHCS. To the extent that any Works may not, by operation of law, be works made for hire, this Agreement will constitute an irrevocable assignment by the Subcontractor to DHCS of the ownership of, and all rights of copyright, trademarks (including goodwill), and any other rights in intellectual property and rights in the physical embodiment of the Works, and DHCS will have the right to obtain and hold in its name all registrations which may be available in the Works. Subcontractor agrees to give DHCS or its designees all assistance reasonably required to perfect such rights. The Subcontractor will turn over all Works to DHCS or its designee when the Subcontractor ceases to perform services for AHP or upon AHP's earlier request.

(c) In performing services under this Agreement, Subcontractor will not design or develop any items that infringe one or more patents or other intellectual property rights of any third party. If Subcontractor becomes aware of any possible infringement in the course of performing the Work, Subcontractor shall immediately so notify AHP in writing.

(d) This Section is subject to any contrary or additional provisions contained in the **SPECIAL SUBCONTRACT TERMS AND CONDITIONS**, or under FAR clause 52.227-14, Rights in Data, together with any Alternates, if specified.

(e) This Section shall survive the expiration or termination of this Agreement.

## **SECTION 10: TERMINATION FOR CAUSE**

(a) AHP, or at the direction of the Prime Contractor, may terminate if Subcontractor fails to comply with any terms, conditions, requirements, failure of achievement in any or all deliverables, satisfactory performance, or provisions of the Agreement. AHP shall notify Subcontractor in writing of its failure to comply. Should Subcontractor not remedy such failure within ten (10) business days (Remedy Period), the agreement may be terminated. Upon notification or any time during the Remedy Period, Subcontractor may request additional time in order to cure the default and so long as Subcontractor is



working in Good Faith and Prime Contractor approves, the cure period may be extended to at least thirty (30) business days.

(b) In the event that this Agreement is terminated for cause pursuant to Paragraph (a) above, then the Prime Contractor nor AHP shall not be liable for any work that is not performed in accordance with the Subcontract. The Prime Contractor through AHP will pay the Subcontractor for work that has been performed in accordance with this Subcontract and the Subcontractor shall transfer to the Prime Contractor or AHP all work that has been completed and paid for under this Agreement.

(c) This Agreement may be terminated immediately upon notification by either party following a material breach of this Agreement.

## **SECTION 11: POLICIES AND CODES**

- 11.1 Subcontractor shall comply with all California and federal law, regulations, and published guidelines, to the extent that these authorities contain requirements applicable to Subcontractor's performance under this Agreement. These authorities include, but are not limited to, Title 42, United States Code (USC) Chapter 6A Part B and Title 45, Code of Federal Regulations (CFR) Parts 75 and 96.
- 11.2 AHP may perform inspections, review procedures, documents pertaining to the Statement of Work and other elements of this Agreement, perform onsite visits, desk reviews in order to ensure Contractor's comply with 11.1 and 11.2 as well as protect against fraud, waste and abuse.
- 11.3 In the event Contractor does not comply with 11.1 and 11.2 above, AHP shall hold Subcontractor in non-compliance under Section 9.
- 11.4 DHCS or AHP shall review Subcontractor's records to ensure funds were properly used.

## **SECTION 12: DATA COLLECTION AND PERFORMANCE**

### 12.1 a. Planning Grants

Subcontractor must submit substantiating documentation of their efforts throughout the contract period, which may include implementation/action plan drafts and community needs assessments.

### b. Implementation Grants

Subcontractors for Implementation Grants must include data on the performance measures identified in their contracts. Potential performance measures include:

- The number of individuals served/impacted by each CCMU
  - Percentage treated and released by CCMU
  - Percentage referred to services in the community
  - Percentage admitted to psychiatric hospital
  - Percentage involuntarily admitted to hospital
  - Percentage taken to the Emergency Department
- Average and median response time of each CCMU
- Primary diagnoses of clients served
- Primary reason for CCMU dispatch
  - e.g. Risk of self-harm, risk of violence to others, other erratic behavior
- Percentage with co-occurring mental health and substance use disorder diagnoses
- Health insurance statuses of clients served
- Number of CCMU dispatches
  - Percent of all crisis calls (911 or other) resulting in CCMU dispatch

- Number of initial mental health or substance use calls routed through police to CCMU
- Number of crisis calls when CCMU engages/requests police response
- Demographic data of clients served:
  - Number of clients served who are aged 5 and under/5-9/10-14/15-19/20- 25/26-34/35-44/45-54/55-64/65-74/75-84/85 and over/unknown
  - Number of clients served who are male/female/transgender/non-binary or gender queer/unknown
  - Number of clients served who are American Indian or Alaska Native/Asian American/ Black or African American/Native Hawaiian or Pacific Islander/More than one race/White/unknown
  - Number of clients served who are Latinx or Chicanx or Hispanic/Not Latinx or Chicanx or Hispanic/unknown
  - Number of clients served who speak a language other than English at home
- Percentage of individuals who receive crisis follow-up care within 48 hours
- Percentage of families engaged collaboratively in the crisis intervention process
- Percentage of crisis encounters resolved successfully within two hours
- Satisfaction with services (how likely are they to recommend)

## 12.2 Monitoring and Site Inspection

- a. The Subcontractor shall be subject by AHP for compliance with the provisions of this Agreement. Such monitoring activities shall include, but are not limited to, inspection of the Subcontractor's services, procedures, books, and records, as AHP deems appropriate. AHP may conduct monitoring activities at any time during the Subcontractor's normal business hours.
- b. AHP shall conduct a review of the Subcontractor's records to determine if any of the claimed expenditures were an improper use of grant funds.
- c. The refusal of Subcontractor to permit access to physical facilities and/or inspection of any documents, files, books, or records necessary for AHP to complete its monitoring and inspection activities constitutes an express and immediate material breach of this contract and will be a sufficient basis to terminate the contract for cause.

## **SECTION 13: ORGANIZATIONAL CONFLICT OF INTEREST**

Subcontractor warrants to the best of its knowledge and belief at this time, there are no relevant facts or circumstances which could give rise to an organizational conflict of interest, ("OCI") as defined in FAR Subpart 9.5, or that Subcontractor has disclosed all such relevant information, and will disclose any actual or potential OCI that is discovered, including a description of activities that Subcontractor has taken or proposes to take, after consultation with the AHP Contracting Officer, to avoid the conflict. During the term of this Agreement, Subcontractor shall not enter into other contracts or arrangements or otherwise engage in work that will conflict with the parties' relationship of trust and cooperation or that may otherwise conflict with the Subcontractor's obligations.

## **SECTION 14: INSURANCE**

(a) Subcontractor shall continuously maintain for the duration of this Agreement, the following insurance at, or in excess of, the limits detailed below:

- Worker's compensation and employer's liability insurance as required by the state or province where the work is performed.
- Comprehensive automobile and vehicle liability insurance covering claims for

injuries to members of the public and/or damages to property of others arising from use of motor vehicles, including on-site and off-site operations, and owned, non-owned, or hired vehicles, with \$1,000,000 combined single limits.

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

- Insurance appropriate and sufficient in type and amount to cover any software and data to be developed under this Agreement, and property insurance sufficient to cover the cost of any AHP, Client or other property under the Agreement that may be in the control of the Subcontractor.

(b) All policies, except Workers' Compensation and Employer's Liability, shall be endorsed to name AHP as an Additional Insured with respect to the work to be performed by Subcontractor. All such insurance must be primary and non-contributory and required to respond and pay prior to any other insurance or self-insurance available.

(c) Subcontractor shall immediately deposit with AHP upon request a Certificate of Insurance attesting to the above coverage and naming AHP as an additional insured party under such policies. The Subcontractor agrees that the insurance required herein will remain in effect at all times during the term of the Agreement. In the event said insurance coverage expires at any time or times during the term of this Agreement, the Subcontractor agrees to provide, at least 30 calendar days before said expiration date, a new certificate of insurance evidencing insurance coverage as provided herein for not less than the remainder of the term of the Agreement or for a period of not less than one year. AHP may, in addition to any other remedies it may have, terminate this Agreement on the occurrence of such event.

(d) Insurance Indemnification. Subcontractor shall indemnify AHP for any costs and expenses incurred, including reasonable attorneys' fees, judgments, settlements or penalties, as a result of any claim or liability resulting from the failure of Subcontractor (or its lower tier subcontractors or consultants) to maintain the insurance policies required by this section.

(e) AHP will not be responsible for any premiums, deductibles or assessments on the insurance policy.

## **SECTION 15: INDEMNIFICATION**

(a) Subcontractor shall indemnify and hold harmless AHP and DHCS and its officers, employees and agents for any costs and expenses incurred, including reasonable attorneys' fees, judgments, settlements or penalties, against all liabilities, claims, suits, demands or liens for damages to persons or property, ("Claims"), (unless such Claims arise from the gross negligence or willful misconduct of AHP), arising out of, resulting from, or relating to, the following:

- Any act, omission, or statement of the Subcontractor, or any person employed by or engaged under contract with the Subcontractor that results in injury (including

death), loss, or damage to any person or property;

- Any failure on the part of the Subcontractor to comply with applicable government requirements and requirements of law;
- the failure to maintain the insurance policies required by this section or the work performed, inclusive of Intellectual property infringement, if applicable, under this Subcontract. Insurance coverage that may be required shall in no way lessen or limit the liability of Subcontractor under the terms of this obligation.
- Any failure on the part of the Subcontractor to satisfy all claims for labor, equipment, materials and other obligations relating to the performance of the work hereunder;
- Any actual or alleged direct or contributory infringement of, or inducement to infringe, any United States or foreign patent, trademark or copyright, arising out of the performance of this Agreement, provided the Subcontractor is reasonably notified of such claims and proceedings; and
- Any actual or alleged unauthorized use or disclosure of any trade secret, confidential information or other proprietary interest, Work product, or other information owned by the Government, Client or AHP under the terms of this Agreement.

(b) Subcontractor shall indemnify under this clause for any of the above acts attributable to its employees, consultants, agents, and/or lower-tiered subcontractors engaged in performance of the work under this Agreement.

(c) This indemnification shall survive the expiration or termination of the Agreement.

## **SECTION 16: DISPUTES/APPLICABLE LAWS**

### **16.1 Disputes**

Any dispute arising out of, or relating to, this Agreement that is not resolved by the good faith efforts of the parties, shall be settled by submission to a panel consisting of one arbitrator under the Commercial Rules of the American Arbitration Association (“AAA”). The parties shall bear equally the costs assessed by the AAA, and judgment upon the award rendered by the arbitrator may be entered in any court having jurisdiction. Venue for the arbitration shall be Massachusetts at the election of AHP. The decision of the arbitrator shall be final, conclusive, and unappealable, except in the event of fraud or the arbitrator’s failure to disclose a material conflict of interest. The prevailing party, in addition to any damages awarded by the arbitrator, shall be entitled to costs and reasonable attorneys’ fees, the amount of which shall be determined by the arbitrator, in the event the parties are unable to agree.

### **16.2 Applicable Laws**

Subcontractor agrees to comply with the applicable provisions of Federal, State and local laws or ordinances, and all orders, rules, and regulations issued thereunder, and in such a manner that the name of the other party will not be discredited. Where a FAR provision or clause, or any other Federal statute, regulation, or clause is incorporated in or applicable to this Agreement or work being performed under it, Federal law shall govern the interpretation and application thereof. If Federal law is not applicable, the appropriate law of the Commonwealth of Massachusetts shall apply, exclusive of that body of laws known as conflicts of law. This Section shall survive the expiration or termination of the Agreement.

## **SECTION 17: CERTIFICATIONS**

By signature to this Agreement, Subcontractor makes the following Representations and Certifications:

(a) Debarment and Suspension: Neither Subcontractor nor any of its principals is presently debarred, suspended, proposed for debarment, declared ineligible nor voluntary excluded by any Federal department or agency from participating in transactions. Any change in the debarred or suspended status of the Subcontractor during the life of this Subcontract will be reported immediately to AHP. Subcontractor shall incorporate this Debarment and Suspension certification into any subcontract that they may enter into as a part of this Subcontract.

(b) Prohibition To Perform Duties: Subcontractor is not prohibited, precluded, or restricted from performing the duties required under the Statement of Work, due to previous employment obligations, restrictions, commitments, or agreements Subcontractor has with any other federal, state and local government agency.

(c) Federal Civil Rights Act/Equal Opportunity: Subcontractor will conform to the provisions of Title VI of the Federal Civil Rights Act of 1964, section 2000d as amended and will not discriminate against any employee or applicant for employment because of age, race, religion, creed, color, sex, or national origin.

(d) Labor Laws - Subcontractor certifies that it is in compliance with all applicable labor laws, including but not limited to the Walsh-Healy Act and the Contract Work Hours and Safety Standards Act (41 U.S.C. 51-58) regarding overtime compensation.

(e) Americans with Disabilities Act – Subcontractor agrees to ensure that deliverables developed and produced, pursuant to this Agreement shall comply with the accessibility requirements of Sections 7405 and 11135 of the California Government Code, Section 508 of the Rehabilitation Act and Americans with Disabilities Act of **1973** as amended (29 U.S.C 794(d), regulations implementing the Rehabilitation Act of 1973 as set forth in in Part 1194 of Title 36 of the Federal Code of Regulations, and the Americans with Disabilities Act of 1990(42 U.S.C. 12101 et seq. and 28 CFR Part 35). In 1998, Congress amended the **Rehabilitation Act of 1973** to require Federal agencies to make their electronic and information technology (EIT) accessible to people with disabilities. California Government Code Sections 7405 and 11135 codifies section 508 of the Rehabilitation ACT of 1973 requiring accessibility of EIT.

(f) Employee Compliance - Subcontractor will require all employees, entities and individuals providing services in connection with the performance of this Subcontract to comply with the provisions of this Agreement and with all Federal, State, and local laws and regulations in connection with this work.

(g) Code of Ethics: Subcontractor has a Code of Ethics addressing at least the following areas: accurate accounting records and reporting; gifts and entertainment to Government customers; hiring of former government employees; protection of Government proprietary and source selection information; extending and receiving business courtesies; and personal and organization conflicts of interest.

(h) Age Discrimination Act of 1975 (45 CFR Part 90)

(i) Section 1557 of the Affordable Care Act.

(j) Trafficking Victims Protection Act of 2000 (22 USC 7104(G), as amended and 2 CFR Part 175

(k) Clean Air Act (42 USC 7401-7671q) and the Federal Water Pollution Control ACT

(33 USC 1251-1387), as amended.

(l) Byrd Anti-Lobbying Amendment (31 USC 1352). The Subcontractor shall certify to DHCS that it will not and has not used Federal appropriated funds to pay any person or organization for influencing or attempting to influence an office or employee of any agency, a member of Congress, officer or employee of Congress, or an employee of a member of Congress in connection with obtaining any Federal contract, grant or any other award covered by 31 USC 1352. The Subcontractor shall also disclose to DHCS any lobbying with non-Federal funds that takes place in connection with obtaining any Federal Award.

(m) Confidentiality of Alcohol and Drug Abuse Patient Records: (42 CFR Part 2, Subparts A-E). The Subcontractor shall comply with the regulation set forth in 42 CFR part 2, including the responsibility for assuring the security and confidentiality of all electronically transmitted patient material.

(n) Certification and Attestation: As a requirement to be eligible for the PWI grant funding, the Subcontractor, attested to its eligibility to receive funding, Attestation Letter attached hereto as Attachment F. Any misrepresentation contained within the Attestation Letter shall be considered a material breach.

(o) Standard Funding Restrictions: Exceed Salary Limitation: The Consolidated Appropriations Act, 2016 (Pub. L.113- 76) signed into law on January 10, 2016, limits the salary amount that may be awarded and charged to SAMHSA grants and cooperative agreements. Award funds may not be used to pay the salary of an individual at a rate in excess of Executive Level II. The Executive Level II salary can be found in SAMHSA's standard terms and conditions for all awards at <https://www.samhsa.gov/grants/grants-management/notice-award-noa/standard-terms-conditions>. This amount reflects an individual's base salary exclusive of fringe and any income that an individual may be permitted to earn outside of the duties to the applicant organization. This salary limitation also applies to sub awards/subcontracts under a SAMHSA grant or cooperative agreement. The Federal Executive Level II Salary Cap is currently \$199,300.

- Pay for any lease beyond the project period.
- Pay for the purchase or construction of any building or structure to house any part of the program.
- Make direct payments to individuals to enter treatment or continue to participate in prevention or treatment services.
- No out-of-state travel is permitted with these funds.

\*SAMHSA funds were granted to the State and all funding restrictions are applicable to this funding opportunity and all sub-contracts.

## **SECTION 18: RECORDS AND RECORD KEEPING**

- a. The Subcontractor shall retain all financial records, supporting documents, statistical records, and all other records pertinent to the grant in accordance with 45 CFR section 75.361.
- b. AHP, SAMHSA, the Inspector General, the Controller General and DHCS, or any of its authorized representatives, have the right to access any documents, papers, or other records of the Subcontractor which are pertinent to the grant, for the purpose of performing audits, examinations, excerpts, and transcripts. The right to access records also includes timely and reasonable access to the Subcontractor's personnel for the purpose of interview and discussion related to

the requested documents.

- c. The right to access records is not limited to the required retention period but lasts as long as the records are retained by the Subcontractor.

#### **SECTION 19: EXPENSE ALLOWABILITY/FISCAL DOCUMENTATION**

- a. Invoices, received from a Subcontractor and accepted and/or submitted for payment by AHP, shall not be deemed evidence of allowable agreement costs.
- b. The Subcontractor shall maintain for review and audit and supply to AHP upon request, adequate documentation of all expenses claimed pursuant to this Agreement to permit a determination of expense allowability.
- c. If the allowability or appropriateness of an expense cannot be determined by AHP 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 AHP. Upon receipt of adequate documentation supporting a disallowed or questionable expense, reimbursement may resume for the amount substantiated and deemed allowable.
- d. If Travel is a reimbursable expense, receipts must be maintained to support the claimed expenditures. For more information on allowable travel and per diem expenses and required documentation, see Attachment B, "Travel Reimbursement Information".
- e. Costs and/or expenses deemed unallowable are subject to recovery by AHP. See Section 20 Recovery of Overpayments" for more information.
- f. Country organizations may utilize their existing DHCS certified indirect cost rates for per Behavioral Health Information Notice 20-020.

#### **SECTION 20: RECOVERY OF OVERPAYMENTS**

- a. Subcontractor agrees that claims based upon a contractual agreement or an audit finding and/or an audit finding that is appealed and upheld, will be recovered by AHP by one of the following options:
  - 1. Subcontractor's remittance to AHP of the full amount of the audit exception within 30 days following AHP request for payment;
  - 2. A repayment schedule which is agreeable to both AHP and the Subcontractor.
- b. AHP reserves the right to select which option will be employed and the Subcontractor will be notified by AHP 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 Subcontractor, beginning 30 days after the Subcontractor's receipt of AHP's demand for repayment.
- d. If the Subcontractor 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 Subcontractor loses the final administrative appeal, the Subcontractor shall repay, to AHP, the over-claimed or disallowed expenses, plus accrued interest. Interest accrues

from the Subcontractor's first receipt of AHP's notice requesting reimbursement of questioned audit costs or disallowed expenses.

**SECTION 21: BEST EFFORTS**

**21.1 Best Efforts** During the term of this Agreement, Subcontractor shall use Best Efforts in order to satisfy all the requirements of the work to be performed under Section 4 and Attachment A of this Agreement.

THIS AGREEMENT CONSISTS OF **SEVENTEEN (17)** TYPEWRITTEN PAGES, TOGETHER WITH THE ATTACHMENTS IDENTIFIED BELOW, WHICH ARE HEREBY INCORPORATED INTO THIS AGREEMENT.

**LIST OF ATTACHMENTS**

<u>TITLE</u>	<u>No. of PAGES</u>
<b>Attachment A</b> – Standard Subcontract Terms and Conditions	1
<b>Attachment B</b> – Special Subcontractor Requirements	36
<b>Attachment C</b> – Subcontractor's Certification	5
<b>Attachment D</b> - Subcontractor's Statement of Work	2
<b>Attachment E</b> – Payment Schedule	1



## ATTACHMENT A-STANDARD SUBCONTRACT TERMS AND CONDITIONS

**Headings:** Headings are for convenience of reference only and shall in no way affect interpretation of this Agreement.

**Independent Contractor:** Subcontractor is engaged as an independent contractor, and this Agreement shall not be construed as creating any other relationship. Subcontractor shall comply with all laws, and assume all risks incident to its status as independent contractor, and necessary to comply with specific requirements of this Agreement, including, but not limited to, payment of all applicable federal/state income taxes, associated payroll/business taxes, and licenses and fees.

**No Agency:** Subcontractor, its employees, agents or assigns, shall not represent, act or purport to act, or be deemed to be an agent, representative, or employee of AHP, or commit or obligate AHP to any other person or party.

**Lower-Tier Consultants/Subcontractors:** AHP's prior written approval is required to obtain services of consultants or lower-tier Subcontractors; provided, however, that this limitation shall not apply to the purchase of standard commercial supplies.

**No Assignment:** This Agreement is for professional services, and the Agreement, or any duties/obligations imposed shall not be assigned, delegated or otherwise transferred.

**Changes to be Made in Writing:** Unless otherwise specified that AHP may make a unilateral modification, no understanding, agreement, modification, change order, or other matter affecting this Agreement shall be binding, unless in writing, signed by both parties' Contracting Officer. No handwritten changes shall be effective unless initialed by each Contracting Officer.

**Limitation of Liability upon Termination:** AHP's maximum aggregate liability to Subcontractor is limited to the total dollar amount of work properly performed by Subcontractor up to the effective date of termination, together with any authorized travel, or authorized expenses incurred under the Agreement that cannot be canceled. AHP is not liable for any special, indirect, incidental, consequential, or punitive damages, nor for any loss of goodwill, profits, data, or loss of use arising out of, resulting from, or in any way connected with the performance or breach of this Agreement, even if advised of the possibility of such damages.

**Force Majeure:** Neither party shall be liable to the other for loss or damages due to failure or delay in rendering performance caused by circumstances beyond its reasonable control, if such failure could not have been overcome by the exercise of due diligence, due care, or foresight. Causes may include, but are not limited to, acts of God or a public enemy; wars; acts of terrorism; riots; fires; floods; epidemics; quarantine restrictions; labor disputes; strikes; defaults of subcontractors/vendors; failure/delays in transportation; unforeseen freight embargoes; unusually severe weather; or any law/order/regulation/request of a state or local government entity, the US Government, or of any agency, court, commission, or other instrumentality of any such governments. Times of performance under this Agreement may be appropriately extended for excused delays if the party whose performance is affected promptly notifies the other of the existence and nature of such delay.

**Scientific Misconduct:** Subcontractor shall immediately report to AHP any instance of scientific misconduct or fraud related to performance of work under this Agreement.

**Warranty:** Unless a different warranty is specified, Subcontractor warrants all services provided and products delivered will be free from defect in materials and/or workmanship, and will be fit for the purpose intended, and will conform to the specifications of the statement of work. In the event of a breach AHP may complete the work and seek all remedies available in law or equity.

**Notices:** Notices shall be in writing, sent by USPS Certified Mail-RRR, or any overnight delivery/courier service, and notice shall be deemed given when personally delivered, (or three (3) days after being sent by prepaid certified U.S. mail).

**Litigation:** Subcontractor shall provide written notice to AHP of any litigation that relates to the services under this contract, or that has the potential to impair its ability to fulfill this contract, including but not limited to financial, legal or other situations.

**Publicity:** Without prior written approval of the other, neither party shall use the other's name or make reference to the other party or any of its employees in publications, news releases, advertising, speeches, technical papers, photographs, sales promotions, or publicity purposes of any form related to this work or data developed hereunder, unless disclosure of such materials is required by legal, accounting, or regulatory requirements beyond the disclosing party's reasonable control. Use of either party's name may be made in internal documents, annual reports, proposals, etc. which may identify the existence of the project by title, principal investigator or project director, sponsor, period of funding, amount of award and brief abstract of the project. This Section shall survive expiration/termination of this Agreement.

**Restrictions on Hiring:** During the period of this Agreement, and for a period of two (2) years after its termination, neither party shall directly or indirectly, induce or solicit (or authorize or assist in the taking of any such actions by any third party) any employee or consultant of the other party to leave his/her business association with that party. Parties are not be restricted in the right to solicit or recruit generally in the media.

**Survival:** Except as otherwise stated, sections that by their terms impose continuing obligations or establish continuing rights shall be deemed to survive the expiration/termination of this Agreement.

**Validity and Waiver:** The invalidity in whole or in part of any provision of this Agreement shall not affect the validity of other provisions. Waiver of a breach of any provision shall not constitute a waiver of any subsequent breach of that provision, or a breach of any other provision. AHP's failure to enforce any provision of this Agreement shall not be construed as a waiver. Only AHP's Contracting Officer has the authority to waive any term or condition of this Subcontract on behalf of AHP.

**Interpretation:** This Agreement shall be interpreted and construed in accordance with its fair meaning, and not strictly for or against either party, regardless of who may have drafted it or any specific provision.

**Third Party Beneficiaries:** This Agreement shall not be construed so as to give any person or entity, other than the parties, any legal or equitable claim or right.

**Counterparts/Other Instruments:** The parties may execute this contract in multiple counterparts, each of which is deemed an original and all of which constitute only one agreement. The parties shall properly make, execute, and deliver such other and further instruments as may be reasonable, necessary, desirable, or convenient to give full force and effect to this Agreement.

**Binding Effect:** This Agreement shall be binding upon the parties, their successors and assigns.

## **ATTACHMENT B**

### **1. Federal Equal Opportunity Requirements**

- a. The Subcontractor 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 Subcontractor 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 Subcontractor agrees to post in conspicuous places, available to employees and applicants for employment, notices to be provided by the Federal Government or AHP, 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 Subcontractor'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 Subcontractor will, in all solicitations or advancements for employees placed by or on behalf of the Subcontractor, 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 Subcontractor 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 Subcontractor'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 Subcontractor 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 Subcontractor 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 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 Subcontractor'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 Subcontractor 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 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 Subcontractor 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 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 Subcontractor will take such action with respect to any subcontract or purchase order as the Director of the Office of Federal Contract Compliance Programs or AHP may direct as a means of enforcing such provisions including sanctions for noncompliance provided, however, that in the event the Subcontractor becomes involved in, or is threatened with litigation by a subcontractor or vendor as a result of such direction by AHP, the Subcontractor may request in writing to AHP, who, in turn, may request the United States to enter into such litigation to protect the interests of the State and of the United States.

## **2. Travel and Per Diem Reimbursement**

(Applicable if travel and/or per diem expenses are authorized to be reimbursed with Agreement funds.)

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

## **3. Procurement Rules**

Applicable to agreements in which equipment/property, commodities and/or supplies are furnished by AHP or DHCS or expenses for said items are reimbursed by funds with state or federal funds provided under this Agreement.

### **a. Equipment/Property definitions**

Wherever the term equipment and/or 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 DHCS 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 DHCS or the cost is reimbursed through this Agreement.

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

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

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

(2) All equipment/property purchases are subject to Paragraphs d through h of Provision 3. Paragraph b of Provision 3 shall also apply, if equipment/property purchases are delegated to subcontractors that are either a government or public entity.

(3) Nonprofit organizations and commercial businesses shall use a procurement system that meets the following standards:

(a) Maintain a code or standard of conduct that shall govern the performance of its officers, employees, or agents engaged in awarding procurement contracts. No employee, officer, or agent shall participate in the selection, award, or administration of a procurement, or bid contract in which, to his or her knowledge, he or she has a financial interest.

(b) Procurements shall be conducted in a manner that provides, to the maximum extent practical, open, and free competition.

(c) Procurements shall be conducted in a manner that provides for all of the following:

[1] Avoid purchasing unnecessary or duplicate items.

[2] Equipment/property 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 AHP, prior written authorization from the AHP Contract Office or Project Manager will be required before the Subcontractor will be reimbursed for any purchase of \$5,000 or more for commodities, supplies, equipment/property, and services related to such purchases. The Subcontractor must provide in its request for authorization all particulars necessary, as specified by AHP, 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 AHP (e.g., when AHP has a need to monitor certain purchases, etc.), AHP may require prior written authorization and/or the submission of paid vendor receipts for any purchase, regardless of dollar amount. AHP reserves the right to either deny claims for reimbursement or to request repayment for any Subcontractor purchase that AHP determines to be unnecessary in carrying out performance under this Agreement.
- f. The Subcontractor must maintain a copy or narrative description of the procurement system, guidelines, rules, or regulations that will be used to make purchases under this Agreement. AHP and the State reserves the right to request a copy of these documents and to inspect the purchasing practices of the Subcontractor at any time.
- g. For all purchases, the Subcontractor must maintain copies of all paid vendor invoices, documents, bids and other information used in vendor selection, for inspection or audit. Justifications supporting the absence of bidding (i.e., sole source purchases) shall also be maintained on file by the Subcontractor for inspection or audit.
- h. AHP may, with cause (e.g., with reasonable suspicion of unnecessary purchases or use of inappropriate purchase practices, etc.), withhold, cancel, modify, or retract the delegated purchase authority granted under Paragraphs b and/or c of Provision 3 by giving the Subcontractor no less than 30 calendar days written notice.

#### **4. Equipment/Property Ownership / Inventory / Disposition**

(Applicable to agreements in which equipment/property is furnished by DHCS and/or AHP when said items are purchased or reimbursed by DHCS with state or federal funds provided under this Agreement.)

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

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

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

Upon receipt of equipment and/or property, the Subcontractor shall report the receipt to the AHP. To report the receipt of said items and to receive property tags, Subcontractor shall use a form or format designated by AHP. If the appropriate form does not accompany this Agreement, Subcontractor shall request a copy from AHP.

- (2) **Annual Equipment/Property Inventory** - If the Subcontractor enters into an agreement with a term of more than twelve months, the Subcontractor shall submit an annual inventory of state equipment and/or property to the AHP using a form or format designated by AHP. If an inventory report form does not accompany this Agreement, Subcontractor shall request a copy from AHP. Subcontractor shall:
- (a) Include in the inventory report, equipment and/or property in the Subcontractor's possession and/or in the possession of a subcontractor (including independent consultants).
  - (b) Submit the inventory report to AHP according to the instructions appearing on the inventory form or issued by AHP.
  - (c) Contact AHP 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 AHP.
- 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, AHP or DCHS shall be under no obligation to pay the cost of restoration, or rehabilitation of the Subcontractor's facility which may be affected by the removal of any state equipment and/or property.
- d. The Subcontractor shall maintain and administer a sound business program for ensuring the proper use, maintenance, repair, protection, insurance and preservation of state equipment and/or property.
- (1) In administering this provision, AHP may require the Subcontractor to repair or replace, to AHP's satisfaction, any damaged, lost or stolen state equipment and/or property. In the event of state equipment and/or miscellaneous property theft, Subcontractor shall immediately file a theft report with the appropriate police agency or the California Highway Patrol and Subcontractor shall promptly submit one copy of the theft report to AHP.
- e. Unless otherwise stipulated by the Program funding this Agreement, equipment and/or property purchased/reimbursed with agreement funds or furnished by AHP under the terms of this Agreement, shall only be used for performance of this Agreement or another DHCS agreement.
- f. Within sixty (60) calendar days prior to the termination or end of this Agreement, the Subcontractor shall provide a final inventory report of equipment and/or property to AHP and shall, at that time, query DHCS as to the requirements, including the manner and method, of returning state equipment and/or property to AHP. Final disposition of equipment and/or property shall be at AHP expense and according to AHP instructions. Equipment and/or property disposition instructions shall be issued by AHP immediately after receipt of the final inventory report. At the termination or conclusion of this Agreement, AHP OR DHCS may at its discretion, authorize the continued use of state equipment and/or property for performance of work under a different DHCS agreement.
- g. **Motor Vehicles**  
(Applicable only if motor vehicles are purchased/reimbursed with agreement funds or furnished by AHP or DHCS under this Agreement.)
- (1) If motor vehicles are purchased/reimbursed with agreement funds or furnished by AHP or DHCS under the terms of this Agreement, within thirty (30) calendar days prior to the

termination or end of this Agreement, the Subcontractor shall return such vehicles to AHP or DHCS and shall deliver all necessary documents of title or registration to enable the proper transfer of a marketable title to AHP or DHCS.

- (2) If motor vehicles are purchased/reimbursed with agreement funds or furnished by AHP or DHCS under the terms of this Agreement, the State of California shall be the legal owner of said motor vehicles and the Subcontractor shall be the registered owner. The Subcontractor may only use said vehicles for performance and under the terms of this Agreement.
- (3) The Subcontractor agrees that all operators of motor vehicles, If motor vehicles are purchased/reimbursed with agreement funds or furnished by AHP or DHCS 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 Stat of California Class B driver's license.
- (4) If any motor vehicle is purchased/reimbursed with agreement funds or furnished by AHP or DHCS under the terms of this Agreement, the Subcontractor, as applicable, shall provide, maintain, and certify that, at a minimum, the following type and amount of automobile liability insurance is in effect during the term of this Agreement or any extension period during which any vehicle remains in the Subcontractor's possession.

#### **Automobile Liability Insurance**

- (a) The Subcontractor, 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 AHP under the terms of this Agreement, to the Subcontractor.
- (b) The Subcontractor shall, as soon as practical, furnish a copy of the certificate of insurance to the AHP Contract Office or Project Manager. The certificate of insurance shall identify the AHP contract or agreement number for which the insurance applies.
- (c) The Subcontractor agree that bodily injury and property damage liability insurance, as required herein, shall remain in effect at all times during the term of this Agreement or until such time as the motor vehicle is returned to AHP.
- (d) The Subcontractor agree to provide, at least thirty (30) days prior to the expiration date of said insurance coverage, a copy of a new certificate of insurance evidencing continued coverage, as indicated herein, for not less than the remainder of the term of this Agreement, the term of any extension or continuation thereof, or for a period of not less than one (1) year.
- (e) The Subcontractor, if not a self-insured government and/or public entity, must provide evidence, that any required certificates of insurance contain the following provisions:
  - [1] The insurer will not cancel the insured's coverage without giving thirty (30) calendar days prior written notice to AHP.
  - [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 the AHP, in writing, of the Subcontractor'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 Subcontractor is hereby advised that copies of certificates of insurance may be subject to review and approval by the Department of General Services (DGS), Office of Risk and Insurance Management. The Subcontractor shall be notified by AHP, in writing, if this provision is applicable to this Agreement. If DGS approval of the certificate of insurance is required, the Subcontractor agrees that no work or services shall be performed prior to obtaining said approval.
- (g) In the event the Subcontractor fails to keep insurance coverage, as required herein, in effect at all times during vehicle possession, AHP may, in addition to any other remedies it may have, terminate this Agreement upon the occurrence of such event.

## 5. Subcontract Requirements

- a. Prior written authorization will be required before the Subcontractor enters into or is reimbursed for any subcontract for services costing \$5,000 or more. Except as indicated in Paragraph b(3) herein, when securing subcontracts for services exceeding \$5,000, the Subcontractor shall obtain at least three bids or justify a sole source award.
  - (1) The Subcontractor must provide in its request for authorization, all information necessary for evaluating the necessity or desirability of incurring such cost.
  - (2) AHP may identify the information needed to fulfill this requirement.
  - (3) Subcontracts performed by the following entities or for the service types listed below are exempt from the bidding and sole source justification requirements:
    - (a) A local governmental entity or the federal government,
    - (b) A State college or State university from any State,
    - (c) A Joint Powers Authority,
    - (d) An auxiliary organization of a California State University or a California community college,
    - (e) A foundation organized to support the Board of Governors of the California Community Colleges,
    - (f) An auxiliary organization of the Student Aid Commission established under Education Code § 69522,
    - (g) Firms or individuals proposed for use and approved by DHCS' funding Program via acceptance of an application or proposal for funding or pre/post contract award negotiations.
    - (h) Entities and/or service types identified as exempt from advertising and competitive bidding in State Contracting Manual Chapter 5 Section 5.80 Subsection B.2. View this publication at the following Internet address: <https://www.dgs.ca.gov/OLS/Resources/Page-Content/Office-of-Legal-Services-Resources-List-Folder/State-Contracting>
- b. AHP reserves the right to approve or disapprove the selection of subcontractors and with advance written notice, require the substitution of subcontractors and require the Subcontractor to terminate subcontracts entered into in support of this Agreement.
  - (1) Upon receipt of a written notice from AHP requiring the substitution and/or termination of a subcontract, the Subcontractor 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 DHCS.

- c. Actual subcontracts (i.e., written agreement between the Subcontractor and a subcontractor) of \$5,000 or more are subject to the prior review and written approval of AHP. AHP may, at its discretion, elect to waive this right. All such waivers shall be confirmed in writing by AHP.
- d. Subcontractor shall maintain a copy of each subcontract entered into in support of this Agreement and shall, upon request by AHP, make copies available for approval, inspection, or audit.
- e. AHP assumes no responsibility for the payment of subcontractors used in the performance of this Agreement. Subcontractor accepts sole responsibility for the payment of subcontractors used in the performance of this Agreement.
- f. The Subcontractor is responsible for all performance requirements under this Agreement even though performance may be carried out through a subcontract.
- g. The Subcontractor shall ensure that all subcontracts for services include provision(s) requiring compliance with applicable terms and conditions specified in this Agreement.
- h. The subcontractor agrees to maintain and preserve, until three years after termination of Agreement No. 21-10349 and final payment from AHP, to permit AHP or DHCS or any duly authorized representative, to have access to, examine or audit any pertinent books, documents, papers and records related to this subcontract and to allow interviews of any employees who might reasonably have information related to such records.
- i. Unless otherwise stipulated in writing by AHP, the Subcontractor shall be the subcontractor's sole point of contact for all matters related to performance and payment under this Agreement.
- j. Subcontractor shall, as applicable, advise all subcontractors of their obligations pursuant to the following numbered provisions of this Exhibit: 1, 2, 3, 4, 5, 6, 7,8, 10, 11, 12, 13, 14, 17, 19, 20, 24, 32 and/or other numbered provisions herein that are deemed applicable.

## **6. Income Restrictions**

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

## **7. Audit and Record Retention**

- a. The Subcontractor shall maintain books, records, documents, and other evidence, accounting procedures and practices, sufficient to properly reflect all direct and indirect costs of whatever nature claimed to have been incurred in the performance of this Agreement, including any matching costs and expenses. The foregoing constitutes "records" for the purpose of this provision.
- b. The Subcontractor's facility or office or such part thereof as may be engaged in the performance of this Agreement and his/her records shall be subject at all reasonable times to inspection, audit, and reproduction.

- c. Subcontractor agrees that AHP, 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. Subcontractor 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 Subcontractor 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 1896.77)
- d. The Subcontractor shall preserve and make available his/her records (1) for a period of three years from the date of final payment under this Agreement, and (2) for such longer period, if any, as is required by applicable statute, by any other provision of this Agreement, or by subparagraphs (1) or (2) below.
  - (1) If this Agreement is completely or partially terminated, the records relating to the work terminated shall be preserved and made available for a period of three years from the date of any resulting final settlement.
  - (2) If any litigation, claim, negotiation, audit, or other action involving the records has been started before the expiration of the three-year period, the records shall be retained until completion of the action and resolution of all issues which arise from it, or until the end of the regular three-year period, whichever is later.
- e. The Subcontractor may, at its discretion, following receipt of final payment under this Agreement, reduce its accounts, books and records related to this Agreement to microfilm, computer disk, CD ROM, DVD, or other data storage medium. Upon request by an authorized representative to inspect, audit or obtain copies of said records, the 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.
- f. The Subcontractor shall, if applicable, comply with the Single Audit Act and the audit requirements set forth in 2 C.F.R. § 200.501 (2014).

## **8. Site Inspection**

AHP, DHCS and or SAMHSA 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 Subcontractor, the Subcontractor shall provide and shall require subcontractors to provide all reasonable facilities and assistance for the safety and convenience of the authorized representatives in the performance of their duties. All inspections and evaluations shall be performed in such a manner as will not unduly delay the work.

## **9. Federal Contract Funds**

- 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, the Agreement shall be amended to reflect any reduction in funds.
- d. AHP and DHCS has the option to invalidate or cancel the Agreement with 30 days advance written notice or to amend the Agreement to reflect any reduction in funds.

## 10. Intellectual Property Rights

### a. Ownership

- (1) Except where AHP has agreed in a signed writing to accept a license, AHP or DHCS 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 Subcontractor or AHP and which result directly or indirectly from this Agreement.
- (2) For the purposes of this Agreement, Intellectual Property means recognized protectable rights and interest such as: patents, (whether or not issued) copyrights, trademarks, service marks, applications for any of the foregoing, inventions, trade secrets, trade dress, logos, insignia, color combinations, slogans, moral rights, right of publicity, author's rights, contract and licensing rights, works, mask works, industrial design rights, rights of priority, know how, design flows, methodologies, devices, business processes, developments, innovations, good will and all other legal rights protecting intangible proprietary information as may exist now and/or here after come into existence, and all renewals and extensions, regardless of whether those rights arise under the laws of the United States, or any other state, country or jurisdiction.
  - (a) For the purposes of the definition of Intellectual Property, "works" means all literary works, writings and printed matter including the medium by which they are recorded or reproduced, photographs, art work, pictorial and graphic representations and works of a similar nature, film, motion pictures, digital images, animation cells, and other audiovisual works including positives and negatives thereof, sound recordings, tapes, educational materials, interactive videos and any other materials or products created, produced, conceptualized and fixed in a tangible medium of expression. It includes preliminary and final products and any materials and information developed for the purposes of producing those final products. Works does not include articles submitted to peer review or reference journals or independent research projects.
- (3) In the performance of this Agreement, Subcontractor will exercise and utilize certain of its Intellectual Property in existence prior to the effective date of this Agreement. In addition, under this Agreement, Subcontractor may access and utilize certain of AHP's Intellectual Property in existence prior to the effective date of this Agreement. Except as otherwise set forth herein, Subcontractor shall not use any of AHP's Intellectual Property now existing or hereafter existing for any purposes without the prior written permission of AHP. **Except as otherwise set forth herein, AHP shall not give any ownership interest in or rights to its Intellectual Property to the other Party.** If during the term of this Agreement, Subcontractor accesses any third-party Intellectual Property that is licensed to AHP, Subcontractor agrees to abide by all license and confidentiality restrictions applicable to AHP in the third-party's license agreement.
- (4) Subcontractor agrees to cooperate with AHP in establishing or maintaining AHP's and/or DHCS exclusive rights in the Intellectual Property, and in assuring AHP's or DHCS' sole rights against third parties with respect to the Intellectual Property. If the Subcontractor

enters into any agreements or subcontracts with other parties in order to perform this Agreement, Subcontractor 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 AHP and/or DHCS all rights, title and interest in Intellectual Property made, conceived, derived from, or reduced to practice by the subcontractor, Contractor or AHP and which result directly or indirectly from this Agreement or any subcontract.

- (5) Subcontractor further agrees to assist and cooperate with AHP/DHCS 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 AHP'S Intellectual Property rights and interests.

**b. Retained Rights / License Rights**

- (1) Except for Intellectual Property made, conceived, derived from, or reduced to practice by Subcontractor or AHP and which result directly or indirectly from this Agreement, Subcontractor 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. Subcontractor hereby grants to DHCS, without additional compensation, a permanent, non-exclusive, royalty free, paid-up, worldwide, irrevocable, perpetual, non-terminable license to use, reproduce, manufacture, sell, offer to sell, import, export, modify, publicly and privately display/perform, distribute, and dispose Subcontractor's Intellectual Property with the right to sublicense through multiple layers, for any purpose whatsoever, to the extent it is incorporated in the Intellectual Property resulting from this Agreement, unless Subcontractor assigns all rights, title and interest in the Intellectual Property as set forth herein.
- (2) Nothing in this provision shall restrict, limit, or otherwise prevent Subcontractor from using any ideas, concepts, know-how, methodology or techniques related to its performance under this Agreement, provided that Subcontractor's use does not infringe the patent, copyright, trademark rights, license or other Intellectual Property rights of AHP 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) Subcontractor 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 Subcontractor in connection with Subcontractor's performance of this Agreement shall be deemed "works made for hire". Subcontractor further agrees that the work of each person utilized by Subcontractor in connection with the performance of this Agreement will be a "work made for hire," whether that person is an employee of Subcontractor or that person has entered into an agreement with Subcontractor to perform the work. Subcontractor shall enter into a written agreement with any such person that: (i) all work performed for Subcontractor shall be deemed a "work made for hire" under the Copyright Act and (ii) that person shall assign all right, title, and interest to AHP and/or DHCS to any work product made, conceived, derived from, or reduced to practice by Subcontractor or AHP 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 AHP and which result directly or indirectly from this Agreement, shall include AHP's or DHCS' notice of copyright, which shall read in 3mm or larger typeface: "© [Enter Current Year e.g., 2010, etc.], This material may not be reproduced or disseminated without prior written permission from AHP." This notice

should be placed prominently on the materials and set apart from other matter on the page where it appears. Audio productions shall contain a similar audio notice of copyright.

**d. Patent Rights**

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

**e. Third-Party Intellectual Property**

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

**f. Warranties**

(1) Subcontractor 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 Subcontractor'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 Subcontractor or DHCS or AHP 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 Subcontractor.
- (d) Neither Subcontractor'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 AHP or DHCS 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 Subcontractor's performance of this Agreement.
- (2) AHP NOR DHCS MAKE NO WARRANTY THAT THE INTELLECTUAL PROPERTY RESULTING FROM THIS AGREEMENT DOES NOT INFRINGE UPON ANY PATENT, TRADEMARK, COPYRIGHT OR THE LIKE, NOW EXISTING OR SUBSEQUENTLY ISSUED.

**g. Intellectual Property Indemnity**

- (1) Subcontractor shall indemnify, defend and hold harmless AHP and DHCS and its licensees and assignees, and its officers, directors, employees, agents, representatives, successors, and users of its products, ("Indemnitees") from and against all claims, actions, damages, losses, liabilities (or actions or proceedings with respect to any thereof), whether or not rightful, arising from any and all actions or claims by any third party or expenses related thereto (including, but not limited to, all legal expenses, court costs, and attorney's fees incurred in investigating, preparing, serving as a witness in, or defending against, any such claim, action, or proceeding, commenced or threatened) to which any of the Indemnitees may be subject, whether or not Subcontractor 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 Subcontractor pertaining to Intellectual Property; or (ii) any Intellectual Property infringement, or any other type of actual or alleged infringement claim, arising out of AHP'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 Subcontractor or DCHS or AHP 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. AHP reserves the right to participate in and/or control, at Subcontractor's expense, any such infringement action brought against AHP.
- (2) Should any Intellectual Property licensed by the Subcontractor to AHP under this Agreement become the subject of an Intellectual Property infringement claim, Subcontractor will exercise its authority reasonably and in good faith to preserve AHP's right to use the licensed Intellectual Property in accordance with this Agreement at no expense to AHP. AHP shall have the right to monitor and appear through its own counsel (at Subcontractor's expense) in any such claim or action. In the defense or settlement of the claim, Subcontractor may obtain the right for AHP 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, AHP 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) Subcontractor agrees that damages alone would be inadequate to compensate AHP or DHCS for breach of any term of this Intellectual Property Exhibit by Subcontractor. Subcontractor acknowledges AHP or DHCS would suffer irreparable harm in the event of such breach and agrees AHP shall be entitled to obtain equitable relief, including without limitation an injunction, from a court of competent jurisdiction, without restriction or limitation of any other rights and remedies available at law or in equity.

**h. Federal Funding**

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

**11. Air or Water Pollution Requirements**

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

- a. Government contractors agree to comply with all applicable standards, orders, or requirements issued under section 306 of the Clean Air Act (42 USC 7606) section 508 of the Clean Water Act (33 U.S.C. 1368), Executive Order 11738, and Environmental Protection Agency regulations.
- b. Institutions of higher education, hospitals, nonprofit organizations and commercial businesses agree to comply with all applicable standards, orders, or requirements issued under the Clean Air Act (42 U.S.C. 7401 et seq.), as amended, and the Clean Water Act (33 U.S.C. 1251 et seq.), as amended.

**12. Prior Approval of Training Seminars, Workshops or Conferences**

Subcontractor shall obtain prior AHP 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 Subcontractor shall acknowledge the support of the State whenever publicizing the work under this Agreement in any media. This provision does not apply to necessary staff meetings or training sessions held for the staff of the Subcontractor to conduct routine business matters.

**13. Confidentiality of Information**

- a. The Subcontractor and its employees, agents, or subcontractors shall protect from unauthorized disclosure names and other identifying information concerning persons either receiving services pursuant to this Agreement or persons whose names or identifying information become available or are disclosed to the subcontractors as a result of services performed under this Agreement, except for statistical information not identifying any such person.
- b. The Subcontractor and its employees, agents shall not use such identifying information for any purpose other than carrying out the subcontractor's obligations under this Agreement.

- c. The Subcontractor and its employees, agents shall promptly transmit to the AHP Contract Office or Project Manager all requests for disclosure of such identifying information not emanating from the client or person.
- d. The Subcontractor shall not disclose, except as otherwise specifically permitted by this Agreement or authorized by the client, any such identifying information to anyone other than AHP without prior written authorization from the AHP Contract Office or Project 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 AHP/DHCS, this provision may be supplemented by additional terms and conditions covering personal health information (PHI) or personal, sensitive, and/or confidential information (PSCI). Said terms and conditions will be outlined in one or more exhibits that will either be attached to this Agreement or incorporated into this Agreement by reference.

#### 14. Documents, Publications and Written Reports

(Applicable to agreements over \$5,000 under which publication, 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 agreements and subcontracts relating to the preparation of such document or report, if the total cost for work by nonemployees of the State exceeds \$5,000.

#### 15. Financial and Compliance Audit Requirements

- a. The definitions used in this provision are contained in Section 38040 of the Health and Safety Code, which by this reference is made a part hereof.
- b. Direct service contract means a contract or agreement for services contained in local assistance or subvention programs or both (see Health and Safety [H&S] Code Section 38020). Direct service contracts shall not include contracts, agreements, grants, or subventions to other governmental agencies or units of government nor contracts or agreements with regional centers or area agencies on aging (H&S Code Section 38030)
- c. The Subcontractor, as indicated below, agrees to obtain one of the following audits:
  - (1) ***If the Subcontractor 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 Subcontractor 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 Subcontractor 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 Subcontractor 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 Subcontractor is a State or Local Government entity or Nonprofit organization (as defined by 2 C.F.R. §§ 200.64, 200.70, and 200.90) and expends \$750,000 or more in Federal awards***, the Subcontractor agrees to obtain an annual single, organization wide, financial and compliance audit according to the requirements specified in 2 C.F.R. 200.501 entitled "Audit Requirements". 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 Subcontractor is a recipient expending Federal awards received directly from Federal awarding agencies, or

(b) The Subcontractor is a subrecipient expending Federal awards received from a pass-through entity such as the State, County or community based organization.

(4) If the Subcontractor submits to DHCS a report of an audit other than a 2 C.F.R. 200.501 audit, the Subcontractor must also submit a certification indicating the Subcontractor 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 DHCS program funding this Agreement. The audit report must identify the Subcontractor'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 DHCS Program Contract Manager shall forward the audit report to DHCS' 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 Subcontractor's total revenue. The AHP 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 Subcontractor 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 Subcontractor will be given advance written notification, if the State chooses to exercise its option to perform said audits.

j. The Subcontractor shall include a clause in any agreement the Subcontractor enters into with the audit firm doing the single organization wide audit to provide access by the State or Federal Government to the working papers of the independent auditor who prepares the single organization wide audit for the Contractor.

k. Federal or state auditors shall have "expanded scope auditing" authority to conduct specific

program audits during the same period in which a single organization wide audit is being performed, but the audit report has not been issued. The federal or state auditors shall review and have access to the current audit work being conducted and will not apply any testing or review procedures which have not been satisfied by previous audit work that has been completed.

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

## **16. Human Subjects Use Requirements**

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

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

## **17. Debarment and Suspension Certification**

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

a. By signing this Agreement, the Subcontractor agrees to comply with applicable federal suspension and debarment regulations including, but not limited to 2 CFR 180, 2 CFR 376

b. By signing this Agreement, the Subcontractor 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) violation of Federal or State antitrust statutes; commission of embezzlement, theft, forgery, bribery, falsification or destruction of records, making false statements, tax evasion, receiving stolen property, making false claims, obstruction of justice, or the commission of any other offense indicating a lack of business integrity or business honesty that seriously affects its business honesty;

(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) Have not, within a three-year period preceding this application/proposal/agreement, engaged in any of the violations listed under 2 CFR Part 180, Subpart C as supplemented by 2 CFR Part 376.

(6) 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.

(7) 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 Subcontractor is unable to certify to any of the statements in this certification, the Subcontractor shall submit an explanation to AHP and the DHCS Program Contract Manager.

d. The terms and definitions herein have the meanings set out in 2 CFR Part 180 as supplemented by 2 CFR Part 376.

e. If the Subcontractor knowingly violates this certification, in addition to other remedies available to the Federal Government, the DHCS may terminate this Agreement for cause or default.

### **18. Smoke-Free Workplace Certification**

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

- a. Public Law 103-227, also known as the Pro-Children Act of 1994 (Act), requires that smoking not be permitted in any portion of any indoor facility owned or leased or contracted for by an entity and used routinely or regularly for the provision of health, day care, early childhood development services, education or library services to children under the age of 18, if the services are funded by federal programs either directly or through state or local governments, by federal grant, contract, loan or loan guarantee. The law also applies to children's services that are provided in indoor facilities that are constructed, operated, or maintained with such federal funds. The law does not apply to children's services provided in private residences; portions of facilities used for inpatient drug or alcohol treatment; service providers whose sole source of applicable federal funds is Medicare or Medicaid; or facilities where WIC coupons are redeemed.
- b. Failure to comply with the provisions of the law may result in the imposition of a civil monetary penalty of up to \$1,000 for each violation and/or the imposition of an administrative compliance order on the responsible party.
- c. By signing this Agreement, Subcontractor or Grantee certifies that it will comply with the requirements of the Act and will not allow smoking within any portion of any indoor facility used for the provision of services for children as defined by the Act. The prohibitions herein are effective December 26, 1994.
- d. Subcontractor or Grantee further agrees that it will insert this certification into any subawards (subcontracts or subgrants) entered into that provide for children's services as described in the Act.

### **19. Covenant Against Contingent Fees**

The Subcontractor 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 Subcontractor for the purpose of securing business. For breach or violation of this warranty, AHP 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 fully amount of such commission, percentage, and brokerage or contingent fee.

## **20. Payment Withholds**

(Applicable only if a final report is required by this Agreement. Not applicable to government entities)  
Unless waived or otherwise stipulated in this Agreement, AHP may, at its discretion, withhold 10 percent (10%) of the face amount of the Agreement, 50 percent (50%) of the final invoice, or \$3,000 whichever is greater, until AHP receives a final report that meets the terms, conditions and/or scope of work requirements of this Agreement.

## **21. Performance Evaluation**

Not applicable to grant agreements  
AHP may, at its discretion, evaluate the performance of the Subcontractor at the conclusion of this Agreement. If performance is evaluated, the evaluation shall not be a public record and shall remain on file with AHP. Negative performance evaluation may be considered by AHP prior for making future contract awards.

## **22. 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.

## **23. Four-Digit Date Compliance**

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

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

## **24. Prohibited Use of State Funds for Software**

(Applicable to agreements in which computer software is used in performance of the work.)  
Subcontractor certifies that I 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 law.

## **25. Use of Small, Minority Owned and Women's Businesses**

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

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

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

## 26. Alien Ineligibility Certification

(Applicable to sole proprietors entering federally funded agreements.)

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

## 27. Union Organizing

(Applicable only to grant agreements.)

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

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

## 28. Agreement 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, DHCS 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 Subcontractor 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. Directors 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 Subcontract.

e. Subcontractor agrees that all fringe benefits shall be at actual cost.

## **29. Suspension or Stop Work Notification**

- a. AHP may, at any time, issue a notice to suspend performance or stop work under this Agreement. The initial notification may be a verbal or written directive issued by the funding Program's Contract Manager. Upon receipt of said notice, the Subcontractor is to suspend and/or stop all, or any part, of the work called for by this Agreement.
- b. Written confirmation of the suspension or stop work notification with directions as to what work (if not all) is to be suspended and how to proceed will be provided within 30 working days of the verbal notification. The suspension or stop work notification shall remain in effect until further written notice is received from AHP. The resumption of work (in whole or part) will be at AHP's discretion and upon receipt of written confirmation.
  - (1) Upon receipt of a suspension or stop work notification, the Subcontractor shall immediately comply with its terms and take all reasonable steps to minimize or halt the incurrence of costs allocable to the performance covered by the notification during the period of work suspension or stoppage.
  - (2) Within 90 days of the issuance of a suspension or stop work notification, AHP shall either:
    - (a) Cancel, extend, or modify the suspension or stop work notification; or
    - (b) Terminate the Agreement as provided for in the Cancellation / Termination clause of the Agreement.
- c. If a suspension or stop work notification issued under this clause is canceled or the period of suspension or any extension thereof is modified or expires, the Subcontractor may resume work only upon written concurrence of AHP.
- d. If the suspension or stop work notification is cancelled and the Agreement resumes, changes to the services, deliverables, performance dates, and/or agreement terms resulting from the suspension or stop work notification shall require an amendment to the Agreement.
- e. If a suspension or stop work notification is not canceled and the Agreement is cancelled or terminated pursuant to the provision entitled Cancellation / Termination, AHP shall allow reasonable costs resulting from the suspension or stop work notification in arriving at the settlement costs.
- f. AHP shall not be liable to the Subcontractor for loss of profits because of any suspension or stop work notification issued under this clause.

## **30. Public Communications**

"Electronic and printed documents developed and produced, for public communications shall follow the following requirements to comply with Section 508 of the Rehabilitation Act and the American with Disabilities Act:

- A. Ensure visual-impaired, hearing impaired and other special needs audiences are provided material information in formats that provide the most assistance in making informed choices."

## **31. Compliance with Statutes and Regulations**

- a. The Subcontractor shall comply with all California and federal law, regulations, and published guidelines, to the extent that these authorities contain requirements applicable to Subcontractor's performance under the Agreement.

- b. These authorities include, but are not limited to, Title 2, Code of Federal Regulations (CFR) Part 200, subpart F, Appendix II; Title 42 CFR Part 431; subpart F; Title 42 CFR Part 433, subpart D; Title 42 CFR 434; Title 45 CFR Part 75, subpart D; and title 45 CFR Part 95, subpart F. To the extent applicable under federal law, this Agreement shall incorporate the contractual provisions in these federal regulations and they shall supersede any conflicting provisions in this Agreement.

### **32. 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., are 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 an agreement, or grant or any extension or amendment of that agreement, 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 from 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 individual(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 AHP Contract Office or Project 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.

### **33. Avoidance of Conflicts of Interest by Subcontractor**

1. AHP intends to avoid any real or apparent conflict of interest on the part of the Subcontractors, or employees, officers and Directors of the subcontractors. This AHP reserves the right to determine, at its sole discretion, whether any information, assertion or claim received from any source indicates the existence of a real or apparent conflict of interest; and, if a conflict is found to exist, to require the Subcontractor to submit additional information or a plan for resolving the conflict, subject to AHP review and prior approval.
2. Conflicts of interest include, but are not limited to:
  - a. An instance where the subcontractor has an interest, financial or otherwise, whereby the use or disclosure of information obtained while performing services under the Agreement would allow for private or personal benefit or for any purpose that is contrary to the goals and objectives of the Agreement.
  - b. An instance where the subcontractor's employees, officers, or Directors use their positions for purposes that are, or give the appearance of being, motivated by a desire for private gain for themselves or others, such as those with whom they have family, business or other ties.
3. If AHP is or becomes aware of a known or suspected conflict of interest, the Subcontractor will be given an opportunity to submit additional information or to resolve the conflict. A Subcontractor with a suspected conflict of interest will have five (5) working days from the date of notification of the conflict by AHP to provide complete information regarding the suspected conflict. If a conflict of interest is determined to exist by AHP and cannot be resolved to the satisfaction of AHP, the conflict will be grounds for terminating the Agreement. AHP may, at its discretion upon receipt of a written request from the Subcontractor, authorize an extension of the timeline indicated herein.

### **34. Subcontractor Conduct and Filing Requirements**

- A. When a Subcontractor performs work on DHCS premises, the Subcontractor shall follow and adhere to all DHCS policies and procedures including, but not limited to, those governing health and safety, nondiscrimination, appropriate vehicle use, travel reimbursement, security and confidentiality of information, incompatible activities, acceptable employee conduct, information technology protocols and requirements, workplace violence prevention, and conflict of interest filing instructions (if applicable). Subcontractors may not access DHCS confidential, personal, or sensitive information until they have been trained on the DHCS policies and procedures for information privacy and security and sign a Confidentiality Statement. The training may be accomplished through on-line Privacy/Security Training on the DHCS intranet.
- B. Certain Subcontractors designated by the DHCS' Conflict of Interest Code are required to complete and file a Statement of Economic Interests, Form 700. The Subcontractor agrees that if the Director of DHCS or his/her designee determines that a Statement of Economic Interests, Form 700, is required based upon the nature of the services that are to be performed, the Subcontractor shall be so notified by DHCS and the Subcontractor shall obtain a Form 700 and filing instructions from DHCS' Personnel Office or the Fair Practices Commission and fully complete the Form 700. The Subcontractor shall file the completed Form 700 in a timely manner with the DHCS Personnel Office and submit a copy to the DHCS Program Contract Manager. Failure to obtain, complete or file a Form 700 in a timely manner as instructed by DHCS, may result in immediate contract termination or Subcontract substitution/replacement.

### **35. Prohibited Follow-on Subcontracts**



- A.** No person, firm or subsidiary thereof who has been awarded a subcontract agreement may submit a bid for, nor be awarded an agreement for, the provision of services, procurement of goods or supplies, or any other related action which is required, suggested, or otherwise deemed appropriate in the end production of this Subcontract agreement.
- B.** Paragraph A does not apply at any person, firm or subsidiary thereof who is awarded a subcontract agreement which totals more than 10 percent of the total monetary value of the consulting services agreement.
- C.** Paragraphs A and B do not apply to subcontract agreements subject to Chapter 10 (commencing with Section 4525) of Division 5 of Title 1 of the Government Code.

State of California  
Department of Health Care Services  
**CERTIFICATION REGARDING LOBBYING**

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

1. No Federal appropriated funds have been paid or will be paid, by or on behalf of the undersigned, to any person for influencing or attempting to influence an officer or employee of an agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with the making, awarding, or entering into of this Federal contract, Federal grant, or cooperative agreement, and the extension, continuation, renewal, amendment, or modification of this Federal contract, grant or cooperative agreement.
2. If any funds other than Federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any agency of the United States Government, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with this Federal contract, grant or cooperative agreement, the undersigned shall complete and submit Standard Form LLL, "Disclosure of Lobbying Activities" in accordance with its instructions.
3. The undersigned shall require that the language of this certification be included in the award documents for all subawards at all tiers (including subcontractors, subgrants, and contracts under grants and cooperative agreements) of \$100,000 or more, and that all subrecipients shall certify and disclose accordingly.

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

<b>Name of Subcontractor</b>	<b>Printed Name of Person Signing for Subcontractor</b>
<b>Contract/Grant Number</b>	<b>Signature of Person Signing for Subcontractor</b>
<b>Date</b>	<b>Title</b>

After execution by or on behalf of Subcontractor, please return to:  
California Department of Health Care Services



## 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 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 followup report caused by a material change to the information previously reported, enter the year and quarter in which the change occurred. Enter the date and 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 first 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); 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.

## Travel Reimbursement Information

(Lodging and Per Diem Reimbursement - Effective for travel on/after January 1, 2021)

1. The following rate policy is to be applied for reimbursing the travel expenses of persons under contract. The terms "contract" and/or "subcontract" have the same meaning as "grantee" and/or "subgrantee" where applicable.

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

1) Lodging (with receipts\*):

Travel Location/Area	Reimbursement Rate
AH counties (except the counties identified below)	\$ 90.00 plus tax
Counties of Sacramento, Napa, Riverside	\$ 95.00 plus tax
Marin	\$110.00 plus tax
Counties of Los Angeles (except City of Santa Monica), Orange, Ventura, and Edwards AFB	\$120.00 plus tax
Counties of Monterey and San Diego	\$125.00 plus tax
Counties of Alameda, San Mateo, and Santa Clara	\$140.00 plus tax
City of Santa Monica	\$150.00 plus tax
San Francisco	\$250.00 plus tax

Reimbursement for actual lodging expenses that exceed the above amounts may be allowed with the advance approval of the Deputy Director of DHCS or his or her designee. Receipts are required.

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

2.) Meal/Supplemental Expenses: With substantiating receipts, a contractor may claim actual expenses. Incurred up to the following maximum reimbursement rates for each full 24-hour period of travel.

<b>Meals/Expense</b>	<b>Reimbursement Rate</b>
Breakfast	\$7.00
Lunch	\$11.00
Dinner	\$23.00
Incidental expenses	\$5.00

- d. Out-of-state travel may only be reimbursed if such travel is necessitated by the scope or statement of work and has been approved in advance by the program with which the contract is held. For out-of-state travel, contractors may be reimbursed actual lodging expenses, supported by a receipt, and may be reimbursed for meals and supplemental expenses for each 24-hour period computed at the rates listed in c. (2) above. For all out-of-state travel, contractors/subcontractors must have prior DHCS written or verbal approval. Verbal approval shall be confined in writing (email or memo).
  - e. In computing allowances for continuous periods of travel of less than 24 hours, consult the Per Deim Reimbursement Guide.
  - f. No meal or lodging expenses will be reimbursed for any period of travel that occurs within normal working hours unless expenses are incurred at least 50 miles from headquarters.
2. If any of the reimbursement rates stated herein is changed by CalHR, no formal contract amendment will be required to incorporate the new rates. However, DHCS shall inform the subcontractor, in writing, of the revised travel reimbursement rates and the applicable effective date of any rate change. At DHCS' discretion, changes or revisions made by DHCS to this exhibit, excluding travel reimbursement policies established by CalHR may be applied retroactively to any agreement to which a Travel Reimbursement Information exhibit is attached, incorporated by reference, or applied by DHCS program policy. Changes to the travel reimbursement rates stated herein may not be applied earlier than the date a rate change is approved by CalHR.
  3. For transportation expenses. The subcontractor must retain receipts for parking; taxi, airline, bus, or rail tickets; car rental; or any other travel receipt pertaining to each trip for attachment to an invoice as substantiation for reimbursement. Reimbursement may be requested for commercial carrier fares; private car mileage; parking fees; bridge tolls; taxi, bus, or streetcar fares; and auto rental fees when substantiated by a receipt.
  4. Auto mileage reimbursement: If a subcontractor uses his/her or a company car for transportation, the rate of reimbursement will be 0.56 cents maximum per mile. If a subcontractor uses his/her or a company car "in lieu or airfare, the air coach fare will be the maximum paid by the State. The subcontractor must provide a cost comparison upon request by the State. Gasoline and routine automobile repair expenses are not reimbursable.
  5. The subcontractor is required to furnish details surrounding each period of travel. Travel expense reimbursement detail may include, but not be limited to purpose of travel, departure and return times, destination points, miles driven, mode of transportation, etc. Reimbursement for travel expenses may be withheld pending receipt of adequate travel documentation.
  6. Subcontractors are to consult with program funding the contract to obtain specific invoicing procedures.

### Per Diem Reimbursement Guide

Length of travel period:	And this condition exists:	Meal allowed with receipt:
Less than 24 hours	<ul style="list-style-type: none"> <li>• Trip begins at or before 6:00 a.m. and ends at or after 9:00 a.m.</li> <li>• Trip ends at least one hour after the regularly scheduled workday ends or begins at or before 4:00 p.m. and ends after 7:00 p.m.</li> </ul> <p><i>Lunch or Incidentals cannot be claimed on one-day trips.</i></p>	<p>Breakfast</p> <p>Dinner</p>
24 hours or more	<ul style="list-style-type: none"> <li>• Trip begins at or before 6:00 a.m</li> <li>• Trip begins at or before 11:00 a.m.</li> </ul>	<p>Breakfast</p> <p>Lunch</p>
	<ul style="list-style-type: none"> <li>• Trip begins at or before 5:00 p.m.</li> </ul>	<p>Dinner</p>
More than 24 hours	<ul style="list-style-type: none"> <li>• Trip ends at or after 8:00 a.m.</li> </ul>	<p>Breakfast</p>
	<ul style="list-style-type: none"> <li>• Trip ends at or after 2:00 p.m.</li> </ul>	<p>Lunch</p>
	<ul style="list-style-type: none"> <li>• Trip ends at or after 7:00 p.m</li> </ul>	<p>Dinner</p>
<p>The following meals may not be claimed for reimbursement: meals provided by the State, meals included in hotel expenses or conference fees, meals included in transportation costs such as airline tickets, or meals that are otherwise provided. Snacks and/or continental breakfasts such as rolls, juice, and coffee are not considered to be a meal.</p> <p>No meal expense may be claimed for reimbursement more than once in any given 24-hour period.</p>		

## Business Associate Addendum

1. This Agreement has been determined to constitute a business associate relationship under the Health Insurance Portability and Accountability Act (HIPAA) and its implementing privacy and security regulations at 45 Code of Federal Regulations, Parts 160 and 164 (collectively, and as used in this Agreement)
2. The term "Agreement" as used in this document refers to and includes both this Business Associate Addendum and the contract to which this Business Associate Agreement is attached as an exhibit, if any.
3. For purposes of this Agreement, the term "Business Associate" shall have the same meaning as set forth in 45 CFR section 160.103.
4. AHP intends that Business Associate may create, receive, maintain, transmit or aggregate certain information pursuant to the terms of this Agreement, some of which information may constitute Protected Health Information (PHI) and/or confidential information protected by Federal and/or state laws..
  - 4.1 As used in this Agreement and unless otherwise stated, the term "PHI" refers to and includes both "PHI" as defined at 45 CFR section 160.103 and Personal Information (PI) as defined in the Information Practices Act (IPA) at California Civil Code section 1798.3(a). PHI includes information in any form, including paper, oral, and electronic.
  - 4.2 As used in this Agreement, the term "confidential information" refers to information not otherwise defined as PHI in Section 4.1 of this Agreement, but to which state and/or federal privacy and/or security protections apply.
5. Subcontractor (however named elsewhere in this Agreement) is the Business Associate of AHP acting on AHP's behalf and provides services or arranges, performs or assists in the performance of functions or activities on behalf of AHP, and may create, receive, maintain, transmit, aggregate, use or disclose PHI (collectively, "use or disclose PHI") in order to fulfill Business Associate's obligations under this Agreement. AHP and Business Associate are each a party to this Agreement and are collectively referred to as the "parties."
6. The terms used in this Agreement, but not otherwise defined, shall have the same meanings as those terms in HIPAA and/or the IPA. Any reference to statutory or regulatory language shall be to such language as in effect or as amended.
7. **Permitted Uses and Disclosures of PHI by Business Associate.** Except as otherwise indicated in this Agreement, Business Associate may use or disclose PHI, inclusive of de-identified data derived from such PHI, only to perform functions, activities or services specified in this Agreement on behalf of AHP, provided that such use or disclosure would not violate HIPAA or other applicable laws if done by AHP.
  - 7.1 **Specific Use and Disclosure Provisions.** Except as otherwise indicated in this Agreement, Business Associate may use and disclose PHI if necessary for the proper management and administration of the Business Associate or to carry out the legal responsibilities of the Business Associate. Business Associate may disclose PHI for this purpose if the disclosure is required by law, or the Business Associate obtains reasonable assurances from the person to whom the information is disclosed that it will be held confidentially and used or further disclosed only as required by law or for the purposes for which it was disclosed to the person. The person shall notify the Business Associate of any instances of which the person is aware that the confidentiality of the information has been breached, unless such person is a treatment provider not acting as a business associate of Business Associate.



## 8. Compliance with other Applicable Law

- 8.1** To the extent that other state and/or federal laws provide additional, stricter and/or more protective (collectively, more protective) privacy and/or security protections to PHI or other confidential information covered under this Agreement beyond those provided through HIPAA, Business Associate agrees:
- 8.1.1** To comply with the more protective of the privacy and security standards set forth in applicable state or federal laws to the extent such standards provide a greater degree of protection and security than HIPAA or are otherwise more favorable to the individuals whose information is concerned: and
- 8.1.2** To treat any violation of such additional and/or more protective standards as a breach or security incident, as appropriate, pursuant to Section 18. of this Agreement.
- 8.2** Examples of laws that provide additional and/or stricter privacy protections to certain types of PHI and/or confidential information, as defined in Section 4. of this Agreement, include, but are not limited to the Information Practices Act. California Civil Code sections 1798-1798.78, Confidentiality of Alcohol and Drug Abuse Patient Records, 42 CFR Part 2, Welfare and Institutions Code section 5328, and California Health and Safety Code section 11845.5.
- 8.3** If Business Associate is a Qualified Service Organization (QSO) as defined in 42 CFR section 2.11, Business Associate agrees to be bound by and comply with subdivisions (2)(i) and (2)(ii) under the definition of QSO in 42 CFR section 2.11.

## 9. Additional Responsibilities of Business Associate

- 9.1 Nondisclosure.** Business Associate shall not use or disclose PHI or other confidential information other than as permitted or required by this Agreement or as required by law.
- 9.2 Safeguards and Security.**
- 9.2.1** Business Associate shall use safeguards that reasonably and appropriately protect the confidentiality, integrity, and availability of PHI and other confidential data and comply, where applicable, with subpart C of 45 CFR Part 164 with respect to electronic protected health information, to prevent use or disclosure of the information other than as provided for by this Agreement. Such safeguards shall be based on applicable Federal Information Processing Standards (FIPS) Publication 199 protection levels.
- 9.2.2** Business Associate shall, at a minimum, utilize a National Institute of Standards and Technology Special Publication (NIST SP) 800-53 compliant security framework when selecting and implementing its security controls, and shall maintain continuous compliance with its selected framework as it may be updated from time to time. The current version of NIST SP 800-53, Revision 5, is available online at; updates will be available online through the [Computer Security Resource Center website](#).
- 9.2.3** Business Associate shall employ FIPS 140-2 compliant encryption of PHI at rest and in motion unless Business Associate determines it is not reasonable and appropriate to do so based upon a risk assessment, and equivalent alternative measures are in place and documented as such. FIPS 140-2 validation can be determined online through the Cryptographic Module Validation Program Search, with information about the Cryptographic Module Validation Program under FIPS 740-2. In addition, Business Associate shall maintain, at a minimum, the most

current industry standards for transmission and storage of PHI and other confidential information.

- 9.2.4** Business Associate shall apply security patches and upgrades, and keep virus software up-to-date, on all systems on which PHI and other confidential information may be used.
- 9.2.5** Business Associate shall ensure that all members of its workforce with access to PHI and/or other confidential information sign a confidentiality statement prior to access to such data. The statement must be renewed annually.
- 9.2.6** Business Associate shall identify the security official who is responsible for the development and implementation of the policies and procedures required by 45 CFR Part 164, Subpart C.
- 9.3 Business Associate's Agent.** Business Associate shall ensure that any agents, subcontractors, subawardees, vendors or others (collectively, "agents") that use or disclose PHI and/or confidential information on behalf of Business Associate agree to the same restrictions and conditions that apply to Business Associate with respect to such PHI and/or confidential information.
- 10. Mitigation of Harmful Effects.** Business Associate shall mitigate, to the extent practicable, any harmful effect that is known to Business Associate of a use or disclosure of PHI and other confidential information in violation of the requirements of this Agreement.
- 11. Access to PHI.** Business Associate shall make PHI available in accordance with 45 CFR section 164.524.
- 12. Amendment of PHI.** Business Associate shall make PHI available for amendment and incorporate any amendments to protected health information in accordance with 45 CFR section 164.526.
- 13. Accounting for Disclosures.** Business Associate shall make available the information required to provide an accounting of disclosures in accordance with 45 CFR section 164.528.
- 14. Compliance with DHCS Obligations.** To the extent Business Associate is to carry out an obligation of AHP under 45 CFR Part 164, Subpart E, comply with the requirements of the subpart that apply to AHP in the performance of such obligation.
- 15. Access to Practices, Books and Records.** Business Associate shall make its internal practices, books, and records relating to the use and disclosure of PHI on behalf of AHP available to AHP upon reasonable request, and to the federal Secretary of Health and Human Services for purposes of determining DHCS' compliance with 45 CFR Part 164, Subpart E.
- 16. Return or Destroy PHI on Termination; Survival.** At termination of this Agreement, if feasible, Business Associate shall return or destroy all PHI and other confidential information received from, or created or received by Business Associate on behalf of, AHP that Business Associate still maintains in any form and retain no copies of such information. If return or destruction is not feasible, Business Associate shall notify AHP of the conditions that make the return or destruction infeasible, and DHCS and Business Associate shall determine the terms and conditions under which Business Associate may retain the PHI. If such return or destruction is not feasible, Business Associate shall extend the protections of this Agreement to the information and limit further uses and disclosures to those purposes that make the return or destruction of the information infeasible.
- 17. Special Provision for SSA Data.** If Business Associate receives data from or on behalf of AHP that was verified by or provided by the Social Security Administration (SSA data) and is subject to an agreement between AHP, Business Associate shall provide, upon request by DHCS, a list of all employees and agents and employees who have access to such data, including employees and

agents of its agents, to AHP.

18. **Breaches and Security Incidents.** Business Associate shall implement reasonable systems for the discovery and prompt reporting of any breach or security incident, and take the following steps:

**18.1 Notice to OHCS.**

**18.1.1** Business Associate shall notify AHP Immediately upon the discovery of a suspected breach or security incident that involves SSA data. This notification will be provided by email upon discovery of the breach. If Business Associate is unable to provide notification by email, then Business Associate shall provide notice by telephone to AHP.

**18.1.2** Business Associate shall notify AHP within 24 hours by email (or by telephone if Business Associate is unable to email AHP) of the discovery of the following, unless attributable to a treatment provider that is not acting as a business associate of Business Associate:

**18.1.2.1** Unsecured PHI if the PHI is reasonably believed to have been accessed or acquired by an unauthorized person;

**18.1.2.2** Any suspected security incident which risks unauthorized access to PHI and/or other confidential information;

**18.1.2.3** Any intrusion or unauthorized access, use or disclosure of PHI in violation of this Agreement; or

**18.1.2.4** Potential loss of confidential Information affecting this Agreement.

**18.1.3** Notice shall be provided to the DHCS Program Contract Manager (as applicable), the DHCS Privacy Office, and the DHCS Information Security Office (collectively, "DHCS Contacts") using the DHCS Contact Information at Section 18.6. below.

Notice shall be made using the current DHCS "Privacy Incident Reporting Form" ("PIR Form"; the Initial notice of a security Incident or breach that is submitted is referred to as an "Initial PIR Form") and shall include all information known at the time the Incident is reported. The form is available online at

<http://www.dhcs.ca.gov/formsandpubs/laws/priv/Pages/default.aspx>

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

**18.1.3.1** Prompt action to mitigate any risks or damages involved with the security incident or breach; and

**18.1.3.2** Any action pertaining to such unauthorized disclosure required by applicable Federal and State law.

18.2 Investigation. Business Associate shall immediately investigate such security incident or confidential breach.

18.3 Complete Report. To provide a complete report of the investigation to the DHCS contacts within ten (10) working days of the discovery of the security incident or breach. This "Final PIR" must include any applicable additional information not included in the Initial Form. The Final PIR Form shall include an assessment of all known factors relevant to a determination of whether a breach occurred under HIPAA and other

applicable federal and state laws. The report shall also include a full, detailed corrective action plan, including its implementation date and information on mitigation measures taken to halt and/or contain the improper use or disclosure. If DHCS requests information in addition to that requested through the PIR form, Business Associate shall make reasonable efforts to provide DHCS with such information. A "Supplemental PIR" may be used to submit revised or additional information after the Final PIR is submitted. DHCS will review and approve or disapprove Business Associate's determination of whether a breach occurred, whether the security incident or breach is reportable to the appropriate entities, if individual notifications are required, and Business Associate's corrective action plan.

18.3.1 If Business Associate does not complete a Final PIR within the ten (10) working day timeframe, Business Associate shall request approval from DHCS within the ten (10) working day timeframe of a new submission timeframe for the Final PIR.

- 18.4 Notification of Individuals. If the cause of a breach is attributable to Business Associate or its agents, other than when attributable to a treatment provider that is not acting as a business associate of Business Associate, Business Associate shall notify individuals accordingly and shall pay all costs of such notifications, as well as all costs associated with the breach. The notifications shall comply with applicable federal and state law. DHCS shall approve the time, manner and content of any such notifications and their review and approval must be obtained before the notifications are made.
- 18.5 Responsibility for Reporting of Breaches to Entities Other than DHCS. If the cause of a breach of PHI is attributable to Business Associate or its agents, other than when attributable to a treatment provider that is not acting as a business associate of Business Associate, Business Associate is responsible for all required reporting of the breach as required by applicable federal and state law.
- 18.6 DHCS Contact Information. To direct communications to the above referenced DHCS staff, the Contractor shall initiate contact as indicated here. DHCS reserves the right to make changes to the contact information below by giving written notice to Business Associate. These changes shall not require an amendment to this Agreement.

DHCS Program Contract Manager	DHCS Privacy Office	DHCS Information Security Office
See the Scope of Work exhibit for Program Contract Manager Information. If this Business Associate is not attached as an exhibit to a contract, contact the DHCS signatory to this Agreement	Privacy Office c/o Office of HIPAA Compliance Department of Health Care Services P.O. Box 997413, MS 4722 Sacramento, CA 95899-7413 Email: <a href="mailto:incidents@dhcs.ca.gov">incidents@dhcs.ca.gov</a>  Phone: 916-445-4646	Information Security Office DHCS Information Security Office P.O. Box 997413, MS 6400 Sacramento, CA 95899-7413  Email: <a href="mailto:incidents@dhcs.ca.gov">incidents@dhcs.ca.gov</a>

**19 Responsibility of DHCS.** AHP agrees to not request the Business Associate to use or disclose PHI in any manner that would not be permissible under HIPAA and/or other applicable federal and/or state law.

**20 Audits, Inspection and Enforcement**

**20.1** From time to time, AHP or DHCS may inspect the facilities, systems, books and records of Business Associate to monitor compliance with this Agreement. Business Associate shall promptly remedy any violation of this Agreement and shall certify the same to the DHCS

Privacy Officer in writing. Whether or how DHCS exercises this provision shall not in any respect relieve Business Associate of its responsibility to comply with this Agreement.

- 20.2** If Business Associate is the subject of an audit, compliance review, investigation or any proceeding that is related to the performance of its obligations pursuant to this Agreement, or is the subject of any judicial or administrative proceeding alleging a violation of HIPAA, Business Associate shall promptly notify AHP unless it is legally prohibited from doing so.

## **21. Termination**

- 21.1 Termination for Cause.** Upon AHP's knowledge of a violation of this Agreement by Business Associate, AHP may in its discretion:

**21.1.1** Provide an opportunity for Business Associate to cure the violation and terminate this Agreement if Business Associate does not do so within the time specified by DHCS; or

**21.1.2** Terminate this Agreement if Business Associate has violated a material term of this Agreement.

- 21.2 Judicial or Administrative Proceedings.** AHP may terminate this Agreement if Business Associate is found to have violated HIPAA, or stipulates or consents to any such conclusion, in any judicial or administrative proceeding.

## **22. Miscellaneous Provisions**

- 22.1 Disclaimer.** AHP makes no warranty or representation that compliance by Business Associate with this Agreement will satisfy Business Associate's business needs or compliance obligations. Business Associate is solely responsible for all decisions made by Business Associate regarding the safeguarding of PHI and other confidential information.

### **22.2. Amendment.**

**22.2.1** Any provision of this Agreement which is in conflict with current or future applicable Federal or State laws is hereby amended to conform to the provisions of those laws. Such amendment of this Agreement shall be effective on the effective date of the laws necessitating it, and shall be binding on the parties even though such amendment may not have been reduced to writing and formally agreed upon and executed by the parties.

**22.2.2** Failure by Business Associate to take necessary actions required by amendments to this Agreement under Section 22.2.1 shall constitute a material violation of this Agreement.

**22.3 Assistance In Litigation or Administrative Proceedings.** Business Associate shall make itself and its employees and agents available to AHP at no cost to AHP to testify as witnesses, or otherwise, in the event of litigation or administrative proceedings being commenced against AHP, DHCS, its directors, officers and/or employees based upon claimed violation of HIPAA, which involve inactions or actions by the Business Associate.

**22.4 No Third-Party Beneficiaries.** Nothing in this Agreement is intended to or shall confer, upon any third person any rights or remedies whatsoever.

**22.5 Interpretation.** The terms and conditions in this Agreement shall be interpreted as broadly as necessary to implement and comply with HIPAA and other applicable laws.

**22.6 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.

**Attachment C  
Subcontractor Certification**

**Subcontractor Certification Clause**

CCC 04/2017

**CERTIFICATION**

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

Subcontractor/Bidder Firm Name	Federal ID Number
--------------------------------	-------------------

**By (Authorized Signature)**

\_\_\_\_\_  
**Printed Name and Title of Person Signing**

Date Executed	Executed in the County of
---------------	---------------------------

**SUBCONTRACTOR CERTIFICATION CLAUSES**

**PART I - STATEMENT OF COMPLIANCE:**

Subcontractor has, unless exempted, complied with the nondiscrimination program requirements. (GC 12990 (a-f) and CCR, Title 2, Section 11102) (Not applicable to public entities.)

**PART II - DRUG-FREE WORKPLACE REQUIREMENTS:**

Subcontractor 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 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 Subcontractor may be ineligible for award of any future State agreements if the department determines that any of the following has occurred: (1) the Subcontractor has made false certification, or violated the certification by failing to carry out the requirements as noted above. (GC 8350 et seq.)

#### NATIONAL LABOR RELATIONS BOARD CERTIFICATION:

Subcontractor certifies that no more than one (1) final unappealable finding of contempt of court by a Federal court has been issued against Subcontractor within the immediately preceding two-year period because of Subcontractor's failure to comply with an order of a Federal court which orders Subcontractor to comply with an order of the National Labor Relations Board. (PCC 10296) (Not applicable to public entities.)

#### SUBCONTRACTS FOR LEGAL SERVICES \$50,000 OR MORE-PRO BONO REQUIREMENT

Subcontractor hereby certifies that subcontractor will comply with the requirements of Section 6072 of the Business and Professions Code, effective January 1, 2003.

Subcontractor agrees to make a good faith effort to provide a minimum number of hours of pro bono legal services during each year of the Agreement 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 Agreement period of less than a full year or 10% of its Agreement 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.

#### EXPATRIATE CORPORATIONS:

Subcontractor 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.

#### SWEATFREE CODE OF CONDUCT:

- a. All Subcontractors 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 Agreement, declare under penalty of perjury that no apparel, garments or corresponding accessories, equipment, materials, or supplies furnished to the state pursuant to the Agreement 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 subcontractor 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 subcontractor agrees to cooperate fully in providing reasonable access to the subcontractor'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 subcontractor's compliance with the requirements under paragraph (a).

#### DOMESTIC PARTNERS

For agreements of \$100,000 or more, Subcontractor certifies that Subcontractor is in compliance with Public Contract Code section 10295.3.

#### GENDER IDENTITY

For agreements of \$100,000 or more, Subcontractor certifies that Subcontractor is in compliance with Public Contract Code section 10295.35.

#### DOING BUSINESS WITH THE STATE OF CALIFORNIA

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

#### CONFLICT OF INTEREST:

Subcontractor needs to be aware of the following provisions regarding current or former state employees. If Subcontractor 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.

##### a. Current State Employees (PCC 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.

##### b. Former State Employees (PCC 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 an Agreement 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 Agreement 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 an Agreement 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 Agreement within the 12-month period prior to his or her leaving state service.

If Subcontractor violates any provisions of above paragraphs, such action by Subcontractor shall render this Agreement void. (PCC 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. (PCC 10430 (e))

**LABOR CODE/WORKERS COMPENSATION:**

Subcontractor 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 Subcontractor affirms to comply with such provisions before commencing the performance of the work of this Agreement. (Labor Code Section 3700)

**AMERICAN WITH DISABILITIES ACT:**

Subcontractor 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.)

**SUBCONTRACTORS NAME CHANGE:**

An amendment is required to change the Subcontractor'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.

**CORPORATE QUALIFICATION 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 subcontractor 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 subcontractor 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.

**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.

**AIR OR WATER POLLUTION VIOLATION:**

Under the State laws, the Subcontractor 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.

**PAYEE DATA RECORD FORM STD. 204:**

This form must be completed by all subcontractors that are not another state agency or other government entity.

1.CALIFORNIA CIVIL RIGHTS LAWS: For Agreement executed or renewed after January 1, 2017, the subcontractor certifies compliance with the Unruh Civil Rights Act (Section 51 of the Civil Code) and the Fair Employment and Housing Act (Section 12960 of the Government Code); and

2.EMPLOYER DISCRIMINATION POLICIES For Agreements executed or renewed after January 1, 2017, if a con Subcontractor has an internal policy against a sovereign nation or peoples recognized by the United States government, the Subcontractor certifies that such policies are not used in violation of the Unruh Civil Rights Act Act (Section 51 of the Civil Code) and the Fair Employment and Housing Act (Section 12960 of the Government Code).

## ATTACHMENT D STATEMENT OF WORK

### Crisis Care Mobile Units Program Planning Grant

County of Inyo

Item	Billing Code	Time Period	Description/Deliverable	Amount	Due Date
1.	7460.01-001	Quarter 2  1/1/22 – 3/31/22	<p><b>Community Assessment</b></p> <ul style="list-style-type: none"> <li>• The Grantee will contract with one consultant to work on the following:               <ul style="list-style-type: none"> <li>○ A community mobile crisis needs assessment that shall describe the existence and availability of crisis services available to youth and adults in the Grantee’s county (“Community Needs Assessment”).</li> <li>○ An action plan, a written proposal that shall address the need of crisis and non-crisis mobile programs in the Grantee’s county (“Action Plan”). The Action Plan must be submitted to AHP for approval by February 1, 2023 and approved by DHCS no later than close of business February 14, 2023.</li> </ul> </li> <li>• The Grantee will begin conducting Community Needs Assessment activities that will include: collecting existing data and information; collecting existing literature; evaluating current services capacity and community resources; and conducting surveys and key informant interviews with County staff.</li> </ul> <p><b>Coordination</b></p> <ul style="list-style-type: none"> <li>• The Grantee will invite local and regional organizations to join the community planning partners group (“Partners Group”) that will assist the Grantee in developing, revising and approving the Community Needs Assessment and Action Plan.</li> <li>• The Grantee shall convene one (1) virtual Partners Group meeting and will present the overall project management plan including the Community Needs Assessment and Action Plan.</li> </ul> <p><b>Quarterly report</b></p> <ul style="list-style-type: none"> <li>• The Grantee will submit a quarterly report by 3/31/22.</li> </ul> <p><b>Equipment</b></p> <ul style="list-style-type: none"> <li>• Survey Monkey software = \$5,400</li> <li>• Tableau software = \$8,000</li> </ul>	\$39,000.00	3/31/22
2.	7460.01-001	Quarter 3  4/1/2022 – 6/30/22	<p><b>Coordination</b></p> <ul style="list-style-type: none"> <li>• The Grantee will convene one (1) Partners Group meeting. Agenda items will include: project planning, Community Needs Assessment, and Action Plan.</li> </ul> <p><b>Community Assessment</b></p> <ul style="list-style-type: none"> <li>• The Grantee will finalize the Community Needs</li> </ul>	\$37,000.00	6/30/22

			<p>Assessment. Activities will include: analyzing data, information and literature collected; finalizing results on available resources for crisis care and gaps in services; and finalizing surveys and key informant interviews with County staff.</p> <p><b>Quarterly report</b></p> <ul style="list-style-type: none"> <li>The Grantee will submit a quarterly report by 6/30/22.</li> </ul>		
<b>3.</b>	7460.01-001	<p>Quarter 4</p> <p>7/1/22 – 9/30/22</p>	<p><b>Coordination</b></p> <ul style="list-style-type: none"> <li>The Grantee will conduct one (1) virtual Partners Group meeting. Agenda items will include: project updates, Community Needs Assessment, and Action Plan.</li> </ul> <p><b>Community Assessment</b></p> <ul style="list-style-type: none"> <li>The Grantee will prepare a report of initial findings of the surveys, interviews, Community Needs Assessment, and data collection efforts, which will be used in drafting the Action Plan.</li> </ul> <p><b>Action Plan</b></p> <ul style="list-style-type: none"> <li>The Grantee will begin drafting the Action Plan.</li> </ul> <p><b>Quarterly report</b></p> <ul style="list-style-type: none"> <li>The Grantee will submit a quarterly report by 9/30/22.</li> </ul> <p><b>Equipment</b></p> <ul style="list-style-type: none"> <li>6 months of data for tablets (\$50/month) = \$3,000</li> <li>Hotspots for tablets (\$5/month x 6 months) = \$300</li> </ul>	\$36,500.00	9/30/22
<b>4.</b>	7460.01-001	<p>Quarter 5</p> <p>10/1/22 – 12/31/22</p>	<p><b>Coordination</b></p> <ul style="list-style-type: none"> <li>The Grantee will convene one (1) virtual Partners Group meeting. Agenda items will include: project update, Community Needs Assessment, and Action Plan. The Grantee will present the draft Action Plan for review and feedback by Partners Group, which will be incorporated into the next phase of drafting the Action Plan.</li> <li>The Grantee will host a meeting with County staff to present the draft Action Plan for review and feedback, which will be incorporated into the next phase of drafting the Action Plan.</li> </ul> <p><b>Action Plan</b></p> <ul style="list-style-type: none"> <li>The Grantee will revise the Action Plan using feedback from the Partners Group and County staff.</li> </ul> <p><b>Quarterly report</b></p> <ul style="list-style-type: none"> <li>The Grantee will submit a quarterly report by 12/31/22.</li> </ul> <p><b>Equipment</b></p> <ul style="list-style-type: none"> <li>Survey Monkey software = \$5,400</li> <li>Tableau software = \$8,000</li> </ul>	\$36,000.00	12/31/22

5.	7460.01-001	Quarter 6 (partial) 1/1/23 – 2/14/23	<p><b>Coordination</b></p> <ul style="list-style-type: none"> <li>The Grantee will convene one (1) virtual Partners Group meeting. Agenda items will include: project updates; and Action Plan.</li> <li>The Grantee will share the finalized Action Plan with the Partners Group.</li> </ul> <p><b>Action Plan</b></p> <ul style="list-style-type: none"> <li>The Grantee will finalize the Action Plan and submit to Inyo County HHS Leadership by 1/10/23, and to AHP by 2/1/23 for review. The Grantee will submit the final Action Plan to DHCS by 2/14/2023.</li> </ul> <p><b>Quarterly report</b></p> <ul style="list-style-type: none"> <li>The Grantee will submit a quarterly report by 2/14/2023.</li> </ul>	\$21,400.00	2/14/23
<b>CONTRACT TOTAL:</b>				<b>\$200,000.00</b>	

## ATTACHMENT E PAYMENT SCHEDULE

### County of Inyo

Description	Invoice Description	Amount Estimated
Equipment	Upon Completion of purchase with receipt for goods/equipment	\$13,400.00 \$3,300.00 \$13,400.00
<b>Total Equipment</b>		<b>\$30,100.00</b>

Quarter #/Date Range	Invoice Description	Amount of Invoice
Quarter 2: <b>1/01/22 – 3/31/22</b>	Progress Report detailing progress made towards Deliverable 1	\$39,000.00
Quarter 3: <b>04/01/22 – 6/30/22</b>	Progress Report detailing progress made towards Deliverable 2	\$37,000.00
Quarter 4: <b>07/01/22 – 9/30/22</b>	Progress Report detailing progress made towards Deliverable 3	\$36,500.00
Quarter 5: <b>10/01/22 – 12/31/22</b>	Progress Report detailing progress made towards Deliverable 4	\$36,000.00
Quarter 6: <b>1/1/23 – 2/14/23</b>	Progress Report detailing progress made towards Deliverable 5	\$21,400.00
<b>Total Deliverables and Other Directs</b>		<b>\$169,900.00</b>
<b>Total Deliverables, Other Direct and Equipment</b>		<b>\$200,000.00</b>

**HIPAA PRIVACY  
COMPLIANCE AGREEMENT  
FOR BUSINESS ASSOCIATES**

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THIS AGREEMENT is made this \_\_\_\_\_ day of \_\_\_\_\_, ~~20/2000~~ by and among **ADVOCATES FOR HUMAN POTENTIAL, INC.**, a Corporation organized under the laws of the Commonwealth of Massachusetts, with corporate offices located at **490-B Boston Post Road, Sudbury, MA 01776** (hereinafter known as "AHP"), and

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Insert Individual/Business Name

an/a

Individual residing at: \_\_\_\_\_  
Print Residence Address

\_\_\_\_\_, having its place of business  
Insert Business Entity type, e.g. Corporation/LLC/Partnership

at: \_\_\_\_\_,

(hereinafter known as "BUSINESS ASSOCIATE"). AHP and Business Associate shall collectively be known herein as "the Parties."

**WHEREAS**, AHP has entered into a consulting agreement with

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Insert Provider/AHP Client Name

"Covered Entity," whose business in the health care industry would constitute being defined as a Covered Entity;

**WHEREAS**, AHP wishes to continue an existing business relationship with Business Associate that has been memorialized in a separate subcontract/consulting agreement, which is still in effect;

**WHEREAS**, the nature of the existing contractual relationship between AHP, Covered Entity and Business Associate may involve the exchange of Protected Health Information ("PHI") as that term is defined under the Health Insurance Portability and Accountability Act of 1996 ("HIPAA") as amended by Health Information Technology for Economic and Clinical Health Act of 2009 ("HITECH Act"), including all pertinent regulations issued by the Department of Health and Human Services ("HHS");

The premises having been considered and with acknowledgment of the mutual promises and of other good and valuable consideration herein contained, the Parties, intending to be legally bound, hereby agree as follows:

**A. Definitions.**

1. Breach. "Breach" has the same meaning as this term has in §13400 of Health Information Technology for Economic and Clinical Health Act of 2009 ("HITECH Act").
2. Business Associate. "Business Associate" shall mean \_\_\_\_\_  
Insert Business/Individual Name
3. Covered Entity. "Covered Entity" shall mean \_\_\_\_\_  
Insert Provider/AHP Client Name
4. Designated Record Set. "Designated Record Set" has the same meaning as this term has in 45 CFR §164.501.



**HIPAA PRIVACY  
COMPLIANCE AGREEMENT  
FOR BUSINESS ASSOCIATES**

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5. Individual. "Individual" has the same meaning as this term has in 45 CFR §164.501.
6. Privacy Rule. "Privacy Rule" shall mean the Standards for Privacy of Individually Identifiable Health Information at 45 CFR Part 160 and Part 164, Subparts A and E, as amended by the HITECH Act.
7. Protected Health Information. "Protected Health Information" (or "PHI") has the same meaning as this term has in 45 CFR §160.103 (as amended by the HITECH Act), limited to the information created or received by Business Associate from or on behalf of Covered Entity.
8. Required by Law. "Required by Law" has the same meaning as this term has in 45 CFR §164.501.
9. Secretary. "Secretary" shall mean the Secretary of the U.S. Department of Health and Human Services or his designate.
10. Security Standards. "Security Standards" means the security standards for protection of PHI promulgated by the Secretary in Title 45 C.F.R.
11. Unsecured Protected Health Information. "Unsecured Protected Health Information" shall mean Protected Health Information (PHI) that is not secured through the use of a technology or methodology specified by the Secretary in regulations or as otherwise defined in the §13402(h) of the HITECH Act.
12. Any prospective amendment to the laws referenced in this definitional section prospectively amend this Agreement to incorporate said changes by Congressional act or by regulation of the Secretary of HHS.

**B. Obligations and Activities of Business Associate.**

1. Business Associate agrees to not use or disclose Protected Health Information other than as permitted or required by the Agreement or as Required by Law.
2. Business Associate agrees to employ administrative, physical, and technical safeguards meeting required Security Standards for business associates as Required by Law to prevent disclosure or use of PHI other than as allow by this Agreement.
3. Business Associate agrees to mitigate, to the extent practicable, any harmful effect that is known to Business Associate of a use or disclosure of PHI held by Business Associate in violation of the requirements of this Agreement.
4. Business Associate agrees to report to AHP and Covered Entity any use or disclosure of the Protected Health Information not provided for by this Agreement of which it becomes aware.
5. If a breach of unsecured protected health information occurs at or by Business Associate, the Business Associate must notify AHP and the Covered Entity following the discovery of the breach without unreasonable delay and, in all cases, no later than 60 days from the discovery of the breach. To the extent possible, the Business Associate should provide AHP and the Covered Entity with the identification of each individual affected by the breach as well as any information required to be provided by AHP and the Covered Entity in its notification to affected individuals. Business Associates shall comply with all regulations issued by HHS and applicable state agencies regarding breach notification to AHP and the Covered Entity.

**HIPAA PRIVACY  
COMPLIANCE AGREEMENT  
FOR BUSINESS ASSOCIATES**

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6. Business Associate agrees to ensure that any agent, including a subcontractor, to whom it provides Protected Health Information received from, or created or received by Business Associate on behalf of Covered Entity agrees to the same restrictions and conditions that apply through this Agreement to Business Associate with respect to PHI.
7. Business Associate agrees, at the request of AHP or the Covered Entity, to provide AHP or the Covered Entity (or a designate of Covered Entity) access to Protected Health Information in a Designated Record Set in prompt commercially reasonable manner in order to meet the requirements under 45 CFR §164.524.
8. Business Associate agrees to make any amendment(s) to Protected Health Information in a Designated Record Set that AHP or the Covered Entity directs or agrees to pursuant to 45 CFR §164.526 at the request of AHP or the Covered Entity or an Individual, in a prompt and commercially reasonable manner.
9. Business Associate agrees to make internal practices, books, and records, including policies and procedures and Protected Health Information, relating to the use and disclosure of Protected Health Information received from, or created or received by Business Associate on behalf of, AHP or Covered Entity available to AHP or the Covered Entity, or to the Secretary (including official representatives of the Secretary), in a prompt commercially reasonable manner for purposes of determining Covered Entity's compliance with the Privacy Rule.
10. Business Associate shall, upon request with reasonable notice, provide AHP or Covered Entity access to its premises for a review and demonstration of its internal practices and procedures for safeguarding PHI.
11. Business Associate agrees to document such disclosures of Protected Health Information and information related to such disclosures as would be required for Covered Entity to respond to a request by an Individual for an accounting of disclosures of Protected Health Information in accordance with 45 CFR §164.528.
12. Business Associate agrees to provide to Covered Entity or an Individual, in a prompt commercially reasonable manner, information collected in accordance with this Agreement, to permit Covered Entity to respond to a request by an Individual for an accounting of disclosures of Protected Health Information in accordance with 45 CFR §164.528.
13. During the term of this Agreement, Business Associate shall maintain, at its sole cost and expense, comprehensive general liability insurance of not less than one million dollars and any insurance that may be mandated for Business Associate by law or regulation (including Worker's Compensation and State Disability Insurance if applicable). Business Associate shall provide AHP written evidence of such insurance upon request. Business Associate shall provide AHP with prompt written notice of any material change or cancellation in its coverage.
14. Business Associate shall indemnify AHP for any damages, costs and expenses incurred, including reasonable attorneys' fees, judgments, settlements or penalties, as a result of any claim or liability resulting from the failure of Business Associate (or its lower tier subcontractors or consultants) to maintain the insurance policies required by this section or for breach of any of Business Associates obligations under this Agreement.

**HIPAA PRIVACY  
COMPLIANCE AGREEMENT  
FOR BUSINESS ASSOCIATES**

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**C. Permitted Uses and Disclosures by Business Associate.**

Except as otherwise limited in this Agreement, Business Associate may use or disclose Protected Health Information as follows:

1. On behalf of, Covered Entity, provided that such use or disclosure would not violate the Privacy Rule if done by Covered Entity.
2. Except as otherwise limited in this Agreement, Business Associate may disclose Protected Health Information for the proper management and administration of the Business Associate, provided that disclosures are required by law, or Business Associate obtains reasonable assurances from the person to whom the information is disclosed that it will remain confidential and 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 in which the confidentiality of the information has been breached.

**D. Obligations of Covered Entity**

1. Covered Entity shall notify AHP, which will then notify Business Associate of any limitation(s) in its notice of privacy practices of Covered Entity in accordance with 45 CFR §164.520, to the extent that such limitation may affect Business Associate's use or disclosure of Protected Health Information.
2. Covered Entity shall notify AHP, which will then notify Business Associate of any changes in, or revocation of, permission by Individual to use or disclose Protected Health Information, to the extent that such changes may affect Business Associate's use or disclosure of Protected Health Information.
3. Covered Entity shall notify AHP, which will then notify Business Associate of any restriction to the use or disclosure of Protected Health Information that Covered Entity has agreed to in accordance with 45 CFR §164.522, to the extent that such restriction may affect Business Associate's use or disclosure of Protected Health Information.
4. AHP or the Covered Entity shall not request Business Associate to use or disclose Protected Health Information in any manner that would not be permissible under the Privacy Rule if done by Covered Entity. Nothing in this paragraph shall restrict the ability of Business Associate to use or disclose PHI as set forth in paragraph C.2. herein.

**E. Remedies in Event of Breach.**

Business Associate hereby recognizes that irreparable harm will result to Covered Entity, and to the business of Covered Entity, and could result in irreparable harm to AHP in the event of breach by Business Associate of any of the covenants and assurances contained in Paragraphs B or C of this Agreement. As such, in the event of breach of any of the covenants and assurances contained in paragraphs B or C above, Covered Entity and/or AHP shall be entitled to enjoin and restrain Business Associate from any continued violation of Paragraphs B or C. The remedies contained in this paragraph E shall be in addition to (and not supersede) any action for damages and/or any other remedy Principal may have for breach of any part of this Agreement.

**HIPAA PRIVACY  
COMPLIANCE AGREEMENT  
FOR BUSINESS ASSOCIATES**

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**F. Term of Agreement and Termination.**

1. Term of Agreement. The Term of this Agreement shall be effective as of the date given at the top of Page 1 herein, and shall terminate when all of the Protected Health Information provided by Covered Entity to Business Associate, or created or received by Business Associate on behalf of Covered Entity, is destroyed or returned to Covered Entity, or, if it is infeasible to return or destroy Protected Health Information, protections are extended to such information, in accordance with the termination provisions in this Section.
2. Termination for Cause. Upon AHP's or Covered Entity's knowledge of a material breach by Business Associate, AHP or Covered Entity shall either:
  - a. Provide an opportunity for Business Associate to cure the breach or end the violation and terminate this Agreement if Business Associate does not cure the breach or end the violation within the time specified by AHP or Covered Entity;
  - b. Immediately terminate this Agreement if Business Associate has breached a material term of this Agreement and cure is not possible; or
  - c. If neither termination nor cures are feasible, AHP or Covered Entity shall report the violation to the Secretary.
3. Effect of Termination.
  - a. Except as provided in paragraph E.3(b) of this section, upon termination of this Agreement, for any reason, Business Associate shall return or destroy all Protected Health Information received from Covered Entity, or created or received by Business Associate on behalf of Covered Entity. This provision shall apply to Protected Health Information that is in the possession of subcontractors or agents of Business Associate. Business Associate shall retain no copies of the Protected Health Information.
  - b. In the event that Business Associate determines that returning or destroying the Protected Health Information is infeasible, Business Associate shall provide to AHP and Covered Entity notification of the conditions that make return or destruction infeasible. Upon notification to AHP and Covered Entity that return or destruction of Protected Health Information is infeasible, Business Associate shall extend the protections of this Agreement to such Protected Health Information and limit further uses and disclosures of such Protected Health Information to those purposes that make the return or destruction infeasible, for so long as Business Associate maintains such Protected Health Information.

**G. Miscellaneous Terms.**

1. State Law. If state law applicable to the relationship between Business Associate and AHP and through the agreement between AHP and Covered Entity contains additional or more stringent requirements than federal law for Business Associates regarding any aspect of PHI privacy, then Business Associate agrees to comply with the higher standard contained in applicable state law.
2. Consideration. Business Associate recognizes that the promises it has made in this Agreement shall, henceforth, be detrimentally relied upon by AHP or Covered Entity in choosing to continue or commence a business relationship with Business Associate.

**HIPAA PRIVACY  
COMPLIANCE AGREEMENT  
FOR BUSINESS ASSOCIATES**

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3. Modification. This Agreement may only be modified through a writing signed by the Parties and, thus, no oral modification hereof shall be permitted. The Parties agree to take such action as is necessary to amend this Agreement from time to time as is necessary for Covered Entity to comply with the requirements of the Privacy Rule and the Health Insurance Portability and Accountability Act of 1996.
4. Notices. Any notice required under this Agreement shall be made in writing to:

Item	AHP	Business Associate
Name	Charles Galland	
Organization	Advocates for Human Potential, Inc.	
Address	490 B Boston Post Road	
City, State, Zip	Sudbury, MA 01776	
Phone	978-261-1425	
Email	<a href="mailto:cgalland@ahpnet.com">cgalland@ahpnet.com</a>	
Fax	978-261-1467	

IN WITNESS WHEREOF and acknowledging acceptance and agreement of the foregoing, the Parties affix their signatures hereto.

Item	AHP	Business Associate
Printed Name	Charles Galland	
Signature		
Title	Chief Operating Officer	
Date		

 **SIGN HERE**



# County of Inyo



## Health & Human Services

### CONSENT - ACTION REQUIRED

**MEETING:** March 1, 2022

**FROM:** Melissa Best-Baker

**SUBJECT:** Payment to Southern Inyo Hospital

---

**RECOMMENDED ACTION:**

Request Board approve the payment of \$6,956.95 to Southern Inyo Hospital for medical services provided to an Inyo County Jail inmate in January 2022.

**SUMMARY/JUSTIFICATION:**

We are requesting approval for services provided to an inmate at Southern Inyo Hospital in January 2022. California State Penal Code 4011.10(b) determines that HHS is only permitted to reimburse costs for inmate health costs at a rate equal to 110% of the hospital's actual cost to charge ratio. Using data from the Office of Statewide Health Planning and Development, we are only obligated to pay 44.726% of the base charges of \$15,554.59, which totals \$6,956.95. The Department respectfully requests authorization to pay the amount of our obligation, \$6,956.95.

**BACKGROUND/HISTORY OF BOARD ACTIONS:**

N/A

**ALTERNATIVES AND CONSEQUENCES OF NEGATIVE ACTION:**

Your Board could deny payment of this obligation, leaving a local hospital with unreimbursed costs to care for a local inmate.

**OTHER AGENCY INVOLVEMENT:**

Inyo County Sheriff's Department and Southern Inyo Hospital

**FINANCING:**

Health Realignment funds. Funding for this is included in the Health budget. This will be paid for out of the Health Budget (045100), Professional Services (5265). No County General Funds.

**ATTACHMENTS:**

**APPROVALS:**

Melissa Best-Baker  
Darcy Ellis  
Marilyn Mann  
Amy Shepherd  
Marilyn Mann

Created/Initiated - 2/15/2022  
Approved - 2/16/2022  
Approved - 2/17/2022  
Approved - 2/17/2022  
Final Approval - 2/18/2022



# County of Inyo



## Health & Human Services - Behavioral Health

### CONSENT - ACTION REQUIRED

**MEETING:** March 1, 2022

**FROM:** Marilyn Mann

**SUBJECT:** Appointing Kimball Pier, Ph.D the Local Mental Health Director and authorized LPS Conservator

---

**RECOMMENDED ACTION:**

Request Board appoint HHS Deputy Director - Behavioral Health Kimball Pier as the Local Mental Health Director and the authorized LPS (Lanterman-Petris-Short) Conservator, and authorize the County Administrator to sign a Local Mental Health Director Appointment Letter.

**SUMMARY/JUSTIFICATION:**

Your Board previously appointed Marilyn Mann, HHS Director, as the Interim Local Mental Health Director for the County's Mental Health Plan, as well as the authorized LPS (Lanterman-Petris-Short Act) Conservator pending the recruitment and hiring of a Deputy Director-Behavioral Health. The Department recently hired Kimball Pier, Ph.D as the Behavioral Health Deputy Director and the department recommends appointing Dr. Pier into both roles effective March 1, 2022.

The requirements for appointment as the Local Mental Health Director are outlined in the California Code of Regulations, Title 9, Section 620, which lists a number of licensed professionals who can fill the role when it is not the role of the local health officer or medical administrator of the county hospital. Dr. Pier qualifies under subsection (d), which specifically reads, "a marriage, family, and child counselor who shall have a master's degree in an approved behavioral science course of study, and who shall be a licensed marriage, family, and child counselor and have received specific instruction, or its equivalent, as required for licensure on January 1, 1981. In addition, the marriage, family, and child counselor shall have had at least five years of mental health experience, two years of which shall have been administrative experience. The term, specific instruction, contained in Sections 5751 and 5751.3 of the Welfare and Institutions Code, shall not be limited to school, college, or university classroom instruction, but may include equivalent demonstrated experience in assessment, diagnosis, prognosis, and counseling, and psychotherapeutic treatment of premarital, marriage, family, and child relationship dysfunctions".

With this appointment, the Department is also requesting your Board appoint Dr. Pier as the Lanterman-Petris-Short (LPS) Act Conservator for the County. This role has been linked to the HHS Deputy Director-Behavioral Health for over twenty years and allows the position to act as the LPS Conservator of a person when there is no family or other person to act in this capacity.

The Department respectfully requests your Board appoint Kimball Pier, PhD. as the Local Mental Health Director effective March 1, 2022, as well as the LPS Conservator with the authority to appoint Deputy LPS Conservators



to act in the Conservator's absence. The Department also requests your Board authorize the County Administrative Officer to sign the attached letter to forward with the Board Order to the Department of Health Care Services for the purpose of confirming the appointment.

**BACKGROUND/HISTORY OF BOARD ACTIONS:**

N/A

**ALTERNATIVES AND CONSEQUENCES OF NEGATIVE ACTION:**

Marilyn Mann will continue in her role of Interim Local Mental Health Director until the State-authorized one-year interim status expires on August 4, 2021 and will continue as the LPS Conservator should your Board not follow the recommendation.

**OTHER AGENCY INVOLVEMENT:**

California Department of Health Care Services, California Behavioral Health Directors Association, CalMHSA

**FINANCING:**

There is no financing associated with this agenda item.

**ATTACHMENTS:**

1. Local Mental Health Director Appointment Letter

**APPROVALS:**

Marilyn Mann	Created/Initiated - 2/11/2022
Darcy Ellis	Approved - 2/11/2022
John Vallejo	Approved - 2/11/2022
Marilyn Mann	Final Approval - 2/14/2022



# COUNTY OF INYO

ADMINISTRATOR'S OFFICE

LESLIE CHAPMAN  
COUNTY ADMINISTRATIVE OFFICER



March 1, 2022

Shaina Zurlin  
Division Chief/Director, Behavioral Health  
Kelly Pfeifer, M.D.  
Deputy Director, Behavioral Health  
California Department of Health Care Services  
1501 Capital Avenue, MS 4000  
Sacramento, California 95899-7413

RE: Appointment of Kimball Pier, PhD. as the Local Mental Health Director

Dear Ms. Zurlin and Dr. Pfeifer,

This letter is to confirm that Inyo County has hired a full-time Deputy Director-Behavioral Health who meets the requirements to serve as the County's Local Mental Health Director. Our Board of Supervisors appointed Dr. Pier to the role of the County's Local Mental Health Director on March 1, 2022. Dr. Pier's appointment will result in the termination of Health and Human Services Director, Marilyn Mann's role of Interim Local Mental Health Director, which was effective August 5, 2021.

Ms. Mann will work with Dr. Pier to transition the duties and responsibilities of this role effective March 1, 2022. Future correspondence from the Department of Health Care Services should be addressed to Kimball Pier, PhD., HHS Deputy Director-Behavioral Health, 1360 North Main Street, Suite 124, Bishop, California 93514. Dr. Pier can be contacted by email at [kpier@inyocounty.us](mailto:kpier@inyocounty.us) or by calling (760) 872-2590.

Please feel free to contact our office at (760) 878-0292 should you have any questions. Thank you.

Sincerely,

Leslie Chapman  
County Administrative Officer



# County of Inyo



## Health & Human Services - Behavioral Health

### CONSENT - ACTION REQUIRED

**MEETING:** March 1, 2022

**FROM:** Marilyn Mann

**SUBJECT:** Appointment of Kimball Pier, Ph.D as the Inyo County Alcohol and Drug Administrator

---

**RECOMMENDED ACTION:**

Request Board, consistent with California Health and Safety Code Section 11800, approve the appointment of HHS Deputy Director - Behavioral Health Kimball Pier as the Inyo County Alcohol and Drug Program Administrator.

**SUMMARY/JUSTIFICATION:**

Your Board previously appointed the HHS Director to serve as the Interim County Alcohol and Drug Program Administrator while the department recruited a Deputy Director to oversee the Behavioral Health Division of HHS. This appointment was made pursuant to Health and Safety Code Sections 11800, 11801 and California Code of Regulations (CCR) Title 9, Sections 9412 and 9414, which outline the requirements for this state-county liaison and title. Kimball Pier, Ph.D was hired as the HHS Deputy Director-Behavioral Health on January 13, 2022 and the Department is requesting your Board to appoint her to this role. Dr. Pier meets the requirements as outlined in CCR Section 9414 and is able to meet the requirements of this role. The Department recommends your Board appoint Kimball Pier, Ph.D as the Inyo County Alcohol and Drug Administrator effective March 1, 2022.

**BACKGROUND/HISTORY OF BOARD ACTIONS:**

NA

**ALTERNATIVES AND CONSEQUENCES OF NEGATIVE ACTION:**

Marilyn Mann would remain in the role of Interim Alcohol and Drug Administrator should your Board choose not to make this appointment.

**OTHER AGENCY INVOLVEMENT:**

California Department of Health Care Services and California Behavioral Health Director's Association

**FINANCING:**

There is no financing associated with this agenda item

**ATTACHMENTS:**

**APPROVALS:**

Marilyn Mann  
Darcy Ellis  
Marilyn Mann

Created/Initiated - 2/11/2022  
Approved - 2/11/2022  
Final Approval - 2/11/2022



# County of Inyo



## Probation

### CONSENT - ACTION REQUIRED

**MEETING:** March 1, 2022

**FROM:** Jeffrey Thomson

**SUBJECT:** Approval of contract with American Security Group for the maintenance of the security system at the Juvenile Detention Center

---

**RECOMMENDED ACTION:**

Request Board: A) declare American Security Group a sole-source provider; B) approve the contract between the County of Inyo and American Security Group for the maintenance of the security system between County of Inyo and American Security Group for the period of July 1, 2022 to June 30, 2023 in an amount not to exceed \$23,490.00 with an option to renew a second and third year, contingent on the adoption of future fiscal year budgets and; C) authorize the Chairperson to sign the contract.

**SUMMARY/JUSTIFICATION:**

American Security Group (ASG) provides proprietary software and server products that comprise the security and surveillance system at the juvenile detention center. As the system is proprietary, only ASG can provide the maintenance and technical support needed to operate the system.

In January 2013, your Board approved a contract with ASG to install a state of the art security system, which included the installation of sixteen (16) cameras; a V46 recording system ; network appliances and equipment; two (2) 32" monitors; and, an integrated card access control system to identify persons entering/exiting the facility.

In December 2013, your Board approved an additional four (4) digital cameras; expansion of the (door) access control system on two (2) doors within the Center; and, two (2) additional workstations to be added to the system.

A renewal contract with ASG for service and support maintenance of the security system was approved by your Board for fiscal year 2019-2020, with an option to extend for an additional two (2) years, contingent upon the Board's adoption of future budgets. Said contract extensions have been exercised and the current extension is due to expire on June 30, 2022.

**BACKGROUND/HISTORY OF BOARD ACTIONS:**

**ALTERNATIVES AND CONSEQUENCES OF NEGATIVE ACTION:**

The Board could choose not to approve sole sourcing this contract to American Service Group and direct staff to seek other alternatives.

**OTHER AGENCY INVOLVEMENT:**

**FINANCING:**

This contract would be expended out of the Juvenile Institutions Budget 023100, Professional Services Object Code 5265 and funded from YOBG grant monies and if approved.

**ATTACHMENTS:**

1. American Security Group Contract

**APPROVALS:**

Krystal Leonard	Created/Initiated - 2/1/2022
Darcy Ellis	Approved - 2/1/2022
Krystal Leonard	Approved - 2/1/2022
John Vallejo	Approved - 2/1/2022
Amy Shepherd	Approved - 2/1/2022
Sue Dishion	Approved - 2/1/2022
Aaron Holmberg	Approved - 2/9/2022
Krystal Leonard	Approved - 2/9/2022
Jeffrey Thomson	Final Approval - 2/9/2022

**AGREEMENT BETWEEN COUNTY OF INYO  
AND AMERICAN SECURITY GROUP  
FOR THE PROVISION OF SECURITY SYSTEM MAINTENANCE SERVICES**

**INTRODUCTION**

WHEREAS, the County of Inyo (hereinafter referred to as "County") may have the need for the security system maintenance services of American Security Group of Vista, California (hereinafter referred to as "Contractor"), and in consideration of the mutual promises, covenants, terms, and conditions hereinafter contained, the parties hereby agree as follows:

**TERMS AND CONDITIONS**

**1. SCOPE OF WORK.**

The Contractor shall furnish to the County, upon its request, those services and work set forth in Attachment A, attached hereto and by reference incorporated herein. Requests by the County to the Contractor to perform under this Agreement will be made by Jeffrey L. Thomson or his de; whose title is: Chief Probation Officer. Requests to the Contractor for work or services to be performed under this Agreement will be based upon the County's need for such services. The County makes no guarantee or warranty, of any nature, that any minimum level or amount of services or work will be requested of the Contractor by the County under this Agreement. County by this Agreement incurs no obligation or requirement to request from Contractor the performance of any services or work at all, even if County should have some need for such services or work during the term of this Agreement.

Services and work provided by the Contractor at the County's request under this Agreement will be performed 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.

**2. TERM.**

A. Initial Term. The term of the Agreement shall be from July 1, 2022 to June 30, 2023 unless sooner terminated as provided below.

B. Extension of Term. In addition to the initial term, there will be two (2) options for the County or Contractor to extend the Agreement as follows:

- (a) From July 1, 2023 through June 30, 2024.
- (b) From July 1, 2024 through June 30, 2025.

The options to extend may be exercised by either party, in the manner and on the terms and conditions hereinafter provided. The initial term and successive options to extend, if any, shall not exceed an aggregate total of more than thirty-six (36) months.

C. Exercising Options to Extend. The option to extend the term of the Agreement for the period identified above may be exercised by the County or Contractor in the manner and on the terms and conditions below:

1. Terms and Conditions:

(a) Neither Contractor nor County has terminated or cancelled the Agreement for any reason.

(b) Neither Contractor nor County is in default on any term or condition of this Agreement.

2. Manner in Which Options Can Be Exercised:

(a) County or Contractor may exercise the option to extend not earlier than three (3) months before expiration of the initial term of this agreement or any extension thereof.

(b) The County or Contractor must notify the other party in writing of its intent to exercise an option at least thirty (30) days before expiration of the contract, or an extension thereof.

(c) The option to extend shall be upon the same terms and conditions as stated in this Contract.

3. CONSIDERATION.

A. Compensation. County shall pay to Contractor in accordance with the Schedule of Fees (set forth as Attachment B) for the services and work described in Attachment A which are performed by Contractor at the County's request.

B. Travel and per diem. Contractor will not be paid or reimbursed for travel expenses or per diem which Contractor incurs in providing services and work requested by County under this Agreement.

C. No additional consideration. Except as expressly provided in this Agreement, Contractor 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, Contractor 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.

D. Limit upon amount payable under Agreement. The total sum of all payments made by the County to Contractor for services and work performed under this Agreement shall not exceed Twenty Three Thousand Four Hundred Ninty Dollars (\$23,490.00) (hereinafter referred to as "contract limit"). County expressly reserves the right to deny any payment or reimbursement requested by Contractor for services or work performed which is in excess of the contract limit.

E. Billing and payment. Contractor shall submit to the County, once a month, an itemized statement of all services and work described in Attachment A, which were done at the County's request. This statement will be submitted to the County not later than the fifth (5th) day of the month. The statement to be submitted will cover the period from the first (1st) day of the preceding month through and including the last day of the preceding month. This statement will identify the date on which the services and work were performed and describe the nature of the services and work which were performed on each day. Upon timely receipt of the statement by the fifth (5th) day of the month, County shall make payment to Contractor on the last day of the month.

F. 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 Contractor under the terms and conditions of this Agreement.

(2) County will withhold California State income taxes from payments made under this Agreement to non-California resident independent contractors when it is anticipated that total annual payments to Contractor 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 Contractor under this Agreement. Payment of all taxes and other assessments on such sums is the sole responsibility of Contractor. County has no responsibility or liability for payment of Contractor's taxes or assessments.



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

**4. WORK SCHEDULE.**

Contractor's obligation is to perform, in a timely manner, those services and work identified in Attachment A which are requested by the County. It is understood by Contractor that the performance of these services and work will require a varied schedule. Contractor will arrange his/her own schedule, but will coordinate with County to ensure that all services and work requested by County under this Agreement will be performed within the time frame set forth by County.

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

A. Any licenses, certificates, or permits required by the federal, state, county, municipal governments, for contractor to provide the services and work described in Attachment A must be procured by Contractor and be valid at the time Contractor enters into this Agreement or as otherwise may be required. Further, during the term of this Agreement, Contractor 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 licenses, professional licenses or certificates, and business licenses. Such licenses, certificates, and permits will be procured and maintained in force by Contractor at no expense to the County. Contractor will provide County, upon execution of this Agreement, with evidence of current and valid licenses, certificates and permits which are required to perform the services identified in Attachment A. Where there is a dispute between Contractor and County as to what licenses, certificates, and permits are required to perform the services identified in Attachment A, County reserves the right to make such determinations for purposes of this Agreement.

B. Contractor 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. Contractor 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, ET CETERA.**

Contractor shall provide such office space, supplies, equipment, vehicles, reference materials, and telephone service as is necessary for Contractor to provide the services identified in Attachment A to this Agreement. County is not obligated to reimburse or pay Contractor, for any expense or cost incurred by Contractor in procuring or maintaining such items. Responsibility for the costs and expenses incurred by Contractor in providing and maintaining such items is the sole responsibility and obligation of Contractor.

**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 Contractor by County pursuant to this Agreement are, and at the termination of this Agreement remain, the sole and exclusive property of County. Contractor will use reasonable care to protect, safeguard and maintain such items while they are in Contractor's possession. Contractor will be financially responsible for any loss or damage to such items, partial or total, which is the result of Contractor's negligence.

B. Products of Contractor'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, Contractor's services or work under this Agreement are, and at the termination of this Agreement remain, the sole and exclusive property of the County. At the termination of the Agreement, Contractor will convey possession and title to all such properties to County.

**8. WORKERS' COMPENSATION.**

Contractor 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 Contractor shall procure and maintain insurance of the scope and amount specified in Attachment C and with the provisions specified in that attachment.

**10. STATUS OF CONTRACTOR.**

All acts of Contractor, its agents, officers, and employees, relating to the performance of this Agreement, shall be performed as independent contractors, and not as agents, officers, or employees of County. Contractor, 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, Contractor has no authority or responsibility to exercise any rights or power vested in the County. No agent, officer, or employee of the Contractor is to be considered an employee of County. It is understood by both Contractor 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 contractor:

A. Contractor shall determine the method, details, and means of performing the work and services to be provided by Contractor under this Agreement.

B. Contractor 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 Contractor in fulfillment of this Agreement.

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

**11. DEFENSE AND INDEMNIFICATION.**

Contractor shall hold harmless, defend and indemnify County and its officers, officials, employees and volunteers from and against any and all liability, loss, damage, expense, costs (including without limitation costs and fees of litigation) of every nature arising out of or in connection with Contractor's performance of work hereunder or its failure to comply with any of its obligations contained in the agreement, except such loss or damages which was caused by the sole negligence or willful misconduct of the County.

**12. RECORDS AND AUDIT.**

A. Records. Contractor shall prepare and maintain all records required by the various provisions of this Agreement, federal, state, county, municipal, ordinances, regulations, and directions. Contractor shall maintain these records for a minimum of four (4) years from the termination or completion of this Agreement. Contractor 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 Contractor, 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 Contractor.

Further, County has the right, at all reasonable times, to audit, inspect, or otherwise evaluate the work performed or being performed under this Agreement.

**13. NONDISCRIMINATION.**

During the performance of this Agreement, Contractor, its agents, officers, and employees 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. Contractor and its agents, officers, and employees 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. Contractor 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.

**14. CANCELLATION.**

This Agreement may be canceled by County without cause, and at will, for any reason by giving to Contractor thirty (30) days written notice of such intent to cancel. Contractor may cancel this Agreement without cause, and at will, for any reason whatsoever by giving thirty (30) days written notice of such intent to cancel to County.

**15. ASSIGNMENT.**

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

**16. DEFAULT.**

If the Contractor abandons the work, or fails to proceed with the work and services requested by County in a timely manner, or fails in any way as required to conduct the work and services as required by County, County may declare the Contractor in default and terminate this Agreement upon five (5) days written notice to Contractor. Upon such termination by default, County will pay to Contractor all amounts owing to Contractor for services and work satisfactorily performed to 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.**

Contractor 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 Contractor in the course of providing services and work under this Agreement, shall be privileged, restricted, or confidential. Contractor agrees to keep confidential all such information and records. Disclosure of such confidential, privileged, or protected information shall be made by Contractor only with the express written

consent of the County. Any disclosure of confidential information by Contractor without the County's written consent is solely and exclusively the legal responsibility of Contractor in all respects.

Notwithstanding anything in the Agreement to the contrary, names of persons receiving public social services are confidential and are to be protected from unauthorized disclosure in accordance with Title 45, Code of Federal Regulations Section 205.50, the Health Insurance Portability and Accountability Act of 1996, and Sections 10850 and 14100.2 of the Welfare and Institutions Code, and regulations adopted pursuant thereto. For the purpose of this Agreement, all information, records, and data elements pertaining to beneficiaries shall be protected by the provider from unauthorized disclosure.

**19. CONFLICTS.**

Contractor agrees that it has no interest, and shall not acquire any interest, direct or indirect, which would conflict in any manner or degree with the performance of the work and services under this Agreement.

**20. POST AGREEMENT COVENANT.**

Contractor agrees not to use any confidential, protected, or privileged information which is gained from the County in the course of providing services and work under this Agreement, for any personal benefit, gain, or enhancement. Further, Contractor 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, or who has been an adverse party in litigation with the County, and concerning such, Contractor 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 Contractor 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 Contractor 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	
<u>PROBATION – JUVENILE CENTER</u>	Department
<u>P.O. Box 306 201 Mazourka Canyon Road</u>	Street
<u>Independence, CA 93526</u>	City and State

Contractor:	
<u>AMERICAN SECURITY GROUP</u>	Name
<u>P.O. Box 48</u>	Street
<u>Vista, ca 92085-0048</u>	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 AMERICAN SECURITY GROUP  
FOR THE PROVISION OF SECURITY SYSTEM MAINTENANCE SERVICES**

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

**COUNTY OF INYO**

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

Signature

\_\_\_\_\_  
Print Name

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

**CONTRACTOR**

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

Signature

\_\_\_\_\_  
Print Name

Dated: 1/31/2022

APPROVED AS TO FORM AND LEGALITY:

County Counsel

Grace Churchla

APPROVED AS TO ACCOUNTING FORM:

Christie Martindale

County Auditor

APPROVED AS TO PERSONNEL REQUIREMENTS:

\_\_\_\_\_

Personnel Services

APPROVED AS TO INSURANCE REQUIREMENTS:

Caron Holmberg

County Risk Manager

s/CountyCounsel/ModifiedAgreements/AmericanSecurityGroup.116 (Probation)

**ATTACHMENT A**

**AGREEMENT BETWEEN COUNTY OF INYO  
AND AMERICAN SECURITY GROUP  
FOR THE PROVISION OF SECURITY SYSTEM MAINTENANCE SERVICES**

**TERM:**

**FROM:** 07/01/2022 **TO:** 06/30/2023

**SCOPE OF WORK:**

**See attached maintenance Proposal # 1014947 dated 01/31/2022.**



# Proposal

Date	Proposal #
1/31/2022	1014947

Customer
Inyo County Probation Dept. Jeffrey L Thomson 1360 N. Main Street Suite 162 Bishop, CA 93514

Ship To
Inyo County Probation Dept. Jeffrey L Thomson 1360 N. Main Street Suite 162 Bishop, CA 93514

Qty	Description	Rate	Total
	Service and Support Agreement for the Inyo County Juvenile Institution located at 201 Mazourka Canyon Road Independence California for Fiscal Year 2022-2023		
	IP Video System		
	Service and Support		
1.00	IP Video System Service Plan (Base)	500.00	500.00
1.00	IP Video Server Maintenance & Support	500.00	500.00
1.00	IP Video Storage Device Maintenance & Support	500.00	500.00
7.00	IP Video Network Equipment Maintenance & Support	250.00	1,750.00
24.00	IP Video Camera Maintenance & Support	50.00	1,200.00
1.00	System Battery Testing, Service & Replacement	30.00	30.00
	Software Maintenance and Upgrade Plan		
1.00	One (1) Year CURRENT Plan for Ocularis CS	499.00	499.00
24.00	One (1) Year CURRENT Plan for One (1) Ocularis CS Camera/Channel License	59.00	1,416.00
	Access Control System		
	Service and Support		
1.00	Access Control System Service Plan (Base)	125.00	125.00
1.00	Access Control Server Service and Support	250.00	250.00
4.00	Access Control Quarterly Inspections & Training (per quarter)	95.00	380.00
8.00	Access Control Systems Technical Support	50.00	400.00
1.00	System Battery Testing, Service & Replacement	30.00	30.00
	Software Maintenance and Upgrade Plan		
1.00	Additional 1 year software maintenance	250.00	250.00

I hereby authorize performance of this proposal and agree to the following payment terms: <b>Net 30</b>		<b>Subtotal</b>	\$7,830.00
ACCEPTED BY: _____ DATE: _____		<b>Tax (8.0%)</b>	\$0.00
PO Box 48 Vista CA, 92085 www.amsecgroup.com Voice 760-727-4020 Fax 760-727-4027 CA LIC 665638		<b>Total</b>	\$7,830.00



**ATTACHMENT B**

**AGREEMENT BETWEEN COUNTY OF INYO  
AND AMERICAN SECURITY GROUP  
FOR THE PROVISION OF SECURITY SYSTEM MAINTENANCE SERVICES**

**TERM:**

**FROM:** 07/01/2022                      **TO:** 06/30/2023

**SCHEDULE OF FEES:**

Not to exceed \$7,830.00 annually. To be billed at the beginning of each contract year.

**ATTACHMENT C**

**AGREEMENT BETWEEN COUNTY OF INYO  
AND AMERICAN SECURITY GROUP  
FOR THE PROVISION OF SECURITY SYSTEM MAINTENANCE SERVICES**

**TERM:**

**FROM:** 07/01/2022 **TO:** 06/30/2023

**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.



# County of Inyo



## Public Works

### CONSENT - ACTION REQUIRED

**MEETING:** March 1, 2022

**FROM:** Ashley Helms

**SUBJECT:** Amendment 1 to the lease with FedEx Express at the Bishop Airport

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**RECOMMENDED ACTION:**

Request Board ratify and approve Amendment No. 1 to the lease agreement between the County of Inyo and Federal Express Corporation of Memphis, TN for a portion of the real property described as 703 Airport Road, extending the term end date from October 31, 2021 to October 31, 2025, and authorize the Chairperson to sign, contingent upon all appropriate signatures being obtained.

**SUMMARY/JUSTIFICATION:**

FedEx Air has leased a portion of the airfield at the Bishop Airport for over 15 years and carries out daily air cargo operations. The current lease, entered into in December 2016, expired in October 2021. The ratification of this amendment would extend that lease for an additional four years and make modifications to the annual increase to lease rate.

**BACKGROUND/HISTORY OF BOARD ACTIONS:**

**ALTERNATIVES AND CONSEQUENCES OF NEGATIVE ACTION:**

Your Board could choose not to approve this lease. This is not recommended as the Airport benefits from the lease revenue as well as the fuel sales and ramp fees from WestAir, the FedEx aircraft operator.

**OTHER AGENCY INVOLVEMENT:**

**FINANCING:**

The revenue from the lease will reimburse the Bishop Airport Operating Budget (150100), revenue code 5311 (rents).

**ATTACHMENTS:**

1. FedEx Eastern Sierra Regional Airport Lease
2. Amendment 1 - FedEx BIH Airport Lease

**APPROVALS:**

Ashley Helms  
Darcy Ellis  
Breanne Nelums  
John Vallejo  
Amy Shepherd  
Michael Errante

Created/Initiated - 2/22/2022  
Approved - 2/23/2022  
Approved - 2/23/2022  
Approved - 2/23/2022  
Approved - 2/23/2022  
Final Approval - 2/24/2022

# *In the Rooms of the Board of Supervisors*

County of Inyo, State of California

I, HEREBY CERTIFY, that at a meeting of the Board of Supervisor of the County of Inyo, State of California, held in their rooms at the County Administrative Center in Independence on the 20<sup>th</sup> day of December 2016 an order was duly made and entered as follows:

*PW – FED EX  
BISHOP  
AIRPORT  
LEASE* Moved by Supervisor Kingsley and seconded by Supervisor Pucci to approve the contract between the County of Inyo and Federal Express Corporation for the lease of certain land at the Eastern Sierra Regional Airport in an amount not to exceed \$34,125 for the period of November 1, 2016 through October 31, 2021, and authorize the Chairperson to sign, contingent upon appropriate signatures being obtained. Motion carried unanimously.

WITNESS my hand and the seal of said Board this 20<sup>th</sup>

Day of December, 2016



*KEVIN D. CARUNCHIO*  
Clerk of the Board of Supervisors

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

<i>Routing</i>
CC Purchasing Personnel Auditor CAO Other: Public Works DATE: January 6, 2017



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

For Clerk's Use  
Only:  
**AGENDA NUMBER**  
15

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

FROM: Public Works Department

FOR THE BOARD MEETING OF: December, 20, 2016

SUBJECT: **Lease Agreement between County of Inyo and Federal Express Corporation**

**DEPARTMENTAL RECOMMENDATIONS:**

Request Board approve the Contract between the County of Inyo and Federal Express Corporation for the lease of certain land at the Eastern Sierra Regional Airport in an amount not to exceed \$34,125, for the period of *November 1, 2016 thru October 31, 2021* and authorize the Chairperson to sign, contingent upon appropriate signatures.

**CAO RECOMMENDATION:**

**SUMMARY DISCUSSION:**

The county has leased the property located at 703 Airport Road in Bishop for over 10 years. This lease is simply extending the previously agreed upon space of 17,500 sq.ft at .39 per sq. ft for a total of \$568.75 per month for a 60 month period.

**ALTERNATIVES:**

Your Board could choose not to approve this lease. This is not recommended as the entire County of Inyo benefits from having a fed-ex location in bishop and they purchase a large quantity of fuel from the Bishop Airport.

**OTHER AGENCY INVOLVEMENT:**


- County Counsel
- Auditors Office
- Federal Express Corporation

**FINANCING:**

The funding coming in from this lease will reimburse the Bishop Airport General Operation Budget of 150100 object code 5291 Rents and Leases



**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 12/8/16

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 12/13/2016

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

**DEPARTMENT HEAD SIGNATURE:**  
(Not to be signed until all approvals are received)  Date: 12/13/16



# DEPARTMENT OF PUBLIC WORKS

P.O. DRAWER Q  
INDEPENDENCE, CA 93526  
PHONE: (760) 878-0201  
FAX: (760) 878-2001

COUNTY  
OF  
**INYO**

Clint G. Quilter, Public Works Director  
Shannon Williams, Deputy Director Public Works

## CONTRACT SIGNATURE ROUTING

AGREEMENT FOR: Red Airport Space Lease

AGREEMENT WITH: FedEx

BOARD DATE: December 20, 2016

REQUESTED BY: Shannon Williams EXTENSION: x0a1a

DEPARTMENT: PW - Airports DATE: 12-23-16

Number of Originals attached: 3

Please place your initials and date after your department has signed the original contract (s) and return to Public Works. PLEASE DO NOT FORWARD TO THE NEXT DEPARTMENT.  
Thank you.

Routing Order	Department	Date Sent	Initial	Date Returned
	County Counsel	_____	_____	_____
	Risk Manager	_____	_____	_____
	Auditor/Controller	_____	_____	_____
	Personnel	_____	_____	_____
	BOS Chairperson	<u>12-23-16</u>	_____	_____
	<u>Get PEID</u>	_____	_____	_____
	<u>Encumber contract</u>	_____	_____	_____
	<u>Mail copy to Lessee</u>	_____	_____	_____
	<u>Copy scanned &amp; filed</u>	_____	_____	_____

92-1341-006

**LEASE BETWEEN THE COUNTY OF INYO AND FEDERAL EXPRESS CORPORATION FOR THE USE OF CERTAIN LAND AT THE EASTERN SIERRA REGIONAL AIRPORT**

This Lease, made and entered into as of the 1st day of November 2016, by and between the County of Inyo, a political subdivision of the State of California, acting by and through the governing body of said County, its Board of Supervisors, hereinafter referred to as "Lessor" or "County", and Federal Express Corporation, a Delaware Corporation, hereinafter referred to as "Lessee".

In Consideration of the mutual covenants contained herein, and for other good and valuable consideration, the Parties agree to the following:

**SECTION ONE. LEASE OF GROUND SPACE.**

County hereby leases to Lessee, for the term and upon the conditions hereinafter provided, that portion of the Eastern Sierra Regional Airport located in the County of Inyo at 703 Airport Road, Bishop, CA 93514, which portion is more particularly described in Exhibit "A" attached hereto and incorporated herein, (which is hereinafter referred to as the "Leased premises") for the purposes of the construction thereon, maintaining and using the facility hereinafter described.

**SECTION TWO. TERM.**

The initial term of this Lease will be for Five (5) years beginning November 1, 2016 and continuing through and including October 31, 2021.

**SECTION THREE. MAINTENANCE.**

Lessee agrees to maintain the Leased premises and any improvements thereon in good condition as reasonably required by the County throughout the term of the Lease. The Leased premises and improvements thereon shall be in as good condition at the termination of the Lease as they existed at the commencement of the Lease Agreement, less reasonable wear and tear.

**SECTION FOUR. TERMINATION.**

In the event of a breach by the Lessee of any term, provision or condition of the Lease Agreement, County shall have the right to terminate the Lease upon serving proper notice(s) to the Lessee. Notice of termination by County shall not relieve Lessee from the performance of any obligations under this Lease Agreement. Such termination shall not prevent County from recovering any moneys due or damages, or from enforcing such obligations or recovering compensatory damages for any default by Lessee. Nothing contained in this paragraph shall be deemed to provide the exclusive remedy of the County and County shall have the right to pursue any other remedy provided by law or this Lease.

In the event of any such breach by Lessee, County shall have the option to continue the Lease in full force and effect, to collect rent when due, and to re-enter premises during the period Lessee is in breach in order to re-let the premise to third parties for the Lessee's account.

**SECTION FIVE. RENT.**

For the use of the Leased premises, Lessee shall pay County, in lawful money, at the address specified in the Agreement, rent in an amount as set forth below on a quarterly basis payable in advance on the first day of the billed quarter. The amount of rent may be changed from time to time by County upon 30 days notice to the Lessee. Such rate changes shall be based on the then current Consumer Price Index (CPI) normally used for the geographic area, however such increases shall not exceed 6.0 % percent of the then existing rent amount. The initial amount of rent for the land lease is \$0.30 per square foot per year (17,500 sq. ft. per Exhibit A), which yields a rent per month of \$568.75 and per calendar quarter of \$1706.25. Lease payments will be made without any set off, and without regard to any other claim of contribution, improvement or counter claim.

If the Lease or any extension thereof is terminated before the expiration of the complete term, the quarterly Lease payment due will be prorated for the actual term of the Lease, or any extension thereof.

**SECTION SIX. OWNERSHIP OF IMPROVEMENTS.**

Ownership of Lessee's modular office facility and any other personal property of Lessee shall remain in Lessee. Ownership of all other improvements made by Lessee to the Leased premises shall remain in Lessee during the initial period of this Lease. During said period, Lessee shall be entitled to all depreciation, deductions, investment tax credits and any other deductions permitted by the Federal, State or other governmental bodies with reference to ownership of the improvements.

**SECTION SEVEN. TRANSFER OF OWNERSHIP.**

Upon the expiration of the initial term, title to all capital improvements to the Leased premises shall vest in County. "Capital improvements" as used herein shall exclude all personal property and trade fixtures, such as equipment, lighting fixtures, office furniture and partitions, and Lessee's modular office facility.

**SECTION EIGHT. REMOVAL OF CAPITAL IMPROVEMENTS.**

Lessee shall be forbidden from removing any capital improvements from the location at which they are constructed or otherwise installed. However, Lessee shall be permitted at any time to remove any personal property or trade fixtures, such as equipment, lighting, fixtures, office furniture and office partitions, and Lessee's modular office facility from the Leased premises.

**SECTION NINE. EASEMENT DEED AND AGREEMENT.**

The property herein leased by the County to the Lessee is the subject of a recorded Easement Deed and Agreement from the City of Los Angeles Department of Water and Power, to the County, and by this reference, incorporated into this Lease (the "Easement Deed"). This Lease is subject to all of the terms and conditions imposed upon County by said Easement Deed, and Lessee hereby agrees to abide by all of the terms of the Easement Deed and shall not engage in any conduct or activity that would, if performed by County, constitute a breach of the Easement Deed.

**SECTION TEN. SERVICES PROVIDED.**

Lessee will maintain the modular office facility. Lessee will perform normal grounds maintenance and provide repair and care of Leased premises and any improvements thereon. All such maintenance, upkeep, and repair will be done at the sole expense of Lessee without any cost to County. Further, County may assess Lessee for negligent damage to the Leased premises or the area immediately adjacent to the leased premises caused by spillage of petroleum products from containers used by Lessee or by any other cause.

In the event the County notifies Lessee that the modular office facility within the Lessee's area are in need of repairs, Lessee will make such repairs within thirty (30) days of receiving the notification. When the nature of the repairs is such that they must be performed immediately in order to provide for the immediate safety of the public or other airport users, Lessee will perform such emergency repairs immediately. If Lessee is unable to perform such emergency repairs immediately, the County reserves the right to make such repairs itself, or hire a contractor to make such repairs and Lessee will be responsible for paying the cost of said repairs.

**SECTION ELEVEN. UTILITIES.**

All charges for water, power, gas, telephone, and any other utility service used by Lessee in connection with the occupancy and use of the Leased premises, including deposits, connection fees or charges and meter rentals, charged by the supplier or any such utility service, and the costs of facilities for connecting the Leased premises to such utility services, or facilities, shall be paid by Lessee.

**SECTION TWELVE. SUBLEASE/ASSIGNMENT.**

Lessee shall not have the right to sublease the Leased premises or to assign this agreement without prior written approval of the County. The foregoing notwithstanding, Lessee may assign this Lease, or sublet the Leased premises, to any operating subsidiary of FedEx Corporation without Lessor's consent.

**SECTION THIRTEEN. CONDITION OF PREMISES.**

Lessee shall inspect the Leased premises and accept the Leased premises in its present condition without any liability or obligation on the part of the County to make any alterations, improvements or repairs of any kind on or about the Leased premises.

**SECTION FOURTEEN. ENTRY FOR INSPECTION AND MAINTENANCE.**

County reserves the right to enter on the Leased premises at reasonable times, with twenty-four (24) hour prior notification to Lessee, to inspect, to perform required maintenance and repair, or to make additions or alterations to any part of the Leased premises. Lessee agrees to permit County to do so. County may, for such time as is reasonably necessary to make such alterations, additions, or repairs erect scaffolding, fences, and similar structures, post relevant notices, and place movable equipment without any obligation to reduce Lessee's rent of the Leased premises during such period, and without incurring liability to Lessee for disturbance of quiet enjoyment of the Leased premises, or loss of occupation thereof, provided that Lessor shall use reasonable efforts not to interfere with Lessee's business operations.

**SECTION FIFTEEN. IMPROVEMENTS AND ALTERATIONS.**

No structural improvements of or to facilities, including structural additions or alterations shall be erected or constructed upon the Leased premises by Lessee without the written consent of County. The County, however, has already approved the installation of Lessee's modular office facility on the Leased premises. Lessee will be required to obtain building permits, and comply with all applicable building codes and requirements in installing, constructing, and using the office trailer and trailer dock on the Leased premises.

**SECTION SIXTEEN. SIGNS.**

Lessee may erect signs necessary to identify Lessee's occupancy of the Leased premises during the term hereunder. Lessee shall forward to County the proposed design for said signs prior to placing said signs on the Leased premises. Lessee shall not place the proposed signs on the Leased premises until County has given its consent to the proposed signs. County shall not unreasonably withhold said consent. Lessee shall remove signs at the termination or expiration of this Lease. All signs shall comply with the County's sign ordinance, to the extent it is applicable.

**SECTION SEVENTEEN. WASTE.**

Lessee shall give prompt notice to County of any damages to the Leased premises and shall not commit, or suffer to be committed, any waste or injury, or allow any public or private nuisance on the Leased premises.

**SECTION EIGHTEEN. FIRE INSURANCE.**

For the term of this Lease, Lessee will maintain fire and extended coverage insurance through its existing blanket insurance policy on its modular office facility. The County's Risk Manager shall verify the existence of such insurance coverage.

**SECTION NINETEEN. INSURANCE.**

a. General Liability. Lessee shall procure and maintain in force throughout the duration of this Lease a comprehensive liability and property damage insurance in accordance with the following terms and conditions:

- (1) The County approved carrier is Protective Insurance Company which has a "Best's Policyholders Rating" of an "A-, A or "A+";
- (2) The policy must have minimum coverage levels of \$2,000,000.00, combined single limit for bodily injury liability and property damage liability;
- (3) The policy must include premises liability construction alterations and contractual liability coverage.
- (4) The policy shall contain a provision prohibiting the cancellation or modification of said policy except upon thirty (30) days prior written notice to the County; and
- (5) The County of Inyo, the City of Los Angeles, the Los Angeles Department of Water and Power, the Board of Water and Power Commissioners of the City of Los Angeles, their respective agents, officers, and employees shall be named as additional insureds, and a

certificate of insurance shall be provided to County within ten (10) days after the effective date of Lease.

b. Workers' Compensation. Lessee shall procure and maintain in force throughout the duration of this Lease, workers' compensation insurance coverage for all Lessee's employees who work at the leased premises. By executing a copy of this Lease, Lessee acknowledges its obligations and responsibilities to its employees under the California Labor Code and warrants that Lessee has complied, and will comply during the term of this Lease with all provisions of the California Labor Code with regard to its employees. A certificate of insurance shall be provided to the County upon its request. Lessee expressly waives its immunity for injuries to its employees and agrees that the obligation to indemnify, defend, and hold harmless provided for in this Lease extends to any claim brought by or on behalf of any employee of the Lessee. This waiver is mutually negotiated by the parties. This shall not apply to any damage resulting from the sole negligence of the County, its agents and employees. To the extent any of the damages referenced herein were caused by or resulted from the concurrent negligence of the County, its agents, or employees, the obligations provided herein to indemnify, defend, and hold harmless is valid and enforceable only to the extent of the negligence of the Lessee, its officers, agents, and employees.

#### **SECTION TWENTY. HOLD HARMLESS.**

Lessee will defend, indemnify, and hold the County free and harmless from any and all costs, judgment, liability, damage, or expense, including costs of suit and attorney's fees, arising out of or from any claimed injury or damage to person or property sustained in, on, or about the Leased premises, or arising out of Lessee's operation of the Leased premises, or as a result of Lessee's acts or omissions or those of Lessee's agents, officers, or employees, in carrying out any operation upon the Leased premises or the airport property. Lessee specifically waives any and all claims against the County for damages or compensation claimed or sustained by reason of any defect, deficiency, or impairment of any water system, electrical supply system, or electrical apparatus or wiring services on Leased premises.

#### **SECTION TWENTY-ONE. COMPLIANCE WITH LAW.**

Lessee shall, at its sole cost, comply with all the requirements of all County ordinances, State and Federal laws, rules, and regulations now in force, or which may hereafter be in force pertaining to the use of the Leased premises, and shall faithfully observe and obey all County ordinances, State and Federal laws, rules, and regulations now in force, or which hereafter may be in force. If Lessee's failure to obey and comply with any of these rules, laws, ordinances, or regulations results in any assessment of fines, penalty, or damages against the County, Lessee will pay such civil penalty fines or assessments and any costs the County incurs in defending or adjudicating such violations.

#### **SECTION TWENTY-TWO. TAXES, ASSESSMENTS, AND FEES.**

In accordance with Revenue and Taxation Code Section 107.6, Lessee is advised, recognizes and understands that this Lease may create a possessory interest subject to property taxation and that the Lessee may be subject to the payment of property taxes levied on such interest. Lessee shall pay when due, all taxes and assessments of whatever character that may be levied or charged upon its leasehold estate and/or possessory interest in the Leased premises and Lessee's operations

thereon. Lessee shall also pay all license or permit fees necessary, or which may be required by law for the conduct of its operations.

**SECTION TWENTY-THREE. GRANT AGREEMENT ASSURANCES.**

The following assurances required by the Federal Government as a condition of the Grant Agreement for the Eastern Sierra Regional Airport are hereby incorporated into, and made a condition of, this Lease:

a. The Lessee, for itself, its heirs, personal representatives, successors in interest, and assigns, as a part of the consideration hereof, does hereby covenant and agree as a covenant running with the land that in the event facilities are constructed, maintained, or otherwise operated on the said property described in this Lease for a purpose for which a DOT program or activity is extended or for another purpose involving the provision of similar services or benefits, the Lessee shall maintain and operate such facilities and services in compliance with all requirements imposed pursuant to Title 49, Code of Federal Regulations, DOT, Subtitle A, Office of the Secretary, Part 21, Nondiscrimination in Federally-Assisted Programs of the Department of Transportation-Effectuation of Title VI of the Civil Rights Act of 1964, and as said Regulations may be amended.

b. The Lessee, for himself, his personal representatives, successors in interest, and assigns, as a part of the consideration hereof, does hereby covenant and agree as a covenant running with the land that:

- (1) No person on the grounds of race, color, or national origin shall be excluded from participation in, denied the benefits of, or be otherwise subjected to discrimination in the use of said facilities;
- (2) That in the construction of any improvements on, over, or under such land and the furnishing of services thereon, no person on the grounds of race, color, or national origin shall be excluded from participation in, denied the benefits of, or otherwise be subject to discrimination;
- (3) That the Lessee, licensee, permittee, etc. shall use the premises in compliance with all other requirements imposed by or pursuant to Title 49, Code of Federal Regulations, Department of Transportation, Subtitle A, Office of the Secretary, Part 21, Nondiscrimination in Federally Assisted Programs of the Department of Transportation-Effectuation of Title VI of the Civil Rights Acts of 1964, and as said Regulations may be amended.

c. That in the event of breach of any of the above nondiscrimination covenants, County shall have the right to terminate the Lease, and to re-enter and repossess said land and the facilities thereon, and hold the same as if said Lease had never been made or issued. This provision does not become effective until the procedures of 49 CFR Part 21 are followed and completed, including expiration of appeal rights.

d. Lessee shall furnish its accommodations and/or services on a fair, equal, and not unjustly discriminatory basis to all users thereof, and it shall charge fair, reasonable, and not unjustly discriminatory prices for each unit or services, provided that Lessee may be allowed to make reasonable and nondiscriminatory discounts, rebates, or other similar type of price reductions to volume purchasers.



e. Non-compliance with provisions of paragraph "d." above shall constitute a material breach thereof, and in the event of such non-compliance, the County shall have the right to terminate this Lease and the estate hereby created without liability therefore, or at the election of the County or the United States either or both said Governments shall have the right to judicially enforce the provisions.

f. Lessee agrees that it shall insert the above five provisions (paragraphs "a.", "b.", "c.", "d", and "e.") in any lease, agreement, contract, etc., by which said Lessee, grants a right or privilege to any person, firm, or corporation to render accommodations and/or services to the public on the premises herein leased.

g. Lessee assures that it has undertaken an affirmative action program as required by 14 CFR Part 152, Subpart E, to insure that no person shall on the grounds of race, creed, color, national origin, or sex be excluded from participating in any employment activities covered in 14 CFR Part 152, Subpart E. Lessee assures that no person shall be excluded on these grounds from participating in or receiving the services or benefits of any program or activity covered by this subpart. Lessee assures that it will require that its covered suborganizations provide assurances to Lessee that they similarly will undertake affirmative action programs and that they will require assurances from their suborganizations, as required by 14 CFR 152, Subpart E, to the same effort.

h. County reserves the right to further develop or improve the landing area of the airport as it sees fit, regardless of the desires or view of Lessee, and without Lessee's interference or hindrance.

i. County reserves the right to maintain and keep in repair all publicly owned facilities of the airport, together with the right to direct and control all activities of Lessee in this regard.

j. This Lease shall be subordinate to the provisions and requirements of any existing or future agreement between County and the United States, relative to the development, operation, or maintenance of the airport.

k. There is hereby reserved to County, its successors and assigns, for the use and benefit of the public, a right of flight for the passage of aircraft in the airspace above the surface of the premises herein Leased. This public right of flight shall include the right to cause in said airspace any landing at, taking off from, or operation on the Eastern Sierra Regional Airport.

l. Lessee agrees to comply with the notification and review requirements covered in Part 77 of the Federal Aviation Regulations in the event future construction of a building is planned for the Leased premises, or in the event of any planned modification or alteration of any present or future building or structure situated on the Leased premises.

m. Lessee, by accepting this Lease, expressly agrees for itself, its successors and assigns, that it will not erect or permit the erection of any structure or object, or permit the growth of any tree on the land leased hereunder, above the height set forth in Part 77 of Federal Aviation Regulations. In the event the aforesaid covenants are breached, County reserves the right to enter upon the land leased hereunder and to remove the offending structure or object or cut the offending tree, all of which shall be at the expense of Lessee.

n. Lessee, by accepting this Lease, agrees for itself, its successors and assigns, that it will not make use of the leased premises in any manner which might interfere with the landing and taking off of aircraft from the Eastern Sierra Regional Airport, or otherwise constitute a hazard. In the event the aforesaid covenant is breached, County reserves the right to enter upon the premises hereby leased and cause the abatement of such interference at the expense of Lessee.

o. It is understood and agreed that nothing herein contained shall be construed to grant or authorize the granting of an exclusive right within the meaning of Section 308a of the Federal Aviation Act of 1958 (49 U.S.C. 1349a).

**SECTION TWENTY-FOUR. MODIFICATION.**

The terms and conditions of the Lease and any extension thereof may be modified, changed, or amended at any time by the mutual written consent of Lessee and County.

**SECTION TWENTY-FIVE. SUBORDINATION.**

Lessee agrees that this Lease shall be subject and subordinate to any mortgage, trust deed, or like encumbrance heretofore or hereafter placed upon Leased premises by County, or its successors in interest, to secure the payment of monies loaned, interest thereon, and other obligations. Lessee agrees to execute and deliver, upon demand of County, any and all instruments desired by County subordinating in the manner requested by County this Lease to such mortgage, trust deed, or like encumbrance.

Notwithstanding such subordination, Lessee's right to quiet possession of the Leased premises shall not be disturbed if Lessee is not in default and so long as Lessee shall pay the rent and observe and perform all of the provisions in this Lease, unless this Lease is otherwise terminated pursuant to its terms.

**SECTION TWENTY-SIX. MECHANICS LIEN.**

Lessee agrees to keep the Leased premises free from all mechanic's liens or other liens of like nature arising because of work done or materials furnished upon the Leased premises at the instance of, or on behalf of Lessee, provided however that Lessee can contest such lien provided it post an adequate bond therefore.

**SECTION TWENTY-SEVEN. FORCE MAJEURE.**

If either party hereto shall be delayed or prevented from the performance of any act required hereunder by any reason of acts of God, restrictive governmental laws or regulations, strikes, civil disorders, or other causes without the fault, and beyond the control of the party obligated (financial inability excepted), performance of such act shall be waived for the period of the delay; and the period for the performance of any such act shall be extended for the equivalent amount of time as the period of such delay. However, nothing in this clause shall excuse the Lessee from the payment of the quarterly Lease payment or other charge required of Lessee, except as may be expressly provided elsewhere in this Lease.

**SECTION TWENTY-EIGHT. WAIVER.**

It is agreed that any waiver by County of any breach of any one or more of the covenants, conditions, or terms of this Lease shall not be construed to be a waiver of any subsequent or other breach of the same or any other covenant, conditions, or term; nor shall any failure of the part of the County to require exact, full, complete, and explicit compliance with any of the covenants or conditions of this Lease be construed as in any matter changing the terms hereof, nor shall the terms of this Lease be changed or altered in any way whatsoever other than by written agreement, signed by both parties.

**SECTION TWENTY-NINE. NON-MONETARY DEFAULT.**

In the event that County or Lessee shall default in any term or condition of any Lease term or condition (other than a monetary term or condition subject to Lease Section Thirty-Nine) and shall fail to cure such default within thirty (30) days following service upon the defaulting party of a written notice of such default, specifying the default or defaults complained of (or in the case of a default which cannot be cured within such thirty (30) day period, within a reasonable time thereafter, provided cure is commenced within such thirty (30) day period and the cure is diligently and in good faith continued to completion), the complaining party may forthwith terminate this Lease by serving the defaulting party written notice of such termination.

**SECTION THIRTY. INUREMENT.**

The terms, covenants, and conditions of this Lease shall inure to the benefit of and be binding upon the parties hereto and their respective heirs, executors, administrators, legal representative, successors, and assigns.

**SECTION THIRTY-ONE. COSTS AND FEES.**

In the event suit should be brought by any party to this Lease as against the other party hereto, by reason of the breach of any covenant or obligation on the part of the other party, or arising out of this Lease, then and in such event, the party in whose favor judgment shall be rendered shall be entitled to have and recover of and from the other, such reasonable attorney fees as may be fixed by the court wherein such judgment shall be rendered; such attorney fees to be part of and to be included in the final judgment that shall be entered.

**SECTION THIRTY-TWO. SEVERABILITY.**

The invalidity of any provision of the Lease as is determined by a court of competent jurisdiction shall in no way affect the validity of any other provision thereof.

**SECTION THIRTY-THREE. PARTIAL INVALIDITY.**

If any provision of this Lease or the application thereof to any person or circumstances shall, to any extent, be invalid or unenforceable, the remainder of this Lease, or the application of such provisions to persons or circumstances other than those as to which it is invalid or unenforceable, shall not be affected thereby, and each provision of this Lease shall be valid and be enforced to the fullest extent permitted by law.

**SECTION THIRTY-FOUR. TIME IS OF ESSENCE.**

Time is expressly declared to be of the essence in this Lease and in each, every, and all of the covenants and conditions herein.

**SECTION THIRTY-FIVE. ENTIRE AGREEMENT.**

This Lease contains the entire agreement between the parties hereto and no term or provision hereof may be changed, waived, discharged, or terminated unless the same be in writing executed by both parties hereto. This Lease specifically supersedes the existing 2011 lease between the parties applicable to the Leased Premises.

**SECTION THIRTY-SIX. CONSTRUCTION OF AGREEMENT.**

Both County and Lessee have had the opportunity and have participated in the drafting and final preparation of this Lease agreement. For that reason, the Lease itself, or any ambiguity contain therein, shall not be construed against either the County or Lessee as the drafters of this document.

**SECTION THIRTY-SEVEN. ADMINISTRATION.**

This Lease agreement shall be administered on behalf of the County by the Deputy Director of the Department of Public Works, and on behalf of the Lessee by its Contract Administrative Department.

**SECTION THIRTY-EIGHT. NOTICE.**

Any notice or notices provided by this Lease or required by law to be given or served upon County or Lessee may be given or served by depositing the same in the United States Mail, postage prepaid, or by overnight courier, addressed as follows:

Lessee:

Federal Express Corporation  
3680 Hacks Cross Road, 3rd Floor  
Memphis, Tennessee 38125  
Attention: Manager, Industrial Real Estate (92-1341)

Also copy to:  
Federal Express Corporation  
Legal Department  
3620 Hacks Cross Road, 3<sup>rd</sup> Floor  
Memphis, Tennessee 38125  
Attention: Managing Director

Lessor:

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

Eastern Sierra Regional Airport  
Federal Express Air Lease

or to such other address as County or Lessee may subsequently specify in writing, or notices may be personally served upon Lessee or the Director, County of Inyo, Department of Public Works.

**SECTION THIRTY-NINE. MONETARY DEFAULTS.**

If default shall be made by Lessee in the payments of the rent or other monetary obligation herein set forth, and such default shall continue for three (3) days after notice thereof in writing to the Lessee, then and in any such event, County may forthwith at its option terminate this lease, and take possession of the Leased premises or any part thereof, with or without process of law, using such force as may be necessary in so doing, and again to recover the possession of the Leased premises.

**SECTION FORTY. HOLDING OVER.**

Any holding over after the expiration of said term, with the consent of the County, shall be construed to be a tenancy from month to month, and shall be on the terms and conditions herein specified, so far as applicable. Said tenancy may be terminated only upon giving thirty (30) days' written notice by either Lessee or County.

**SECTION FORTY-ONE. USE OF PREMISES.**

The Leased premises are leased to be used by Lessee as a modular office facility and parking area for its small package delivery business. Lessee agrees to restrict its use to such purposes, and not to use or permit the use of the Leased premises for any other purpose without first obtaining the written consent the County.

**SECTION FORTY-TWO. AIRPORT REGULATIONS.**

Lessee in the use of the Leased premises agrees to comply with, obey, and abide by the ordinances and any other airport-related rules or regulations of the County of Inyo, and the laws of the State of California and of the United States of America.

**SECTION FORTY-THREE. QUIET POSSESSION.**

The County covenants and agrees that Lessee, upon payment of the annual Lease payment and compliance with all the terms and conditions of this Lease, may lawfully, peacefully, and quietly have, hold, use occupy, and enjoy the leased premises and each part thereof during the term of this lease and any extension thereof without hindrance or interruption by County.

IN WITNESS WHEREOF, the parties hereto have set their hands and seals this 4th day of January 2017

LESSOR  
County of Inyo

By: MARK TILLEMANS

By: Mark Tillmans  
Chairman Board of Supervisors

LESSEE  
Federal Express Corporation

Wiley Johnson

Approved  
Legal Department  
10/3/2016


10/4/16

Mark Tillmans

Eastern Sierra Regional Airport  
Federal Express Air Lease

Date: 01/04/17

Approved as to form and content:



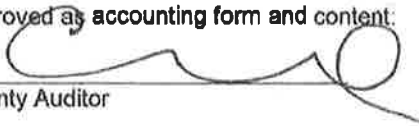
Director, County Department of  
Public Works

Approved as to form and legality:



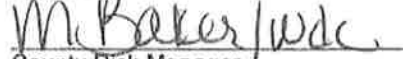
County Counsel

Approved as to accounting form and content:



County Auditor

Approved as to insurance and risk management:



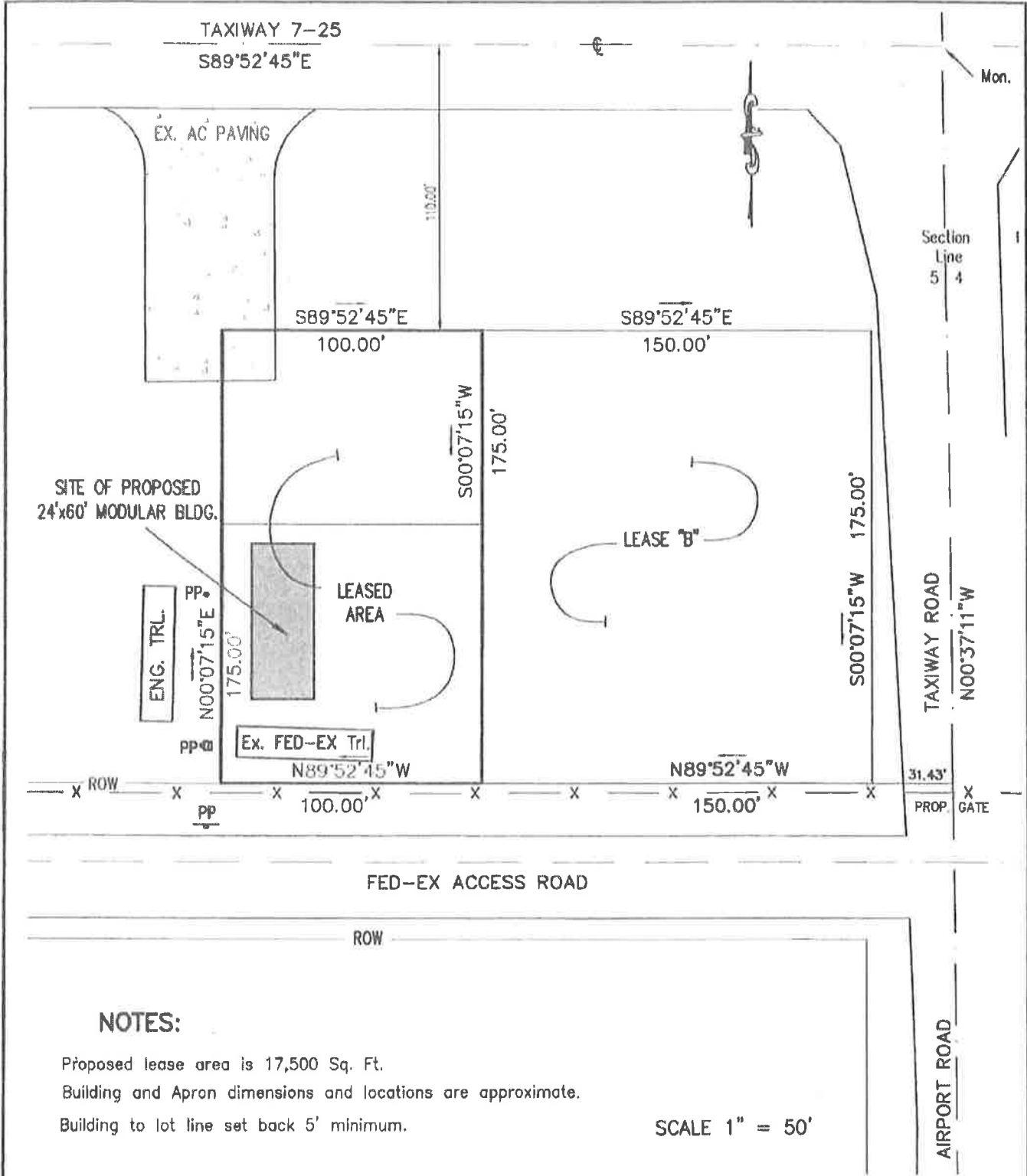
County Risk Manager

s:CC:Leases/Modified/FedExAir.doc

Eastern Sierra Regional Airport  
Federal Express Air Lease  
12

Modified Lease No. 030  
092216

EXHIBIT A



**NOTES:**

- Proposed lease area is 17,500 Sq. Ft.
- Building and Apron dimensions and locations are approximate.
- Building to lot line set back 5' minimum.

SCALE 1" = 50'

<p><b>PROPOSED FEDEX AIR LEASE AT EASTERN SIERRA REGIONAL AIRPORT</b></p>		<p>Plans Prepared by:  <b>INYO COUNTY PUBLIC WORKS</b>                  168 N. Edwards, P.O. Drawer Q                  Independence, CA 93526                  (760) 878-0201</p>
<p>Drawn By: T. DEAN</p>	<p>Date: 11/2016</p>	<p>Printing Name:                  rdd (rev) 11/2016.dwg</p>

AMENDMENT NO. 1

TO

COUNTY OF INYO LEASE OF CERTAIN PROPERTY LOCATED AT BISHOP AIRPORT BY AND BETWEEN

COUNTY OF INYO AND

FEDERAL EXPRESS CORPORATION

THIS AMENDMENT, entered into as of the \_\_\_ day of \_\_\_\_\_ 2022 is by and between the COUNTY OF INYO, a political subdivision of the State of California (hereinafter referred to as "Inyo County"), and Federal Express Corporation (hereinafter referred to as "Lessee").

**WITNESSETH:**

WHEREAS, on November 1, 2016, Inyo County and Lessee entered into an Agreement (the "Agreement") which provided Lessee with that certain real property (hereinafter referred to as "Leased Premises") located at the Bishop Airport, formerly known as the Eastern Sierra Regional Airport (hereinafter referred to as "Airport") and described more particularly in the Agreement.

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

WHEREAS, County and Lessee do desire and consent to amend such Agreement as set forth below:

**SECTION TWO. TERM**

By the terms of the Agreement, the property described therein was leased to Lessee for a term of five (5) years, commencing on November 1, 2016 and ending on October 31, 2021.

The proposed amendment modifies the existing Agreement to extend the term for a period of four years from 11/1/21-10/31/25 with a 5% rent increase in year one and subsequent 3% rent increases in years two through four.

Except as provided for in Section Five relating to rent, the term extension shall be upon the same terms and conditions as stated in the existing Agreement.

**SECTION FIVE. RENT.**

For the use of the Leased Premises, Lessee shall pay County, in lawful money, at the address specified in the Agreement, rent in an amount of \$7,166 per year. Rent shall be paid on a quarterly basis payable in advance on the first day of the billed quarter. Each quarterly payment shall be in the amount of \$1,791.50. The amount of rent will increase on an annual basis by the percentage increases set forth in Section Two above. Additionally, County may change the amount of quarterly rent once in each 12-month period of the term by providing



30 days' advance notice to Lessee. Such periodic rate changes shall be based on the then-current Consumer Price Index (CPI) for the Los Angeles Metropolitan Area. Such periodic increases shall not exceed 5% of the then-current rent amount.

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

THEREFORE, all parties agree to amend the original terms of the Agreement as stated above.

IN WITNESS WHEREOF, the parties hereto have caused this Amendment No. 1 to be executed by their respective authorized officers as of, but not necessarily on, the day and date herein above set forth.

**LESSOR**

**LESSEE**

County of Inyo

Federal Express Corporation

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

By: R. Scott Peterson

Printed Name: \_\_\_\_\_

Printed Name: R. Scott Peterson

Title: \_\_\_\_\_

Title: MD Properties

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

Date: 02/10/2022

Approved as to form and legality:

*Approved by Legal: cjm 02/09/2022*

[FedEx Doc. No. 1579323]

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



# County of Inyo



## Public Works

### CONSENT - ACTION REQUIRED

**MEETING:** March 1, 2022

**FROM:** Robert Ross

**SUBJECT:** Lone Pine Solid Waste Solar Project

---

**RECOMMENDED ACTION:**

Request Board approve the plans and specifications for the Lone Pine Solid Waste Solar Project and authorize the Public Works Director to advertise the project.

**SUMMARY/JUSTIFICATION:**

Inyo County needs an off-grid solar system for the Lone Pine Landfill located in Lone Pine, CA. Currently, the landfill is using a gas-powered generator to supply power for the office and electronic scales used to weigh vehicles entering the landfill. The proposed solar system will provide power for an AC unit for the office, a refrigerator, and a small electronic heater, and be able to operate the electronic scales.

**BACKGROUND/HISTORY OF BOARD ACTIONS:**

**ALTERNATIVES AND CONSEQUENCES OF NEGATIVE ACTION:**

The Board could choose not to approve the plans, specifications, and advertisement of the project. The gas-powered generator could still be used but at a certain cost financially and environmentally.

**OTHER AGENCY INVOLVEMENT:**

Public Works Department  
Solid Waste

**FINANCING:**

This project is funded by a grant from Great Basin Unified Air Pollution Control District, Budget Code 610189 and Object Code 5265

**ATTACHMENTS:**

1. LP Solid Waste Solar Project

**APPROVALS:**

Robert Ross

Created/Initiated - 2/22/2022



# **BID PACKAGE AND SPECIAL PROVISIONS**



FOR CONSTRUCTION OF

## **LONE PINE SOLID WASTE SOLAR PROJECT**

**Project No. ZP-22-003**

**FOR USE IN CONNECTION WITH INYO COUNTY  
STANDARD SPECIFICATIONS, DATED MAY 2020,  
GENERAL PREVAILING WAGE RATES IN EFFECT  
ON THE DATE THE WORK IS ACCOMPLISHED**

February, 2022

**Prepared By: Inyo County Public Works**

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**NOTICE  
INVITING BIDS  
FOR**

**LONE PINE SOLID WASTE SOLAR PROJECT  
LONE PINE, CA**

COUNTY OF INYO

DEPARTMENT OF PUBLIC WORKS

**NOTICE INVITING BIDS**

The Inyo County Public Works Department is soliciting bids for:

**LONE PINE SOLID WASTE SOLAR PROJECT**

Bid Packages, which include the Notice Inviting Bids, Bid Proposal Forms, Contract and Bond Forms, and Special Provisions, may only be obtained from the Inyo County (County) Public Works Department (Department) at 168 North Edwards, P. O. Drawer Q, Independence, CA 93526, telephone (760) 878-0201. A non-refundable price of \$15.00 will be charged for each set of Bid Packages requested. The Bid Packages are available for inspection at the Department during regular business hours. Checks are to be made out to "Inyo County Public Works Department." The Bid Package is also available at no charge at the County of Inyo website at [www.inyocounty.us](http://www.inyocounty.us). Bidders who obtain Bid Packages over the internet are responsible for notifying Inyo County Public Works Department that they are plan holders. Bidders who fail to notify the Department that they are plan holders may not be notified should any Addenda be issued. If the Department issues any Addenda to the Bid Package that is not acknowledged, the Bid Proposal may be rejected. This project is subject to the State of California Department of Industrial Relations (DIR) prevailing wage labor rates.

**Bids must be submitted in a sealed envelope clearly marked with the bidder's name and address, the word "BID", and the Project Title:**

**LONE PINE SOLID WASTE SOLAR PROJECT**

To be considered, bids must be received by the Inyo County Clerk of the Board of Supervisors, 224 North Edwards Street (mailing address: P.O. Box N), Independence, California 93526 at or before 3:30 P.M. on XXXXXXXX at which time they will be publicly opened and read aloud. No oral, telegraphic, telephonic, or fax proposals or modifications will be accepted.

**General Work Description:** This project is at the Lone Pine Solid Waste facility located at Sub Station Road in Lone Pine, CA. The work will include the design and installation of an off grid solar system. Currently, the facility is using gas powered generators to supply power to the existing structures, an AC unit, electronic devices and scales for weighing solid waste. The project will install solar panels, an inverter and lithium iron phosphate batteries. The system will be connected to the existing conduit and electrical panels. The project is described in more detail in Plans and Project Special Provisions. All of the work shall be in accordance with all applicable Federal, State, and local laws, codes, and regulations.

An optional job walk will be held on XXXXXXXX at 10:00 a.m. at the Lone Pine Landfill, Lone

Pursuant to **Section 1725.5 of the Labor Code**, the bidder is required to certify that they, and all subcontractors listed on the submitted Bid Form documents, are registered with the California Department of Industrial Relations.

Pursuant to **Section 1773 of the Labor Code**, the general prevailing wage rates in Inyo County have been determined by the Director of the State Department of Industrial Relations. These wage rates appear in the Department of Transportation publication entitled "General Prevailing Wage Rates," in effect at the time the project is advertised. Future effective wage rates, which have been predetermined and are on file with the State Department of Industrial Relations are referenced, but not printed, in said publication. Such rates of wages are on file with the State Department of Industrial Relations and the Public Works Department of the County of Inyo and are available to any interested party upon request.

Inyo County reserves the right at any stage of these proceedings to reject any or all Bids or to waive any immaterial defect in any Bid if it is deemed to be in the best interest of the County.

Each bidder must supply all the information required by the Contract Documents, Special Provisions and Standard Specifications.

County of Inyo  
Department of Public Works



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Michael Errante  
Director

Dated: February, 2022



# **BID PROPOSAL FORMS FOR**

**LONE PINE SOLID WASTE SOLAR PROJECT**  
Lone Pine, CA

## BID PROPOSAL FORM

TO: COUNTY OF INYO  
Attn.: Inyo County Clerk of Board of Supervisors  
224 North Edwards Street, P.O. Box N  
Independence, California 93526  
(Herein called the "County")

FROM: \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
(Herein called "Bidder")

FOR: **LONE PINE SOLID WASTE SOLAR PROJECT**  
(Herein called "Project")

In submitting this Bid, Bidder understands and agrees that:

**1. BID DEADLINE.** Bids must be received no later than **3:30 P.M. on XXXXXX** by the Inyo County Assistant Board Clerk, 224 North Edwards Street (mailing address: P.O. Box N), Independence, CA 93526, at which time they will be publicly opened and read aloud. No oral, electronic, telephonic or fax proposals or modifications will be accepted.

**2. BID AMOUNT TOTAL.** The total amount of this Bid for provision of the services and/or materials for completion of the Project in accordance with the Contract Documents is set forth herein as:

**3. BID ADDITIVES.** The County reserves the right to award the base bid and any combination, including neither, of the bid additives.

**5. ACCEPTANCE.** County reserves the right to reject any and all Bids, or part of any Bid, to postpone the scheduled Bid deadline date(s), to make an award in its own best interest, and to waive any irregularities or technicalities that do not significantly affect or alter the substance of an otherwise responsible Bid and that would not affect a Bidder's ability to perform the work adequately as specified. However, this Bid shall remain open and shall not be withdrawn for a period of sixty (60) calendar days after the date designated in the Notice Inviting Bids for publicly opening this Bid. If Bidder receives written notice of the award of the Project Contract to Bidder on or before the sixtieth day, Bidder shall execute the Contract and deliver to County the executed Contract and all of the bonds, certificates and/or endorsements of insurance coverage, and other required documents no later than fifteen (15) calendar days after the date on which Bidder receives such notice.

This solicitation in no way obligates County to award a Bid Contract described herein, nor will County assume any liability for the costs incurred in the preparation and transmittal of Bids in response to this solicitation. County reserves the right to not accept any Bid, to reject any or all Bids, to reject any part of any Bid proposal, to negotiate and modify any Bid, and to waive any defects or irregularities in any Bid at County's sole discretion. Furthermore, County shall have the sole discretion to award a Bid Contract as it may deem appropriate to best serve the interests of County. In this regard, County may consider demonstrated quality of work, responsiveness, comparable experience, professional qualifications, references, and proposed fees. Awards will not be based on cost alone. County does not guarantee a minimum or maximum dollar value for any Contract(s) resulting from this solicitation.

If the Contract Documents require or permit this Bid to include two or more Alternates, County reserves the right to award the Contract for that Alternate which County, in its sole discretion, determines at the time of award to be in County's best interest.

**6. TIME OF COMPLETION.** The Bidder further specifically agrees to complete all the work no later than the Time for Completion specified in the Contract Special Provisions.

**7. ADDENDA.** The Bidder acknowledges receipt of the following Addenda and has provided for all Addenda changes in this Bid.

---

(Fill in Addendum numbers and dates Addenda have been received.  
If none have been received, enter "NONE".)

**WARNING: IF AN ADDENDUM OR ADDENDA HAVE BEEN ISSUED BY THE COUNTY AND NOT NOTED ABOVE AS BEING RECEIVED BY THE BIDDER, THIS PROPOSAL MAY BE REJECTED.**

- (b) \_\_\_\_\_ Cashier's Check or Certified Check, made payable to the County of Inyo, attached to the form entitled Cashier's or Certified Check; or
- (c) \_\_\_\_\_ Cash, in legal tender of the United States of America, enclosed in a separate envelope marked " Cash Proposal Guarantee."

The Proposal Guarantee is in the amount of Ten Percent (10%) of the total amount of the Bid. If the Contract Documents require or permit this Bid to include two or more Alternates, the amount of the Proposal Guarantee must not be less than Ten Percent (10%) of the amount of the bid total submitted for the alternate having the highest total bid amount. Only one form of Proposal Guarantee may be submitted with each Bid.

Bidder hereby agrees that County shall be entitled to payment by forfeiture of the Proposal Guarantee if County awards the Project Contract to Bidder, but Bidder fails or refuses to execute the Contract and/or furnish all of the bonds, certificates and/or endorsements of insurance coverage, and other required documents no later than fifteen (15) calendar days after the date on which Bidder receives notice of the award from County.

**10. BID PROTEST.** In the event a dispute arises concerning the bid process prior to the award of the contract, the party wishing resolution of the dispute shall submit an appeal request in writing to the County Director of Purchasing. Bidder may appeal the recommended award or denial of award, provided the following stipulations are met:

1. Only a bidder who has actually submitted a Bid Proposal is eligible to submit an appeal request/bid protest against another bidder. Subcontractors are not eligible to submit bid protests. A bidder may not rely on the bid protest submitted by another bidder, but must timely pursue its own protest.
2. Appeal must be in writing. The appeal must contain a complete statement of the basis for the protest and all supporting documentation. Materials submitted after the Bid Protest Deadline will not be considered. The protest must refer to the specific portion or portions of the Contract Documents upon which the protest is based. The protest must include the name, address and telephone number of the person representing the protesting bidder if different from the protesting bidder.
3. A copy of the protest and all supporting documents must also be transmitted by fax or by e-mail, by or before the Bid Protest Deadline, to the protested bidder and any other bidder who has a reasonable prospect of receiving an award depending upon the outcome of the protest.
4. Must be submitted within ten (10) calendar days of the date of the recommended award or denial of award letters.
5. An appeal of a denial of award can only be brought on the following grounds:
  - a. Failure to follow the selection procedures and adhere to requirements specified in the Bid Package or any addenda or amendments.

THE UNDERSIGNED HEREBY DECLARES, UNDER PENALTY OF PERJURY ACCORDING TO THE LAWS OF THE STATE OF CALIFORNIA, THAT THE STATEMENTS, DESIGNATIONS, CERTIFICATIONS, AND REPRESENTATIONS MADE IN THIS BID PROPOSAL, INCLUDING ALL ATTACHMENTS, ARE TRUE AND CORRECT AND HE OR SHE IS THE INDIVIDUAL, MANAGING PARTNER, CORPORATE OFFICER, OR OTHER REPRESENTATIVE, DULY AUTHORIZED BY LAW TO MAKE THIS BID ON BEHALF OF BIDDER, AND BY SIGNING BELOW, MAKES THIS BID ON BEHALF OF BIDDER ACCORDING TO ALL OF THE TERMS AND CONDITIONS SET FORTH OR INCORPORATED BY REFERENCE HEREIN.

\_\_\_\_\_  
(Signature of Authorized Person)

\_\_\_\_\_  
(Date)

\_\_\_\_\_  
(Printed Name)

\_\_\_\_\_  
(Printed Title)

WITNESS our hands and seals this \_\_\_\_\_ day of \_\_\_\_\_, 20 \_\_\_\_ A.D.

\_\_\_\_\_  
Principal

(SEAL)

By: \_\_\_\_\_  
(Title of Authorized Person)

\_\_\_\_\_  
(Address for Notices to be Sent)

\_\_\_\_\_  
Surety

(SEAL)

By: \_\_\_\_\_  
(Title of Authorized Person)

\_\_\_\_\_  
(Address for Notices to be Sent)

**NOTE:**

**THE SIGNATURES OF THE PRINCIPAL (BIDDER) AND THE SURETY MUST EACH BE ACKNOWLEDGED BEFORE A NOTARY PUBLIC ( OR OTHER OFFICER AUTHORIZED UNDER CALIFORNIA LAW ) AND THE ACKNOWLEDGMENTS MUST BE ATTACHED TO THIS BOND.** The Bid Bond must be executed on this form by a corporate surety admitted to issue such bonds in the State of California. No substitutions will be accepted. If an attorney-in-fact signs for the surety, an acknowledged statement from the surety appointing and empowering the attorney-in-fact to execute such bonds in such amounts on behalf of the surety, must accompany the Bid Bond.

**ADDRESS OF COUNTY FOR NOTICES TO BE SENT:**

**County of Inyo (Attn.: Public Works Director)  
224 North Edwards Street, P.O. Box N  
Independence, California 93526**

**LONE PINE SOLID WASTE SOLAR PROJECT**

**DESIGNATION OF SUBCONTRACTORS**

In compliance with the provisions of the **Subletting and Subcontracting Fair Practices Act (Section 4100 et. seq. of the Public Contract Code of the State of California)**, the undersigned bidder has set forth below the full name, and the location of the place of business of each Subcontractor who will perform work or labor or render service to the Prime Contractor in or about the construction of the work or improvement, or a Subcontractor licensed by the State of California who, under subcontract to the Prime Contractor, specifically fabricates and installs a portion of the work or improvement according to detailed drawings contained in the Plans and Specifications to which the attached bid is responsive, and the portion of the work which will be done by each Subcontractor for each subcontract in excess of one-half of one percent of the Prime Contractor's total bid, or \$10,000.00, whichever is greater.

The Bidder understands that if he fails to specify a Subcontractor for any portion of the work to be performed under the Contract in excess of one-half of one percent of his bid, or \$10,000.00, whichever is greater, he shall be deemed to have agreed to perform such portion himself, and that he shall not be permitted to sublet or subcontract that portion of the work except in cases of public emergency or necessity, and then only after a finding, produced to writing as a public record of the Awarding Authority, setting forth the facts constituting the emergency or necessity. If no Subcontractors are to be employed on the project, enter the word "none".

ITEM NO.	DESCRIPTION OF WORK	% OF TOTAL CONTRACT	SUBCONTRACTOR'S LICENSE TYPE, NUMBER, EXPIRATION DATE	NAME, ADDRESS, PHONE NUMBER

\_\_\_\_\_  
Signature of Authorized Person)

\_\_\_\_\_  
(Title)

\_\_\_\_\_  
(Printed Name)

\_\_\_\_\_  
(Date)

**CONTRACTOR'S LABOR CODE CERTIFICATION**  
**(Labor Code Section 3700 et seq.)**

**LONE PINE SOLID WASTE SOLAR PROJECT**

I am aware of the provisions of Section 3700 and following of the Labor Code which requires every employer to be insured against liability for workers' compensation or to undertake self-insurance in accordance with the provisions of that code, and I will comply with such provisions before commencing the performance of the work of this contract.

---

**(Name and Title of Signer)**

---

**Signature**

---

**Date**

**Company Name** \_\_\_\_\_

**Business Address** \_\_\_\_\_



**NON-COLLUSION AFFIDAVIT**  
(Public Contract Code Section 7106)  
(Code of Civil Procedure Section 2015.5)

**LONE PINE SOLID WASTE SOLAR PROJECT**

The undersigned declares:

I am the \_\_\_\_\_ of \_\_\_\_\_, the party making the foregoing bid. The bid is not made in the interest of, or on behalf of, any undisclosed person, partnership, company, association, organization, or corporation. The bid is genuine and not collusive or sham. The bidder has not directly or indirectly induced or solicited any other bidder to put in a false or sham bid. The bidder has not directly or indirectly colluded, conspired, connived, or agreed with any bidder or anyone else to put in a sham bid, or to refrain from bidding. The bidder has not in any manner, directly or indirectly, sought by agreement, communication, or conference with anyone to fix the bid price of the bidder or any other bidder, or to fix any overhead, profit, or cost element of the bid price, or of that of any other bidder. All statements contained in the bid are true. The bidder has not, directly or indirectly, submitted his or her bid price or any breakdown thereof, or the contents thereof, or divulged information or data relative thereto, to any corporation, partnership, company, association, organization, bid depository, or to any member or agent thereof, to effectuate a collusive or sham bid, and has not paid, and will not pay, any person or entity for such purpose. Any person executing this declaration on behalf of a bidder that is a corporation, partnership, joint venture, limited liability company, limited liability partnership, or any other entity, hereby represents that he or she has full power to execute, and does execute, this declaration on behalf of the bidder.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct and that this declaration is executed on

\_\_\_\_\_, at \_\_\_\_\_,  
(Date) (City) (State)

\_\_\_\_\_  
(Name and Title of Signer)

\_\_\_\_\_  
Signature Date

Company Name \_\_\_\_\_

Business Address \_\_\_\_\_

\_\_\_\_\_

**PUBLIC CONTRACT CODE STATEMENT (SECTION 10232)**

**LONE PINE SOLID WASTE SOLAR PROJECT**

In accordance with **Public Contract Code Section 10232**, the Contractor hereby states under penalty of perjury, that no more than one final unappealable finding of contempt of court by a federal court has been issued against the Contractor within the immediately preceding two year period because of the Contractor's failure to comply with an order of a federal court which orders the Contractor to comply with an order of the National Labor Relations Board.

By Bidder's signature on the Bid Proposal Form, Bidder certifies, under penalty of perjury under the laws of the State of California, that the foregoing statements in accordance with **Public Contract Code Section 10232** are true and correct.

\_\_\_\_\_  
**(Name and Title of Signer)**

\_\_\_\_\_  
**Signature**

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

**Company Name** \_\_\_\_\_

**Business Address** \_\_\_\_\_  
\_\_\_\_\_

4. Meets the conditions of one through three of this subsection, but within Mono or Inyo and Mono Counties, if no Inyo County local business submits a bid that is within eight percent of the lowest bid submitted.

C. A Responsive Bid is a bid which responds to the requirements of the request for bids and is submitted by a responsible bidder.

**6.06.030 General Provisions.**

A. The preferences provided in this chapter are intended to extend to the limit of the jurisdiction of Inyo County under California law. Such preferences do not apply where prohibited by Federal or State law. Such preferences do not apply where funding agencies prohibit such preferences as a condition of providing funding for the anticipated project. Where this Chapter provides preferences for multiple classes of entities, and one or more of those classes of entities are disallowed contracting preference by Federal or State law or by the funding agency, those disallowed entities will not be provided preferences, but the remaining classes of entities shall receive preferences.

B. Requests for bids or proposals issued by the County shall specify the applicable contracting preferences available pursuant to this Chapter.

**6.06.040 Local Business and Small Business Preference.**

Except as excluded by Section 6.06.030(A), for all contracts awarded by Inyo County, if the lowest responsive bid is submitted by a local business or a small business, that business shall be awarded the contract. If the lowest responsive bid is not submitted by a local business or a small business, the lowest responsive bid submitted by a local business that is within eight percent of the lowest responsive bid or by a small business that is within five percent of the lowest responsive bid shall be considered the low bid and that business shall be awarded the contract. To be eligible, a local business or a small business shall provide certification with its bid that it is such business as herein defined.

**6.06.050 Small Business Subcontracting Preference.**

For public works and road construction contracts awarded by Inyo County, where no entity qualifying under this Chapter for a contracting preference submits a responsive bid that is the lowest or within five percent of the lowest responsive bid, there shall be a preference given to bids in which at least ten percent of the monetary value of the work to be performed is subcontracted to a small business or businesses. If such bid is the lowest responsive bid, that contractor shall be awarded the contract. If such bid is not the lowest responsive bid, any such bid that is within five percent of the lowest responsive bid shall be considered the low bid, and that contractor shall be awarded the contract.

**6.06.060 Limit On Contracting Preferences.**

Contracting preferences under this Chapter shall not exceed \$10,000.00 for any one solicitation and award determination.

**SECTION 3. SEVERABILITY**

If any section, subsection, sentence, clause or phrase of this ordinance is for any reason held to be unconstitutional or invalid, such decision shall not affect the validity of the remaining portions of this ordinance. The Board of Supervisors hereby declares that it would have passed this ordinance and every section, subsection, sentence, clause or phrase not declared invalid or unconstitutional, without regard to whether any portion of this ordinance would be subsequently declared unconstitutional or invalid.



# FINAL REPORT - UTILIZATION OF SMALL BUSINESS ENTERPRISES (SBE), FIRST-TIER SUBCONTRACTORS

PROJECT: LONE OINE SOLID WASTE SOLAR				CONTRACT COMPLETION DATE	
PRIME CONTRACTOR		BUSINESS ADDRESS			
BID ITEM NO.	SUBCONTRACTOR NAME, BUSINESS ADDRESS, AND PHONE	DESCRIPTION OF WORK PERFORMED	SBE CERT. NUMBER	CONTRACT PAYMENTS NON-SBE	SBE
				\$	\$
				\$	\$
				\$	\$
				\$	\$
				\$	\$
				\$	\$
				\$	\$
				\$	\$
			TOTAL	\$	\$
(i) Original Commitment					
\$ _____					
2) I CERTIFY THAT THE ABOVE INFORMATION IS COMPLETE AND CORRECT					
CONTRACTOR REPRESENTATIVES SIGNATURE				BUSINESS PHONE NUMBER	DATE
4) TO THE BEST OF MY KNOWLEDGE, THE ABOVE INFORMATION IS COMPLETE AND CORRECT					
RESIDENT ENGINEER'S SIGNATURE				BUSINESS PHONE NUMBER	DATE

To be completed by the contractor and submitted to the Resident Engineer upon project completion

# **CONTRACT AND BOND FORMS FOR**

**LONE PINE SOLID WASTE SOLAR PROJECT**  
Lone Pine, CA

**ENCLOSURES:**

Contract: Inyo County Standard Contract No. 147  
Faithful Performance Bond  
Labor and Material Payment Bond

# **SPECIAL PROVISIONS**

**FOR**

**LONE PINE SOLID WASTE SOLAR PROJECT**

Lone Pine, CA

COUNTY OF INYO  
DEPARTMENT OF PUBLIC WORKS

# SPECIFICATIONS APPROVAL

## LONE PINE SOLID WASTE SOLAR PROJECT Lone Pine, CA

**These Special Provisions have been prepared by the Inyo County Public Works Department under the direction of the undersigned and are approved for the work contemplated herein.**



---

Director of Public Works

2/23/2022  
Specifications Approval Date



**SPECIAL PROVISIONS**  
**LONE PINE SOLID WASTE SOLAR PROJECT**

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The successful bidder must furnish 2 bonds:

1. Payment bond to secure the claim payments of laborers, workers, mechanics, or materialmen providing goods, labor, or services under the Contract. This bond must be equal to at least 100 percent of the Contract amount.
2. Performance bond to guarantee the faithful performance of the Contract. This bond must be equal to at least 100 percent of the Contract amount.

The bond forms are in the Bid Book.

### **3-1.06 CONTRACTOR LICENSE**

For a federal-aid contract, the Contractor must be properly licensed as a contractor from contract award through Contract acceptance (Pub Cont Code § 10164).

For a non-federal-aid contract:

1. The Contractor must be properly licensed as a contractor from bid opening through Contract acceptance (Bus & Prof Code § 7028.15)
2. Joint venture bidders must obtain a joint venture license before contract award (Bus & Prof Code § 7029.1)

### **3-1.07 INSURANCE POLICIES**

The successful bidder must submit:

1. Copy of its commercial general liability policy and its excess policy or binder until such time as a policy is available, including the declarations page, applicable endorsements, riders, and other modifications in effect at the time of contract execution. Standard ISO form no. CG 0001 or similar exclusions are allowed if not inconsistent with section 7-1.06. Allowance of additional exclusions is at the discretion of the Department.
2. Certificate of insurance showing all other required coverages. Certificates of insurance, as evidence of required insurance for the auto liability and any other required policy, shall set forth deductible amounts applicable to each policy and all exclusions that are added by endorsement to each policy. The evidence of insurance shall provide that no cancellation, lapse, or reduction of coverage will occur without 10 days prior written notice to the Department.
3. A declaration under the penalty of perjury by a CPA certifying the accountant has applied GAAP guidelines confirming the successful bidder has sufficient funds and resources to cover any selfinsured retentions if the self-insured retention is over \$50,000.

If the successful bidder uses any form of self-insurance for workers compensation in lieu of an insurance policy, it shall submit a certificate of consent to self-insure under Labor Code § 3700.

### **3-1.08 SMALL BUSINESS ENTERPRISE PARTICIPATION**

The successful bidder must sign the Contract form.

Deliver two (2) fully executed (except for the County's signature) to the Office Engineer:

1. Signed Contract form
2. Contract bonds
3. Documents identified in section 3-1.07
4. Payee Data Record
5. Small Business (SB) Participation Report form
6. For a federal-aid contract, Caltrans Bidder - DBE Information form

The Office Engineer must receive these documents before the 10th business day after the bidder receives the contract.

The bidder's security may be forfeited for failure to execute the contract within the time specified (Pub Cont Code §§ 10181, 10182, and 10183).

A copy of the Contract form is included in your bid book.

## **SECTION 7        LEGAL RELATIONS AND RESPONSIBILITY TO THE PUBLIC**

Amended to read as follows:

### **7-1.02K (2)    WAGES**

The general prevailing wage rates, determined by the Department of Industrial Relations, for Inyo County, are available at the County of Inyo address or the California DIR web site at <http://www.dir.ca.gov>. Changes are available at the same locations. These wage rates are not included in the Contract Documents. All labor will be paid at not less than these minimum wage rates.

### **ADD TO 7-1.02K (3) CERTIFIED PAYROLL RECORDS (LABOR CODE §1776)**

Keep accurate payroll records. Submit a copy of your certified payroll records, weekly, including those of subcontractors to the following:

1. Inyo County Department of Public Works
2. Division of Labor Standards Enforcement of the Department of Industrial Relations
3. Division of Apprenticeship Standards of the Department of Industrial Relations

Include:

1. Each employee's:
  - 1.1. Full name
  - 1.2. Address
  - 1.3. Social security number
  - 1.4. Work classification

copies of all required insurance policies, including endorsements required by these specifications, at any time. We strongly recommend obtaining a copy of the policy declarations and endorsement page (make this a requirement in your Contract) to facilitate verification of coverages and spot any undesirable policy limitations or exclusions.

3. **SUBCONTRACTORS:** Contractor shall require and verify that all subcontractors maintain insurance meeting all the requirements stated herein, and Contractor shall ensure that Entity is an additional insured on insurance required from subcontractors. For CGL coverage subcontractors shall provide coverage with a format least as broad as CG 20 38 04 13.
4. **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.
5. **CONTRACTOR'S LIABILITY NOT LIMITED BY INSURANCE:** Nothing contained in the insurance requirements is to be construed as limiting the liability of the Contractor or the Contractor's sureties.

#### **7-1.06C WORKERS' COMPENSATION AND EMPLOYER'S LIABILITY INSURANCE**

See Contractor's Labor Code Certification, Bid Certifications Page 2.

Provide Employer's Liability Insurance in amounts not less than:

1. \$1,000,000 for each accident for bodily injury by accident
2. \$1,000,000 policy limit for bodily injury by disease
3. \$1,000,000 for each employee for bodily injury by disease

Waive all rights of subrogation against the County, its officers, officials, employees and volunteers for losses arising from work performed by you.

#### **7-1.06D LIABILITY INSURANCE**

Coverage shall be at least as broad as:

1. **Commercial General Liability (CGL):** Insurance Services Office Form CG 00 01 covering CGL on an "occurrence" basis, including products and completed operations, property damage, bodily injury and 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 (ISO CG 25 03 or 25 04) or the general aggregate limit shall be twice the required occurrence limit.
2. **Automobile Liability:** Insurance Services Office Form Number CA 0001 covering any auto (Code 1), or if Contractor has no owned autos, hired (Code 8) and non-owned (Code 9) autos, with limit no less than **\$1,000,000** per accident for bodily injury and property damage.
3. **Contractors Pollution Liability and/or Asbestos Pollution Liability and/or Errors & Omissions** applicable to the work being performed, with a limit no less than **\$1,000,000** per claim or occurrence and **\$2,000,000** aggregate per policy period of one year.

4. A copy of the claims reporting requirements must be submitted to the Entity for review.
5. If the services involve lead-based paint or asbestos identification / remediation, the Contractors Pollution Liability shall not contain lead-based paint or asbestos exclusions. If the services involve mold identification / remediation, the Contractors Pollution Liability shall not contain a mold exclusion and the definition of "Pollution" shall include microbial matter including mold.

## **SECTION 8        PROSECUTION AND PROGRESS**

Amended to read as follows:

### **ADD TO 8-1.05        TIME**

The Contractor shall complete all designated portions of the work required to be provided pursuant to the contract no later than **Ten (10) Calendar days** from and including the Starting Date, plus such additional days, if any, which are expressly granted as extensions of time by Contract Change Orders signed and issued by the County. Such total number of days shall be referred to herein as the "Time for Completion".

Failure of the Contractor to perform any covenant or condition contained in the Contract Documents within the time period specified shall constitute material breach of this Contract entitling the County to terminate the Contract unless the Contractor applies for, and receives, an extension of time in accordance with the procedures set forth in Section 1017.09 SS, "EXTENSION OF TIME."

### **8-1.10        LIQUIDATED DAMAGES**

In accordance with Government Code Section 53069.85, the Contractor shall pay to the County of Inyo, liquidated damages in the amounts of:

**\$300.00** per day for each and every calendar day delay in finishing work in excess of the Time for Completion specified.

The County shall be entitled to deduct the amounts of liquidated damages from any payment otherwise due to the Contractor.

(d) (1) (A) Upon receipt of a claim pursuant to this section, the public entity to which the claim applies shall conduct a reasonable review of the claim and, within a period not to exceed 45 days, shall provide the claimant a written statement identifying what portion of the claim is disputed and what portion is undisputed. Upon receipt of a claim, a public entity and a contractor may, by mutual agreement, extend the time period provided in this subdivision.

(B) The claimant shall furnish reasonable documentation to support the claim.

(C) If the public entity needs approval from its governing body to provide the claimant a written statement identifying the disputed portion and the undisputed portion of the claim, and the governing body does not meet within the 45 days or within the mutually agreed to extension of time following receipt of a claim sent by registered mail or certified mail, return receipt requested, the public entity shall have up to three days following the next duly publicly noticed meeting of the governing body after the 45-day period, or extension, expires to provide the claimant a written statement identifying the disputed portion and the undisputed portion.

(D) Any payment due on an undisputed portion of the claim shall be processed and made within 60 days after the public entity issues its written statement. If the public entity fails to issue a written statement, paragraph (3) shall apply.

(2) (A) If the claimant disputes the public entity's written response, or if the public entity fails to respond to a claim issued pursuant to this section within the time prescribed, the claimant may demand in writing an informal conference to meet and confer for settlement of the issues in dispute. Upon receipt of a demand in writing sent by registered mail or certified mail, return receipt requested, the public entity shall schedule a meet and confer conference within 30 days for settlement of the dispute.

(B) Within 10 business days following the conclusion of the meet and confer conference, if the claim or any portion of the claim remains in dispute, the public entity shall provide the claimant a written statement identifying the portion of the claim that remains in dispute and the portion that is undisputed. Any payment due on an undisputed portion of the claim shall be processed and made within 60 days after the public entity issues its written statement. Any disputed portion of the claim, as identified by the contractor in writing, shall be submitted to nonbinding mediation, with the public entity and the claimant sharing the associated costs equally. The public entity and claimant shall mutually agree to a mediator within 10 business days after the disputed portion of the claim has been identified in writing. If the parties cannot agree upon a mediator, each party shall select a mediator and those mediators shall select a qualified neutral third party to mediate with regard to the disputed portion of the claim. Each party shall bear the fees and costs charged by its respective mediator in connection with the selection of the neutral mediator. If mediation is unsuccessful, the parts of the claim remaining in dispute shall be subject to applicable procedures outside this section.

(C) For purposes of this section, mediation includes any nonbinding process, including, but not limited to, neutral evaluation or a dispute review board, in which an independent third party or board assists the parties in dispute resolution through negotiation or by issuance of an evaluation. Any mediation utilized shall conform to the timeframes in this section.

(D) Unless otherwise agreed to by the public entity and the contractor in writing, the mediation conducted pursuant to this section shall excuse any further obligation under Section 20104.4 to mediate after litigation has been commenced.

(E) This section does not preclude a public entity from requiring arbitration of disputes under private arbitration or the Public Works Contract Arbitration Program, if mediation under this section does not resolve the parties' dispute.

(3) Failure by the public entity to respond to a claim from a contractor within the time periods described in this subdivision or to otherwise meet the time requirements of this section shall result in the claim being deemed rejected in its entirety. A claim that is denied by reason of the public entity's failure to have responded to a claim, or its failure to otherwise meet the time requirements of this section, shall not constitute an adverse finding with regard to the merits of the claim or the responsibility or qualifications of the claimant.

(4) Amounts not paid in a timely manner as required by this section shall bear interest at 7 percent per annum.

(5) If a subcontractor or a lower tier subcontractor lacks legal standing to assert a claim against a public entity because privity of contract does not exist, the contractor may present to the public entity a claim on behalf of a subcontractor or lower tier subcontractor. A subcontractor may request in writing, either on his or her own behalf or on behalf of a lower tier subcontractor, that the contractor present a claim for work which was performed by the subcontractor or by a



# LONE PINE SOLID WASTE SOLAR SPECIFICATIONS

## Part 1 – General

The project includes the purchase and installation of 10 Solar Panels 4.0 kW each and a rail system for their installation. (2) Sinewave Inverter with approximately 9kW AC continuous power (3) 4 lithium iron phosphate batteries of approximately 3.8 kWh DC capacity. The Contractor is responsible for the purchase and installation of any and all work (including furnishing all labor (prevailing wages govern), materials, and equipment) necessary to provide a complete installation per the locally adopted building, electrical, and other applicable codes, as well as good industry practices and standards, including but not limited to:

1. Overall off-grid power system design and electrical calculations
2. Obtain all permits and pay all fees
3. Grounding and bonding wires, clamps, and ground rods
4. Above and below ground PVC, EMT, Rigid and flexible conduit
5. Panels, conductors, and circuit breakers
6. Daily and final cleanup, off hauling of trash, crating materials and debris and payment of dump fees.
7. Training of the applicable County personnel on the operation of said equipment.
8. No change orders allowed. Contractor to provide for all contingencies.
9. Contractor must supply the County Engineer with a schedule of work prior to beginning work.

### **Solar Panels**

Purchase and installation of 10 solar panels each rated for 4.0kW of power. Installation of a rail system mounted on an existing storage container.

### **Inverter**

Purchase and installation of a sinewave inverter capable of 9kW of continuous power. Inverter will be connected to current conduit going to employee building.

### **Battery**

Purchase and installation of 4 lithium iron phosphate batteries capable of storing 3.8 kWh of energy.



# County of Inyo



## Public Works - Recycling & Waste Management

### CONSENT - ACTION REQUIRED

**MEETING:** March 1, 2022

**FROM:** Cap Aubrey

**SUBJECT:** Amendment No 1 to the Agreement with Shred Pro, Inc.

---

**RECOMMENDED ACTION:**

Request Board: A) approve and ratify Amendment No. 1 to the contract between the County of Inyo and Shred Pro, Inc. of Mammoth Lakes, CA, to add additional locations for document shredding pickup and increase the not-to-exceed amount from 116,952 to \$126,456, contingent upon the Board's approval of future budgets; and B) authorize the Chairperson to sign, contingent upon all appropriate signatures being obtained.

**SUMMARY/JUSTIFICATION:**

On October 26, 2021, your Board entered into a five-year and 6-month agreement with Shred Pro, Inc. to provide document shredding services for County facilities. This amendment includes two more additional pickup locations and three additional shred bins which increases the contract by \$9504.00 for the five-year and 6-month contract period. These locations were inadvertently left out of the original contract.

**BACKGROUND/HISTORY OF BOARD ACTIONS:**

**ALTERNATIVES AND CONSEQUENCES OF NEGATIVE ACTION:**

Your Board could choose not to approve the amendment. However, this is not recommended because the alternative is to bury the material in the landfill. The collecting, shredding and removal of this material is a very inexpensive alternative compared to land filling the material.

**OTHER AGENCY INVOLVEMENT:**

County Departments

**FINANCING:**

The Recycling and Waste Management program manages the paper-shredding contract. The expense is paid through the enterprise fund which is reimbursed by the departments benefitting from the service. The Fiscal Year 2021/2022 Budget 045700, Object Code 5265, Professional and Special Services includes this expense.



**ATTACHMENTS:**

1. Shred Pro Contract 2022
2. ShredPro Amendment 1

**APPROVALS:**

Teresa Elliott	Created/Initiated - 2/11/2022
Darcy Ellis	Approved - 2/11/2022
Teresa Elliott	Approved - 2/11/2022
Breanne Nelums	Approved - 2/11/2022
John Vallejo	Approved - 2/11/2022
Amy Shepherd	Approved - 2/11/2022
Michael Errante	Final Approval - 2/14/2022

# *In the Rooms of the Board of Supervisors*

County of Inyo, State of California

I, HEREBY CERTIFY, that at a meeting of the Board of Supervisors of the County of Inyo, State of California, held in their rooms at the County Administrative Center in Independence on the 26<sup>th</sup> day of October 2021 an order was duly made and entered as follows:

*Public Works –  
Recycling & Waste  
Management -  
Shred Pro Contract*

Moved by Supervisor Roeser and seconded by Supervisor Pucci to approve the contract between the County of Inyo and Shred Pro Inc. of Mammoth Lakes, CA for the provision of document shredding in an amount not to exceed \$116,952 for the period of January 1, 2022 through June 30, 2027, contingent upon the Board's approval of future budgets, and authorize the Chairperson to sign, contingent upon all appropriate signatures being obtained. Motion carried unanimously.

WITNESS my hand and the seal of said Board this 26<sup>th</sup>  
Day of October, 2021



LESLIE L. CHAPMAN  
Clerk of the Board of Supervisors

*Leslie L. Chapman*

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

<i>Routing</i>
CC Purchasing Personnel Auditor CAO Other: PW-RWM DATE: November 3, 2021

**AGREEMENT BETWEEN COUNTY OF INYO**  
**AND SHRED PRO INC**  
**FOR THE PROVISION OF DOCUMENT SHREDDING SERVICES**

**INTRODUCTION**

WHEREAS, the County of Inyo (hereinafter referred to as "County") may have the need for the DOCUMENT SHREDDING services of SHRED PRO INC of MAMMOTH LAKES, CA (hereinafter referred to as "Contractor"), and in consideration of the mutual promises, covenants, terms, and conditions hereinafter contained, the parties hereby agree as follows:

**TERMS AND CONDITIONS**

**1. SCOPE OF WORK.**

The Contractor shall furnish to the County, upon its request, those services and work set forth in Attachment A, attached hereto and by reference incorporated herein. Requests by the County to the Contractor to perform under this Agreement will be made by JOHN PINCKNEY, whose title is: DEPUTY PUBLIC WORKS DIRECTOR. Requests to the Contractor for work or services to be performed under this Agreement will be based upon the County's need for such services. The County makes no guarantee or warranty, of any nature, that any minimum level or amount of services or work will be requested of the Contractor by the County under this Agreement. County by this Agreement incurs no obligation or requirement to request from Contractor the performance of any services or work at all, even if County should have some need for such services or work during the term of this Agreement.

Services and work provided by the Contractor at the County's request under this Agreement will be performed 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.

**2. TERM.**

The term of this Agreement shall be from January 1, 2022 to June 30, 2027 unless sooner terminated as provided below.

**3. CONSIDERATION.**

A. Compensation. County shall pay to Contractor in accordance with the Schedule of Fees (set forth as Attachment B) for the services and work described in Attachment A which are performed by Contractor at the County's request.

B. Travel and per diem. Contractor will not be paid or reimbursed for travel expenses or per diem which Contractor incurs in providing services and work requested by County under this Agreement.

C. No additional consideration. Except as expressly provided in this Agreement, Contractor 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, Contractor 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.

D. Limit upon amount payable under Agreement. The total sum of all payments made by the County to Contractor for services and work performed under this Agreement shall not exceed One Hundred sixteen nine hundred fifty two Dollars

(\$116,952) (hereinafter referred to as "contract limit"). County expressly reserves the right to deny any payment or reimbursement requested by Contractor for services or work performed which is in excess of the contract limit.

E. Billing and payment. Contractor shall submit to the County, once a month, an itemized statement of all services and work described in Attachment A, which were done at the County's request. This statement will be submitted to the County not later than the fifth (5th) day of the month. The statement to be submitted will cover the period from the first (1st) day of the preceding month through and including the last day of the preceding month. This statement will identify the date on which the services and work were performed and describe the nature of the services and work which were performed on each day. Upon timely receipt of the statement by the fifth (5th) day of the month, County shall make payment to Contractor on the last day of the month.

F. 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 Contractor under the terms and conditions of this Agreement.

(2) County will withhold California State income taxes from payments made under this Agreement to non-California resident independent contractors when it is anticipated that total annual payments to Contractor 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 Contractor under this Agreement. Payment of all taxes and other assessments on such sums is the sole responsibility of Contractor. County has no responsibility or liability for payment of Contractor's taxes or assessments.

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

**4. WORK SCHEDULE.**

Contractor's obligation is to perform, in a timely manner, those services and work identified in Attachment A which are requested by the County. It is understood by Contractor that the performance of these services and work will require a varied schedule. Contractor will arrange his/her own schedule, but will coordinate with County to ensure that all services and work requested by County under this Agreement will be performed within the time frame set forth by County.

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

A. Any licenses, certificates, or permits required by the federal, state, county, municipal governments, for contractor to provide the services and work described in Attachment A must be procured by Contractor and be valid at the time Contractor enters into this Agreement or as otherwise may be required. Further, during the term of this Agreement, Contractor 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 licenses, professional licenses or certificates, and business licenses. Such licenses, certificates, and permits will be procured and maintained in force by Contractor at no expense to the County. Contractor will provide County, upon execution of this Agreement, with evidence of current and valid licenses, certificates and permits which are required to perform the services identified in Attachment A. Where there is a dispute between Contractor and County as to what licenses, certificates, and permits are required to perform the services identified in Attachment A, County reserves the right to make such determinations for purposes of this Agreement.

B. Contractor 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. Contractor 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, ET CETERA.**

Contractor shall provide such office space, supplies, equipment, vehicles, reference materials, and telephone service as is necessary for Contractor to provide the services identified in Attachment A to this Agreement. County is not obligated to reimburse or pay Contractor, for any expense or cost incurred by Contractor in procuring or maintaining such items. Responsibility for the costs and expenses incurred by Contractor in providing and maintaining such items is the sole responsibility and obligation of Contractor.

#### **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 Contractor by County pursuant to this Agreement are, and at the termination of this Agreement remain, the sole and exclusive property of County. Contractor will use reasonable care to protect, safeguard and maintain such items while they are in Contractor's possession. Contractor will be financially responsible for any loss or damage to such items, partial or total, which is the result of Contractor's negligence.

B. Products of Contractor'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, Contractor's services or work under this Agreement are, and at the termination of this Agreement remain, the sole and exclusive property of the County. At the termination of the Agreement, Contractor will convey possession and title to all such properties to County.

#### **8. INSURANCE.**

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

#### **9. STATUS OF CONTRACTOR.**

All acts of Contractor, its agents, officers, and employees, relating to the performance of this Agreement, shall be performed as independent contractors, and not as agents, officers, or employees of County. Contractor, 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, Contractor has no authority or responsibility to exercise any rights or power vested in the County. No agent, officer, or employee of the Contractor is to be considered an employee of County. It is understood by both Contractor 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 contractor:

A. Contractor shall determine the method, details, and means of performing the work and services to be provided by Contractor under this Agreement.

B. Contractor 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 Contractor in fulfillment of this Agreement.

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

**10. DEFENSE AND INDEMNIFICATION.**

Contractor shall hold harmless, defend and indemnify County and its officers, officials, employees and volunteers from and against any and all liability, loss, damage, expense, costs (including without limitation costs and fees of litigation) of every nature arising out of or in connection with Contractor's performance of work hereunder or its failure to comply with any of its obligations contained in the agreement, except such loss or damages which was caused by the sole negligence or willful misconduct of the County.

**11. RECORDS AND AUDIT.**

A. Records. Contractor shall prepare and maintain all records required by the various provisions of this Agreement, federal, state, county, municipal, ordinances, regulations, and directions. Contractor shall maintain these records for a minimum of four (4) years from the termination or completion of this Agreement. Contractor 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 Contractor, 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 Contractor. Further, County has the right, at all reasonable times, to audit, inspect, or otherwise evaluate the work performed or being performed under this Agreement.

**12. NONDISCRIMINATION.**

During the performance of this Agreement, Contractor, its agents, officers, and employees 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. Contractor and its agents, officers, and employees 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. Contractor 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.

**13. CANCELLATION.**

This Agreement may be canceled by County without cause, and at will, for any reason by giving to Contractor thirty (30) days written notice of such intent to cancel. Contractor may cancel this Agreement without cause, and at will, for any reason whatsoever by giving thirty (30) days written notice of such intent to cancel to County.

**14. ASSIGNMENT.**

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

**15. DEFAULT.**

If the Contractor abandons the work, or fails to proceed with the work and services requested by County in a timely manner, or fails in any way as required to conduct the work and services as required by County, County may declare the Contractor in default and terminate this Agreement upon five (5) days written notice to Contractor. Upon such termination by default, County will pay to Contractor all amounts owing to Contractor for services and work satisfactorily performed to the date of termination.

**16. 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-two (22) below.

**17. CONFIDENTIALITY.**

Contractor 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 Contractor in the course of providing services and work under this Agreement, shall be privileged, restricted, or confidential. Contractor agrees to keep confidential all such information and records. Disclosure of such confidential, privileged, or protected information shall be made by Contractor only with the express written consent of the County. Any disclosure of confidential information by Contractor without the County's written consent is solely and exclusively the legal responsibility of Contractor in all respects.

Notwithstanding anything in the Agreement to the contrary, names of persons receiving public social services are confidential and are to be protected from unauthorized disclosure in accordance with Title 45, Code of Federal Regulations Section 205.50, the Health Insurance Portability and Accountability Act of 1996, and Sections 10850 and 14100.2 of the Welfare and Institutions Code, and regulations adopted pursuant thereto. For the purpose of this Agreement, all information, records, and data elements pertaining to beneficiaries shall be protected by the provider from unauthorized disclosure.

**18. CONFLICTS.**

Contractor agrees that it has no interest, and shall not acquire any interest, direct or indirect, which would conflict in any manner or degree with the performance of the work and services under this Agreement.

**19. POST AGREEMENT COVENANT.**

Contractor agrees not to use any confidential, protected, or privileged information which is gained from the County in the course of providing services and work under this Agreement, for any personal benefit, gain, or enhancement. Further, Contractor 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, or who has been an adverse party in litigation with the County, and concerning such, Contractor by virtue of this Agreement has gained access to the County's confidential, privileged, protected, or proprietary information.

**20. 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.

**21. 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 Contractor 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-two (22) (Amendment).

**22. 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.

**23. 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 Contractor 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	
<u>Recycling &amp; Waste Management</u>	Department
<u>1360 N Main St</u>	Address
<u>Bishop, CA 93514</u>	City and State

Contractor:	
<u>Shred Pro Inc</u>	Name
<u>P O Box 100 PMB 353</u>	Address
<u>Mammoth Lakes, CA 93546</u>	City and State

**24. 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 SHRED PRO INC**  
**FOR THE PROVISION OF DOCUMENT SHREDDING SERVICES**

IN WITNESS THEREOF, THE PARTIES HERETO HAVE SET THEIR HANDS AND SEALS  
THIS 26th DAY OF October, 2021

**COUNTY OF INYO**

By: *Jeff Griffiths*  
Signature

Jeff Griffiths  
Print or Type Name

Dated: 10/26/2021

**CONTRACTOR**

By: *Juanita McCamish*  
Signature

Juanita McCamish  
Print or Type Name

Dated: 09/29/2021

**APPROVED AS TO FORM AND LEGALITY:**

County Counsel

*Trace Church*

**APPROVED AS TO ACCOUNTING FORM:**

*Christie Martindale*  
County Auditor

**APPROVED AS TO PERSONNEL REQUIREMENTS:**

*[Signature]*  
Personnel Services

**APPROVED AS TO INSURANCE REQUIREMENTS:**

*[Signature]*  
County Risk Manager

**ATTACHMENT A**

**AGREEMENT BETWEEN COUNTY OF INYO  
AND SHRED PRO INC  
FOR THE PROVISION OF DOCUMENT SHREDDING SERVICES**

**TERM:**

**FROM:** 1/1/2022 **TO:** 6/30/2027

**SCOPE OF WORK:**

The contractor will be required to service the department bins on a once per month schedule, or more often if requested by the County. The contractor will enter the office during normal business hours, empty the office recycling bin into a larger container, and transport the material to the contractor's document destruction vehicle where the contents of the bin will be shredded and bagged. Once the shredding has been completed the shredded paper will be taken from the vehicle and stored in a secure manner and will be transported by the contractor to a recycling mill.

The contractor will be required to provide a variety of bin sizes to meet the County department needs. The contractor will be required, as part of the services, to provide all necessary equipment and tools to provide the required services. Attached is a list of the required bins, bin sizes and locations. (Please note that bin size and locations may change during the contract term.)

# DOCUMENT SHREDDING LOCATIONS

## INDEPENDENCE

### Administration Building, 224 N Edwards

Board Clerk (2) 65-gallon bins  
CAO  
County Counsel  
Personnel  
Purchasing

### Annex Building, 168 N Edwards

Assessor (1) 95-gallon bin  
Info Services

Environmental Health  
Planning (3) Executives  
Public Works

### Courthouse

2nd Floor  
County Clerk/Recorders (1) Half Executive

Treasurer main office (1) Half Executive  
Auditor's Office (3) Executives

3rd Floor-District Attorney (1) Executive  
3rd Floor-Superior Court (1) Executive

155 N Edwards  
Health and Human Services (1) 65-gallon bin

550 S Clay Street  
Jail (1) 95-gallon bin

201 Mazourka Road  
Juvenile Hall (1) Executive

### 135 S Jackson Street, Water Dept, Yucca Mtn

Water (1) Executive  
Yucca Mtn

## LONE PINE

310 N Jackson St (1) Executive  
Probation  
Social Services

726 N Main Street (1) 38 gallon bin  
Sheriff's Substation

## BISHOP

1360 N. Main St Front Reception (1) Executive  
All COB Depts

1360 N Main St Room 114 (1) 65 gallon bin  
Social Services

1360 N Main St Room 117 (1) 38 gallon bin  
Public Health

1360 N Main St Room 124 (1) 95-gallon bin  
Behavioral Health

1360 N Main St Room 151 (1) 38 gallon bin  
Sheriff Dept

1360 N Main St Room 156 (1) 65 gallon bin  
HHS Admin  
Behavioral Health  
Probation

1360 N Main St Room 162 (1) 65 gallon bin  
Probation

1360 N Main St Room 204 (1) 65 gallon bin  
HHS Admin  
Social Services  
Public Health

1360 N Main St Room 214 (1) 95-gallon bin  
Ag Commissioner  
Environmental Health  
Farm Advisor  
Motor Pool  
Parks and Recreation  
Solid Waste

1360 N Main St Child Support	Room 237	(1) 38 gallon bin
1360 N Main St CAO County Counsel Personnel Risk Management	Room 256	(1) 65-gallon bin
1360 N Main St District Attorney	Room 264	(1) 65 gallon bin
682 Spruce St Senior Center		(1) Executive
536 N. Second St Progress House		(1) Executive
586 Central St Wellness Center		(1) Executive

**ATTACHMENT B**

**AGREEMENT BETWEEN COUNTY OF INYO  
AND SHRED PRO INC  
FOR THE PROVISION OF DOCUMENT SHREDDING SERVICES**

**TERM:**

**FROM:** 1/1/2022 **TO:** 6/30/2027

**SCHEDULE OF FEES:**

County will pay the contractor \$21,264 annually for the work in Attachment A, to be invoiced monthly.

The term of the contract will be for a period of five fiscal years and 6 months.

**ATTACHMENT C**

**AGREEMENT BETWEEN COUNTY OF INYO  
AND SHRED PRO INC  
FOR THE PROVISION OF DOCUMENT SHREDDING SERVICES**

**TERM:**

**FROM:** 1/1/2022      **TO:** 6/30/2027

**SEE ATTACHED INSURANCE PROVISIONS**

**AMENDMENT NUMBER 1 TO  
AGREEMENT BETWEEN THE COUNTY OF INYO AND  
SHRED PRO INC  
FOR THE PROVISION OF INDEPENDENT CONTRACTOR SERVICES**

WHEREAS, the County of Inyo (hereinafter referred to as "County") and SHRED PRO INC of MAMMOTH LAKES (hereinafter referred to as "Contractor"), have entered into an Agreement for the Provision of Independent Contractor Services dated October 26, 2021 on County of Inyo Standard Contract No. 116, for the term from January 1, 2022 to June 30, 2027.

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

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

County and Contractor hereby amend such Agreement as follows:

In Attachment A regarding Document Shredding Locations, the Agreement is amended to add the following locations:

Lone Pine  
138 Jackson St - Lone Pine Senior Center (1) Executive

Bishop  
301 W Line St - Superior Court (1) Executive  
(1) 38 gallon bin

In Attachment B, Agreement Between County of Inyo and Shred Pro Inc is amended as follows:

County will pay the contractor an amount not to exceed \$126,456 for all the work listed in Attachment A, to be invoiced monthly.

Similarly, the first sentence of paragraph 3.D Limit upon amount payable under this agreement is amended to read as follows:

The total sum of all payments made by the County to Contractor for services and work performed under this agreement shall not exceed One Hundred Twenty Six Thousand Four Hundred Fifty Six Dollars (hereinafter referred to as "contract limit"). County expressly reserves the right to deny any payment or reimbursement requested by Contractor for services or work performed which is in excess of the contract limit.

All other terms to remain in full force and effect.

The effective date of this Amendment to the Agreement is January 1, 2022.

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



**AMENDMENT NUMBER 1 TO**  
**AGREEMENT BETWEEN THE COUNTY OF INYO AND**  
**SHRED PRO INC**  
**FOR THE PROVISION OF INDEPENDENT CONTRACTOR SERVICES**

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

**COUNTY OF INYO**

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

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

**CONTRACTOR**


By: Juanita Mccamish  
Signature

\_\_\_\_\_  
Juanita V. Mccmaih

Type or Print

Dated 02/10/2022

APPROVED AS TO FORM AND LEGALITY:

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

APPROVED AS TO ACCOUNTING FORM:

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

APPROVED AS TO PERSONNEL REQUIREMENTS:

\_\_\_\_\_  
Personnel Services

APPROVED AS TO RISK ASSESSMENT:

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



# County of Inyo

## Water Department

### CONSENT - ACTION REQUIRED

**MEETING:** March 1, 2022

**FROM:** Aaron Steinwand

**SUBJECT:** Appointment of one applicant to fill vacancy on the Water Commission

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**RECOMMENDED ACTION:**

Request Board consider the Letter of Interest received for re-appointment to the Water Commission and appoint one Water Commissioner with a term ending December 31, 2025.

**SUMMARY/JUSTIFICATION:**

The Water Commission currently has one vacancy with a term ending December 31, 2025. The Assistant Clerk of the Board has advertised this vacancy in accordance with County policy. Prior to the application deadline, one Letter of Interest was received from Mr. Randy Keller seeking re-appointment to the Commission to complete a four (4) term of office ending December 31, 2025.

**BACKGROUND/HISTORY OF BOARD ACTIONS:**

N/A

**ALTERNATIVES AND CONSEQUENCES OF NEGATIVE ACTION:**

Not appoint a Commissioner at this time and re-advertise to fill the vacancy.

**OTHER AGENCY INVOLVEMENT:**

None

**FINANCING:**

Water Commission stipends and travel expenses are paid from the Water Department budget (024102).

**ATTACHMENTS:**

1. Randy Keller Water Commission Reappointment Request - 2022

**APPROVALS:**

Laura Piper  
Darcy Ellis  
Aaron Steinwand

Created/Initiated - 2/22/2022  
Approved - 2/22/2022  
Final Approval - 2/22/2022



Randy Keller  
P.O. Box 932  
Bishop, CA 93515

February 15, 2022

Inyo County Board of Supervisors  
P.O. Drawer N  
Independence, CA 93526

Dear Board,

Please consider me for re-appointment to the Inyo County Water Commission. I believe the Commission provides an important service to the public. It is a forum on issues relating to the Water Agreement, enhances understanding of those issues and provides a channel from the public to your Board. It has been a privilege to serve on the Commission.

Sincerely,



Randy Keller



# County of Inyo

## Water Department

### CONSENT - ACTION REQUIRED

**MEETING:** March 1, 2022

**FROM:** Aaron Steinwand

**SUBJECT:** Authorizing the Director of the Water Department to sign a Letter of Intent between the County of Inyo and Sierra Nevada Alliance

---

**RECOMMENDED ACTION:**

Request Board authorize the Water Director to sign a Letter of Intent between the County of Inyo and Sierra Nevada Alliance for the provision of two (2) Field Assistants from the Sierra Nevada AmeriCorps Membership in an amount not to exceed \$19,000 for the period of April 15, 2022 through September 30, 2022.

**SUMMARY/JUSTIFICATION:**

The Inyo County Water Department (ICWD) seeks to obtain two (2) seasonal field assistants through an agreement with the Sierra Nevada Alliance (SNA) for vegetation sampling and riparian studies during the 2022 season. A letter of intent must be received by SNA prior to March 15, 2022 in order to move forward with the process of contracting with SNA for these personnel services.

If authorized and a contract is entered into between the County of Inyo and SNA, these seasonal positions would provide extra help needed to complete field work funded by various grants. The ICWD budget will benefit from a partnership with the SNA since significant cost savings will result.

For the current field season, April through September 2022, the County is responsible for \$9,500 per member for a total of \$19,000. The Letter of Intent states that funds are contingent on the approval of the 2021-2022 fiscal year mid-year budgets.

**BACKGROUND/HISTORY OF BOARD ACTIONS:**

The Sierra Nevada AmeriCorps Partnership is administered by the Sierra Nevada Alliance. This program places individuals who are interested in environmental management in early career positions. The program covers half of the wages and benefits. Last field season, April through September 2021, the ICWD contracted with SNA for (1) Field Assistant.

**ALTERNATIVES AND CONSEQUENCES OF NEGATIVE ACTION:**

The Board could not approve the action outlined in the Departmental Recommendation. This alternative would limit the scope of vegetation sampling and riparian studies.

**OTHER AGENCY INVOLVEMENT:**

Sierra Nevada Alliance

**FINANCING:**

Sufficient funds are available for these positions from April 4, 2022 through June 30, 2022 in the ICWD fiscal year 2021-2022 budget (024102-5265 Professional & Special Services) pending approval of the mid-year budget by the Board of Supervisors. Since these positions are paid in full by April 1, 2022, there is no need to consider the fiscal year 2022-23 budget. The ICWD is a non-general fund program. There will be no fiscal impact on the Inyo County General Fund.

**ATTACHMENTS:**

1. Inyo County Water Department Letter of Intent
2. Member Service Plan Form 2022

**APPROVALS:**

Laura Piper	Created/Initiated - 2/3/2022
Aaron Steinwand	Approved - 2/3/2022
Darcy Ellis	Approved - 2/3/2022
Laura Piper	Approved - 2/4/2022
Sue Dishion	Approved - 2/16/2022
John Vallejo	Approved - 2/17/2022
Amy Shepherd	Final Approval - 2/17/2022



(760) 878-0001  
FAX: (760) 878-2552

P.O. Box 337  
135 South Jackson Street  
Independence, CA 93526  
WEB: <http://www.inyowater.org>

## COUNTY OF INYO WATER DEPARTMENT

February 3, 2022

Jenny Hatch  
Sierra Nevada Alliance  
S. Lake Tahoe Office  
3079 Harrison Ave  
South Lake Tahoe, CA 96150

Subject: Letter of Intent

Dear Ms. Hatch,

The Inyo County Water Department submits this Letter of Intent to partner with the Sierra Nevada AmeriCorps Partnership and the Sierra Nevada Alliance for the 2021-22 program year for the following positions:

- Field Assistant x 2

The Water Department will provide the \$9,500 cash match per member (\$19,000 total) as stated in the SNAP Host Site Application by April 1, 2022. This payment and letter are contingent upon the Inyo County Board of Supervisors approving the fiscal year (2021-2022) mid-year budget amendments.

If you have any questions, please contact the Water Department at (760) 878-0001.

Sincerely,

Aaron Steinwand  
Director, Inyo County Water Department



**CALIFORNIA**  
**VOLUNTEERS**



## **Member Service Plan Sierra Nevada AmeriCorps Partnership**

**Host Site:** Inyo County Water Department

**Position Title:** Field Assistant – Vegetation Monitoring

**Designated Site Supervisor:** Meredith Jabis, Senior Scientist, [mjabis@inyocounty.us](mailto:mjabis@inyocounty.us)

**Term of Service:** April 15, 2022 – September 30, 2022

### **Organizational Background:**

The Inyo County Water Department is located in the eastern Sierra Nevada, and monitors the vegetation, soil water, and hydrology within the Owens Valley, CA. It operates in keeping with a Long Term Water Agreement (LTWA) with the City of Los Angeles to manage ground and surface water exportation to supply the city of Los Angeles, while maintaining local environmental conditions in the Owens Valley and the Owens River watershed. One of the primary LTWA goals is to manage water resources while maintaining vegetation community types in the Owens Valley in the same condition as existed during a 'baseline' period (1984-1987). The Inyo County Water Department (ICWD) thus monitors a variety of vegetation types, including within ground water dependent (phreatophytic) and riparian vegetation communities, as well as monitoring: hydrologic conditions in subsurface test wells, surface water flows, and soil moisture at sites across the Owens Valley from the Pleasant Valley Dam in the north to Owens Lake in the south.

ICWD has participated in cooperative studies to better understand water needs of groundwater dependent vegetation communities and has a substantial long term vegetation community dataset. We also assess mitigation project conditions across the valley including a large scale river re-watering and restoration project on the Lower Owens River through which we work collaboratively and adaptively with several parties to realize project goals. To learn more, visit our website at <https://www.inyowater.org/>.

### **Organizational/Program Goals 2021-22:**

The Water Department's work is varied; it involves both vegetation and hydrologic monitoring. ICWD is currently involved in a new study of the riparian system along the Owens River. Riparian forest is specifically targeted because it is one of the most vulnerable community types in the Owens Valley, the land area of this community type has declined on the lower Owens River, and riparian forest establishment is a goal of the Lower



Owens River Project (LORP), a large scale mitigation and river restoration project identified in the LTWA. Our program for 2021 will thus focus on historic and current riparian tree recruitment along the Middle and Lower Owens River as well as to describe local stand age and size structure of populations to assess population dynamics and long term viability.

Each year ICWD monitors a set of permanent vegetation transects within groundwater dependent vegetation communities including alkali meadows, wet meadows, or saltbush and rabbitbrush mixed scrub-meadows or scrub communities. The ICWD also monitors hydrologic variables including groundwater test wells to assess local aquifer conditions, monitors monthly soil moisture conditions, and monitors flows at tributaries and along the channel of the Owens River relevant to vegetation conditions. This year we will also be assessing conditions at select mitigation project sites identified in the Long Term Water Agreement.

### **Member Service Plan Overview and Outcomes:**

Due to the varied environmental datasets ICWD is involved in collecting, SNAP volunteers may be exposed to various vegetation, soil, or hydrologic sampling techniques. Primary activities will involve vegetation sampling as part of novel riparian studies, or within groundwater dependent vegetation communities.

Riparian studies will involve working in a crew of 2 or 3 with a team leader, locating new transect startpoints, setting up transects, marking start and end locations, recording vegetation along the centerline, recording canopy cover, and identifying and recording riparian tree positions within a 10-m wide belt transect. At these riparian transects members may also collect soil samples, record fluvial geomorphic surfaces, or assist in collecting tree core samples. Ongoing long-term vegetation monitoring includes revisiting permanent vegetation transects using a combination of GPS and printed maps, and identifying and recording plant species present.

SNAP members will also be involved in assessments of riparian tree recruitment locations such as recording riparian sapling size and height measurements on the lower Owens River (LORP) to help identify locations for future restoration work (which could include pole planting or changes in hydrologic management). Finally, SNAP members will be exposed to some ~10-30 year old environmental mitigation sites and assist in condition assessment relative to project goals.

### **Service Position Major Projects:**

#### **1. Watershed/Forest Restoration and Assessment:**

##### **a. Priority Project: Riparian Tree Recruitment**

As a result of the re-watering of 62 miles of the Lower Owens River at relatively low flows, tules (primarily *Typha spp.* and *Schoenoplectus acutus*) have invaded former point bars and other potential recruitment locations for riparian trees, competing with successful riparian tree establishment. The SNAP member will assist staff in revisiting known riparian tree recruitment locations to assess site characteristics that support tree recruitment including the number of recruits and their size: basal diameter and height, along with presence of co-occurring vegetation species that could be competing with tree establishment, patch size, and ground substrate (e.g. bare soil, litter). Local environmental conditions including landform, tree topographic elevation relative to water surface, and soil samples will also be

collected. This is an observational study and therefore does not cover a substantial area but is critical to inform future restoration work in subsequent years.

**i. Projected Hours:** 160

**ii. Estimated Acres Restored:** 0 (but ~1 acre in data collection)

**1. Acres Restored by Member (ONLY):** 0 (but ~0.5 acre to be sampled by member)

**a. Priority Project: Riparian Vegetation Monitoring**

Members will assist in riparian vegetation monitoring and studies as part of a 2-3 person team along 107 miles of the Owens River from Pleasant Valley to the Delta. Member tasks may include navigation to transect start points using GPS, setting up start and end points, identifying plants to the species level, recording canopy cover and closure, locating and recording height and diameter of riparian trees within a 10-m wide belt, collecting soils, recording fluvial geomorphic type, or assisting collection of tree core samples. Members will learn to identify riparian, wetland and marsh species and to perform a set of riparian measurements.

**iii. Projected Hours:** 475

**iv. Estimated Acres Restored:** NA

**1. Acres Restored by Member (ONLY):** NA

**b. Priority Project: Vegetation Monitoring**

Members may assist in ongoing vegetation monitoring within groundwater dependent vegetation communities, given member interest. The SNAP member may be involved in an annual assessment of vegetation conditions within alkali meadow, wet meadow, or saltbush-rabbitbrush scrub communities on the floor of the Owens Valley supported by subsurface flows that create relatively shallow groundwater conditions, in an area with only 5-6 in of annual precipitation, thus supporting meadow systems. Members will be trained in vegetation identification to the species level and will learn the line-point vegetation monitoring technique.

**i. Projected Hours:** 25

**ii. Estimated Acres Restored:** NA

**1. Acres Restored by Member (ONLY):** NA

**c. Priority Project: Mitigation Project Assessment**

Some mitigation projects identified within the Long Term Water Agreement were established to restore riparian, marsh, or spring-seep conditions. These sites have not been formally assessed to determine if they are meeting project goals. Members will assist in vegetation and condition assessment at mitigation sites primarily through vegetation transects or plots, and/or soils evaluation.

**i. Projected Hours:** 100

**ii. Estimated Acres Restored:** NA

**1. Acres Restored by Member (ONLY):** NA

- d. Watershed/Forest Restoration and Assessment Totals:**
  - i. Total Projected Hours:** 760
  - ii. Total Estimated Acres Restored:** *NA*
    - 1. Total Member Acres Restored:** *NA*
- 2. Environmental Education**
  - a. Priority Project:** not applicable
    - i. Projected Hours:**
    - ii. Estimated Education Outcomes:**
      - 1. Presentations:** not applicable
- 3. Volunteer Recruitment and Support:**
  - a. Priority Project:** not applicable
    - i. Projected Hours:**
    - ii. Estimated Outcomes:**
      - 1. Number of Volunteers Recruited:**
      - 2. Total # of Hours Served by Volunteers:**
- 4. Resource Attainment:**
  - a. Priority Project:** not applicable.
    - i. Projected Hours:**
    - ii. Estimated Outcomes:**
      - 1. Number of Donations (Grants, Services, Goods, etc):**
      - 2. Dollar Amount of Donation:**
- 5. Green Jobs Training and Member Development:**
  - a. SNAP Specific Trainings:** Required SNAP Member Orientation, Spring Training and Service Projects, Fall Training and Sierra Nevada Alliance Annual Conference, and Graduation
    - i. Projected Hours:** 70 Hours
  - b. Site Specific Orientation:** Riparian Tree Recruitment
    - i. Projected Hours:** 10
  - c. Site Specific Training:** Riparian Vegetation Monitoring
    - i. Projected Hours:** 30
  - d. Site Specific Training:** Line Point Vegetation Monitoring
    - i. Projected Hours:** 20
  - e. Site Specific Training:** Safety Training
    - i. Projected Hours:** 10
  - f. Member Training and Development Totals:**
    - i. Total Projected Hours:** 140
- 6. Total Hours:** 900
- 7. Member- driven projects based on individual interests and skills:** 40
- 8. Percentage Totals:**
  - a. Watershed/Forest Restoration and Assessment:** 80%

- b. Environmental Education: 0%**
- c. Volunteer Recruitment and Support: 0%**
- d. Resource Attainment: 0%**
- e. Member Training and Development: 15%**
- f. Member-driven Projects: 5%**



# County of Inyo



## Probation

### DEPARTMENTAL - ACTION REQUIRED

**MEETING:** March 1, 2022

**FROM:** Jeffrey Thomson

**SUBJECT:** Recognition of Deputy Probation Officer Lisa Vetter

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**RECOMMENDED ACTION:**

Request Board: A) approve a proclamation titled, "A Proclamation of the Board of Supervisors, County of Inyo, State of California, Commending Deputy Probation Officer Lisa Vetter for her Outstanding Contributions to the Inyo County Probation Department and Service to the Citizens of Inyo County and for Being Awarded the Employee of the Year by the Chief Probation Officers of California;" and B) present the proclamation to Deputy Probation Officer Vetter.

**SUMMARY/JUSTIFICATION:**

On December 7, 2021, DPO Lisa Vetter was recognized among thousands of state probation professionals as the Chief Probation Officers of California Employee of the Year for her commitment, dedication, and excellence in *Restoring Trust and Creating Hope*, promoting the probation mission and making our communities a safer place to live.

**BACKGROUND/HISTORY OF BOARD ACTIONS:**

**ALTERNATIVES AND CONSEQUENCES OF NEGATIVE ACTION:**

**OTHER AGENCY INVOLVEMENT:**

**FINANCING:**

**ATTACHMENTS:**

1. Proclamation Honoring Lisa Vetter 2022

**APPROVALS:**

Jeffrey Thomson  
Darcy Ellis  
Jeffrey Thomson

Created/Initiated - 2/11/2022  
Approved - 2/11/2022  
Final Approval - 2/24/2022





C O U N T Y O F

# Inyo

## Proclamation

A PROCLAMATION OF THE BOARD OF SUPERVISORS, COUNTY OF INYO, STATE OF CALIFORNIA, COMMENDING DEPUTY PROBATION OFFICER LISA VETTER FOR HER OUTSTANDING CONTRIBUTIONS TO THE INYO COUNTY PROBATION DEPARTMENT AND SERVICE TO THE CITIZENS OF INYO COUNTY AND FOR BEING AWARDED THE EMPLOYEE OF THE YEAR BY THE CHIEF PROBATION OFFICERS OF CALIFORNIA

**WHEREAS**, the role of a Deputy Probation Officer has evolved in the last decade to balance accountability with rehabilitation and encouragement to the clients they serve while maintaining public safety. This often requires the DPO to provide direct services to clients; and

**WHEREAS**, Deputy Probation Officer Lisa Vetter was hired by the Inyo County Probation Department in 2018 and assigned the domestic violence caseload; and

**WHEREAS**, at the time there was not a 52-week DV program in Inyo County that was utilizing an evidenced-based curriculum nor was there anything available for clients in the south county, forcing them to drive 45-60 minutes each week for class; and

**WHEREAS**, DPO Vetter took initiative to find a solution, seeking out domestic violence training in order to administer the Corrections Counseling Institute's Moral Reconciliation Therapy specific to the prevention of domestic violence; and

**WHEREAS**, DPO Vetter created a Court-approved 52-week program that would meet all state mandates pursuant to Penal Code Section 1203.097 that could be used by other probation departments as a model; and

**WHEREAS**, DPO Vetter is the Chair of the local Domestic Violence Council and collaborates with the Bishop Paiute Tribe's Relief After Violent Encounters (RAVE) to assist survivors of domestic violence and is working with the Inyo County Office of Education to provide a teen violence prevention program for youth; and

**WHEREAS**, because the COVID-19 pandemic was challenging for all clients, including DV offenders, DPO Vetter utilized video conferencing and, when able, would meet with her groups in outdoor venues such as the City Park; and

**WHEREAS**, DPO Vetter is passionate about providing treatment and education about domestic violence, having spent many hours of personal time becoming an expert in her field to provide needed treatment to domestic violence offenders and create a solution to a growing problem in Inyo County by implementing a successful 52-week DV program; and

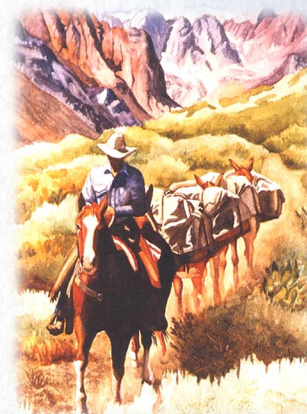
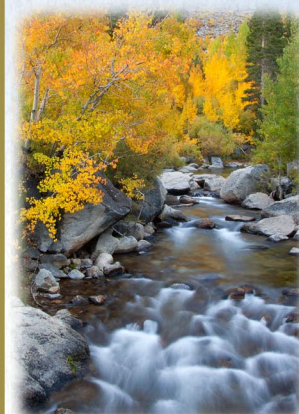
**WHEREAS**, DPO Vetter epitomizes the Inyo County Probation Department motto of Community, Pride, and Progress; and

**WHEREAS**, on December 7, 2021, DPO Lisa Vetter was recognized among thousands of state probation professionals as the Chief Probation Officers of California Central Region and State Employee of the Year for her commitment, dedication, and excellence in *Restoring Trust and Creating Hope*, promoting the probation mission and making our communities a safer place to live.

**NOW THEREFORE BE IT PROCLAIMED**, the Inyo County Board of Supervisors commends Deputy Probation Officer Lisa Vetter for her outstanding contributions to the Inyo County Probation Department and service to the citizens of Inyo County and for being awarded the Employee of the Year by the Chief Probation Officers of California.

**PASSED AND PROCLAIMED** this 1<sup>st</sup> day of March, 2022

Chairperson Totheroh







# County of Inyo



## Clerk of the Board

### DEPARTMENTAL - ACTION REQUIRED

**MEETING:** March 1, 2022

**FROM:** Assistant Clerk of the Board

**SUBJECT:** Approval of Meeting Minutes

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**RECOMMENDED ACTION:**

Request Board approve the minutes of the regular Board of Supervisors meetings of February 8 and February 22, 2022 and the special meeting of February 15, 2022.

**SUMMARY/JUSTIFICATION:**

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 webpage, [www.inyocounty.us](http://www.inyocounty.us).

**BACKGROUND/HISTORY OF BOARD ACTIONS:**

N/A

**ALTERNATIVES AND CONSEQUENCES OF NEGATIVE ACTION:**

N/A

**OTHER AGENCY INVOLVEMENT:**

N/A

**FINANCING:**

N/A

**ATTACHMENTS:**

**APPROVALS:**

Darcy Ellis  
Darcy Ellis

Created/Initiated - 2/24/2022  
Final Approval - 2/24/2022