

Board Office Use: Legislative File Info.	
File ID Number	17-0319
Introduction Date	3/8/17
Enactment Number	17-0290
Enactment Date	3-8-17



**OAKLAND UNIFIED
SCHOOL DISTRICT**

Community Schools, Thriving Students

Memo

To Board of Education
From Devin Dillon, Ph.D., Interim Superintendent

Board Meeting Date March 8, 2017
(To be completed by
Procurement)

Subject Community Based Organization - Master Contract - Alameda County Public Health Department - 922/Community Schools and Student Services Department
(site/department)

Action Requested Approval of Community Based Organization Master Contract between Oakland Unified School District and Alameda County Public Health Department. Services to be primarily provided by the Community Schools and Student Services Department for the period of October 1, 2016 to September 30, 2017.

Background
A one paragraph explanation of why the consultant's services are needed.
There is an academic link between student academic performance and health and wellness. Students who have access to fresh fruits and vegetables, physical activity and nutrition and garden education will ultimately do better in school. Alameda County Public Health Department supports the health of youth in the County and therefore, is investing in the health of students at OUSD schools.

Discussion
One paragraph summary of the scope of work.
Approval by the Board of Education of a Community Based Organization Master Contract between District and the County of Alameda via its Public Health Department, San Leandro, CA, for the latter to provide the coordination and facilitation of nutrition programming through full time and part time staff, as well as Well Champions with a Harvest of the Month and nutrition promotion and obesity prevention focus, for OUSD elementary schools, for the period of October 1, 2016 through September 30, 2017, in an amount not to exceed \$280,000.00.

Recommendation Approval of Community Based Organization Master Contract between Oakland Unified School District and Alameda County Public Health Department. Services to be primarily provided by the Community Schools and Student Services Department for the period of October 1, 2016 through September 30, 2017.

Fiscal Impact Funding resource name (please spell out): 9206/Alameda County Public Health and Wellness in an amount not to exceed \$280,000.00.

Attachments

- Master Contract Exhibit A and B Coversheet
- Exhibit A - Program Description and Performance Requirements
- Exhibit A - Scope of Work
- Exhibit B - Terms of Payment
- Sub F - Budget Justification
- Exhibit C - Certificate of Insurance Coverage
- Exhibit D - Audit Requirements
- Exhibit D(F) - Special Terms and Conditions
- Exhibit H - Information Privacy and Security Requirements



CONTRACT JUSTIFICATION FORM
This Form Shall Be Submitted to the Board Office
With *Every* Consent Agenda Contract.

Legislative File ID No. 17-0319

Department: Alameda County Public Health Department

Vendor Name: Oakland Unified School District Health & Wellness Unit

Contract Term: Start Date: October 1, 2016 End Date: September 30, 2017

Annual Cost: \$ 280,000.00

Approved by: Muntu Davis, Director Alameda County Public Health Department; Michelle Oppen, OUSD

Is Vendor a local Oakland business? Yes ☒ No ☐

Why was this Vendor selected?

OUSD Health & Wellness was selected to provide nutrition education, garden education and healthy food access programming to OUSD schools with 50% or more free/reduced lunch eligible. OUSD was selected to reach children and families throughout Oakland.

Summarize the services this Vendor will be providing.

1. Harvest of the Month nutrition education program at 25 or more elementary schools.
2. Garden education program at 15 or more schools.
3. Healthy Lunchroom program at 5 or more schools.
4. Wellness Policy promotion via the Wellness Champion program.

Was this contract competitively bid? Yes ☐ No ☒

If No, answer the following:

1) How did you determine the price is competitive?

We have worked with this vendor previously providing services for this project.

2) Please check the competitive bid exception relied upon:

☐

Educational Materials

☐

Special Services contracts for financial, economic, accounting, legal or administrative services

☐

CUPCCAA exception (Uniform Public Construction Cost Accounting Act)

☐

Professional Service Agreements of less than \$86,000 (increases a small amount on January 1 of each year)

☐

Construction related Professional Services such as Architects, DSA Inspectors, Environmental Consultants and Construction Managers (require a "fair, competitive selection process)

☐

Energy conservation and alternative energy supply (e.g., solar, energy conservation, co-generation and alternate energy supply sources)

☐

Emergency contracts

☐

Technology contracts

☐

electronic data-processing systems, supporting software and/or services (including copiers/printers) over the \$86,000 bid limit, must be competitively advertised, but any one of the three lowest responsible bidders may be selected

☐

contracts for computers, software, telecommunications equipment, microwave equipment, and other related electronic equipment and apparatus, including E-Rate solicitations, may be procured through an RFP process instead of a competitive, lowest price bid process

☐

Western States Contracting Alliance Contracts (WSCA)

☐

California Multiple Award Schedule Contracts (CMAS) [contracts are often used for the purchase of information technology and software]

☐

"Piggyback" Contracts with other governmental entities

☐

Perishable Food

☐

Sole Source

☐

Change Order for Material and Supplies if the cost agreed upon in writing does not exceed ten percent of the original contract price

☐

Other, please provide specific exception

**COMMUNITY BASED ORGANIZATION
MASTER CONTRACT EXHIBIT A & B COVERSHEET**

Dept Name: Public Health Vendor ID #: 32634 Board PO #: _____
 Bus Unit: PHSVC Master Contract #: 900322 Procurement Contract #: _____ Budget Year: 2016-17

Acct #	Fund #	Dept #	Program #	Subclass #	Project / Grant #	Amount to be Encumbered	Total Contract Amount
610341	10000	350905	00000		PHGO2CH42200	\$280,000	\$280,000

Justification if partial encumbrance or liquidation requested: _____

Federal Funds Waiver #: _____ Contract Maximum: \$280,000

Procurement Contract Begin Date: 10/01/2016 Expire Date: 09/30/2017 Period of Funding From: 10/01/2016 To: 09/30/2017

Department Contact: Jenny Wang Telephone #: 510-595-6475 QIC Code: 23805

Contractor Name: Oakland Unified School District

Project Name: Nutrition Education Obesity Prevention Program and Coordination

Contractor Address: 746 Grand Ave Blvd, Oakland, CA 94610

Remittance Address: 746 Grand Ave Blvd, Lakeview Campus ALCOLINK Vendor Address #: 105
Oakland, CA 94610 BOS Dist. #: 1

Contractor Telephone #: 510-879-2612 Fax #: 510-879-4605 E-mail (Signatory): antwan.wilson@ousd.org

Contractor Contact Person: Michelle Oppen E-mail (Contact): michelle.oppen@ousd.org

Contract Service Category: Nutrition Services, Education, Liaison and Coordination Estimated Units of Service: Per Scope of Work

Method of Reimbursement (Invoicing Procedures): Per Exhibit B

History of Funding:	Original	Amendment #1	Amendment #2	Amendment #3	Amendment #4
Funding Level	\$280,000				
Amount of Encumbrance	\$280,000				
File Date					
File / Item #					
Reason					

Funding Source Allocation:	Federal - CFDA #: _____	State	County
	\$	\$280,000	\$

The signatures below signify that the attached Exhibits A and B have been received, negotiated and finalized. The Contractor also signifies agreement with all provisions of the Master Contract.

DEPARTMENT

By _____
 Signature
Muntu Davis, MD, MPH
 Print or Type Name
 Title Director, Public Health Department Date _____

CONTRACTOR

By _____
 Signature
Devin Dillon, PhD
 Print or Type Name
 Title Interim Superintendent Date _____
 By _____
 Signature

 Print or Type Name
 Title _____ Date _____

EXHIBIT A

PROGRAM DESCRIPTION AND PERFORMANCE REQUIREMENTS

Contracting Department	Alameda County Public Health Department
Contractor Name	Oakland Unified School District
Contract Period	October 1, 2016 – September 30, 2017
Type of Services	Nutrition Services, Education, Liaison, and Coordination
Contract Number (PO #)	

I. Program Name

Nutrition Education Obesity Prevention Program and Coordination

II. Contracted Services:

HOTM and Policies, Systems and Environmental (PSE) Change: Contractor shall provide the coordination and facilitation of nutrition programming and PSE change through full time and part time staff, as well as Wellness Champions with a Harvest of the Month and nutrition promotion and obesity prevention focus.

III. Program Information and Requirements

A. Program Goals

Contractor shall provide services in the attached Scope of Work to accomplish the following goals: By September 30th, 2017, target population is empowered and enabled to select healthy foods and beverages and increase physical activity through nutrition education, social marketing, and environmental supports.

B. Target Populations

Contractor shall provide services to the following populations:

- 1. Service Groups:** Contractor shall provide services to OUSD students and their families in a minimum of 30 income eligible schools.
- 2. Referral Process to Program:** Not Applicable
- 3. Program Eligibility:** Contractor shall provide services only to schools pre-approved for LHD-ACPHD in the SNAP-Ed Work Plan Targeting Summary Site List with more than 50% of the student population enrolled in the Free and Reduced Price Meals program.
- 4. Limitations of Service:** Not Applicable

C. Program Requirements

Contractor shall maintain program services at the following minimum levels:

- 1. Program Design** - See attached Scope of Work. Contractor shall only provide services

allowable within the SNAP-Ed Guidelines Manual posted in the CDPH-NEOPB Branch Home Page, paying particular attention to Fiscal and Administrative guidelines, Allowable/Unallowable Costs guidelines, Time Study guidelines, Branding guidelines, Travel Reimbursement guidelines, and using NEOP Branch-approved educational materials and recipes.

- 2. Consumer/Client Flow:** Not Applicable
- 3. Discharge Criteria and Process:** Not Applicable
- 4. Hours of Operation:** As necessary to accomplish attached Scope of Work
- 5. Service Delivery Sites:** Schools with more than 50% of the student population enrolled in the Free and Reduced Price Meals program.

D. Minimum Staffing Qualifications

Contractor shall have and maintain current job descriptions on file with the Department for all personnel whose salaries, wages, and benefits are reimbursable in whole or in part under this agreement. Job descriptions shall specify the minimum qualifications for services to be performed and shall meet the approval of the Department. Contractor shall submit revised job descriptions meeting the approval of the Department prior to implementing any changes or employing persons who do not meet the minimum qualifications on file with the Department.

IV. Contract Deliverables and Requirements

A. Process Measures

Contractor shall provide the following services/deliverables: See attached Scope of Work

B. Outcome Measures

Contractor shall meet the following outcomes: See attached Scope of Work

V. Reporting and Evaluation Requirements

A. Reporting Requirements:

Contractor shall provide quarterly program updates and reports with invoice statements. Contractor shall provide a final report with the final invoice.

Contractor shall collect the necessary data and enter on an ongoing basis all Scope of Work activities into the online Activity Tracking Log for direct nutrition education, indirect nutrition education, and non-target trainings and events. Contractor will also collect and keep on file backup documentation for all Scope of Work activities as appropriate, for example: agendas, sign-in sheets, lesson plans, nutrition education materials, recipes, participant data cards, pictures and testimonials.

Contractor shall report all Policies, Systems, and Environmental changes that occurred in the school district and in individual schools as a result of SNAP-Ed funding. The required reporting tools will include, but not be limited to the PSE PEARS Database, Success Story Template and Results Based Accountability RBA.

B. Evaluation Requirements:

Contractor shall verify delivery, education, and PSE change through accurate and timely collection, data entry, and submission of Activity Tracking Logs and the PSE PEARS Database, RBA. Contractor shall also provide timely administration, completion, and submission of evaluation results.

VI. Additional Requirements

A. Certification/Licensure

Contractor shall have and maintain current: Proof of Worker's Compensation and Liability Insurance

B. Other Requirements: Not Applicable

VII. Entirety of Agreement

Contractor shall abide by all provisions of the Health Care Services Master Contract General Terms and Conditions, all Exhibits, and all Attachments that are associated with and included in this contract.

Contractor agrees to the supplemental terms and conditions contained in the following attachments to this Exhibit A: See attached Scope of Work

Exhibit A -Scope of Work
Oakland Unified School District, Nutrition Services
NEOPB Contract – FY 2016-17

SNAP-Ed IWP Activity Number	Activity Description	Intervention Categories*	Person Responsible	Deliverable/Documentation										
2.23	OUSD will annually implement site wellness councils, facilitated by site wellness champions, in at least 30 OUSD schools. They will oversee site implementation of the OUSD Wellness Policy by creating site wellness plans, communication tools and completing wellness policy inventories. Evaluate councils for effectiveness.	<table><tr><td></td><td>CED</td></tr><tr><td></td><td>CEI</td></tr><tr><td></td><td>MPR</td></tr><tr><td>X</td><td>C&C</td></tr><tr><td>X</td><td>TTA</td></tr></table>		CED		CEI		MPR	X	C&C	X	TTA	Project Coordinator (OUSD Wellness Coordinator)	On File: Agendas, Meeting Minutes, OUSD School Site Wellness Council plans, Wellness policy inventories, Evaluation results Submit:ATF
	CED													
	CEI													
	MPR													
X	C&C													
X	TTA													
2.24	OUSD will support the development and/or revitalization of school gardens by supporting site garden stewards to develop, maintain and promote school gardens for at least 10 schools.	<table><tr><td></td><td>CED</td></tr><tr><td></td><td>CEI</td></tr><tr><td></td><td>MPR</td></tr><tr><td></td><td>C&C</td></tr><tr><td>X</td><td>TTA</td></tr></table>		CED		CEI		MPR		C&C	X	TTA	Garden.Ed. TSA	Submit: ATF
	CED													
	CEI													
	MPR													
	C&C													
X	TTA													
2.26	OUSD will provide professional development and technical assistance on nutrition, physical activity promotion, evaluation and policies, systems, and environmental changes as reasonable and necessary for up to 200 K-12 teachers, after school providers, food service workers, salad bar champions and wellness champions to accomplish scope of work.	<table><tr><td></td><td>CED</td></tr><tr><td></td><td>CEI</td></tr><tr><td></td><td>MPR</td></tr><tr><td></td><td>C&C</td></tr><tr><td>X</td><td>TTA</td></tr></table>		CED		CEI		MPR		C&C	X	TTA	Project Coordinator OUSD Dietitian	On File: Agendas, Sign in Sheets, Training evaluations, Wellness Inventory Tool Submit: ATF
	CED													
	CEI													
	MPR													
	C&C													
X	TTA													
3.14	OUSD Nutrition Teacher on Special Assignment (TSA), OUSD Garden TSA, Food Corps Members and OUSD teachers will implement approved curriculum in at least 25 schools, reaching at least 5,000 SNAP-Ed eligible students.	<table><tr><td>X</td><td>CED</td></tr><tr><td></td><td>CEI</td></tr><tr><td></td><td>MPR</td></tr><tr><td></td><td>C&C</td></tr><tr><td></td><td>TTA</td></tr></table>	X	CED		CEI		MPR		C&C		TTA	Garden Ed. TSA	On File: Lesson Plans, Lesson Logs, Retrospective teacher Survey results, Wellness Inventory Submit: ATF
X	CED													
	CEI													
	MPR													
	C&C													
	TTA													

3.15	OUSD Food Service Workers, Food Corps Members and OUSD teachers will conduct nutrition education and taste tests and/or healthy cooking demonstrations in at least 20 schools, reaching at least 3,000 SNAP-Ed eligible students.	<table><tr><td></td><td>CED</td></tr><tr><td>X</td><td>CEI</td></tr><tr><td></td><td>MPR</td></tr><tr><td></td><td>C&C</td></tr><tr><td></td><td>TTA</td></tr></table>		CED	X	CEI		MPR		C&C		TTA	OUSD Dietician	On File: Lesson Plans, Lesson Logs, Wellness Inventory Submit: ATF
	CED													
X	CEI													
	MPR													
	C&C													
	TTA													
3.16	OUSD Salad Bar Champions will conduct weekly nutrition education on the benefits of a salad bar program, implementing marketing strategies, connect to broader nutrition promotion and obesity prevention efforts, and increase healthier food selection at the point of service at 10-16 salad bars, reaching at least 2000 Snap Ed eligible students.	<table><tr><td></td><td>CED</td></tr><tr><td>X</td><td>CEI</td></tr><tr><td>X</td><td>MPR</td></tr><tr><td></td><td>C&C</td></tr><tr><td></td><td>TTA</td></tr></table>		CED	X	CEI	X	MPR		C&C		TTA	OUSD Dietician	On File: Lesson Plans, Retrospective Survey results Submit: ATF, PSE PEARS Report
	CED													
X	CEI													
X	MPR													
	C&C													
	TTA													
3.17	OUSD After School Staff will conduct nutrition education and healthy cooking in after school settings for a minimum of 3 months (once per week) in 20 OUSD schools reaching at least 300 SNAP-Ed eligible students	<table><tr><td>X</td><td>CED</td></tr><tr><td></td><td>CEI</td></tr><tr><td></td><td>MPR</td></tr><tr><td></td><td>C&C</td></tr><tr><td></td><td>TTA</td></tr></table>	X	CED		CEI		MPR		C&C		TTA	OUSD Nutrition TSA OUSD Dietician	On File: Lesson Plans, Lesson Logs, Retrospective Survey results Submit: ATF
X	CED													
	CEI													
	MPR													
	C&C													
	TTA													
N/A	Participate in scheduled CNAP meetings, and in the implementation of the CNAP Work Plan.	<table><tr><td></td><td>CED</td></tr><tr><td></td><td>CEI</td></tr><tr><td></td><td>MPR</td></tr><tr><td>X</td><td>C&C</td></tr><tr><td></td><td>TTA</td></tr></table>		CED		CEI		MPR	X	C&C		TTA	Project Coordinator OUSD Dietitian	Sign-ins
	CED													
	CEI													
	MPR													
X	C&C													
	TTA													

***Intervention Categories Legend**

CED = Community/Nutrition and Physical Activity Education Direct; CEI = Community/Nutrition and Physical Activity Education Indirect; MPR = Media, Social Media, Public Relations and Messaging; C&C = Coordination and Collaboration; TTA = Training and Technical Assistance

Evaluation Measures and Activities

Activity Number	Evaluation Activity Description	Person Responsible	Deliverable/Documentation				
E.2.23	Report activities into ATF; Evaluate site wellness councils for effectiveness; Complete OUSD-generated wellness inventory (based on CDC School Health Index) (Activity 2.23)	Project Coordinator OUSD Nutrition TSA	<table><tr><td>X</td><td>EARS/ATF</td></tr><tr><td>X</td><td>PSE PEARS Report</td></tr></table> OUSD-generated wellness inventory	X	EARS/ATF	X	PSE PEARS Report
X	EARS/ATF						
X	PSE PEARS Report						
E.2.26	Conduct OUSD-generated retrospective survey with teachers, after school providers, food service workers, salad bar champions and wellness champions. (Activity 2.26)	Project Coordinator OUSD Nutrition TSA	<table><tr><td>X</td><td>EARS/ATF</td></tr></table> OUSD-generated retrospective survey	X	EARS/ATF		
X	EARS/ATF						
E.3.14	Complete OUSD-generated Retrospective Survey at the end of the school year. (Activity 3.14)	Project Coordinator	Retrospective Teacher Survey results				
E.3.16	Complete OUSD-generated Retrospective Survey at the end of the school year. (Activity 3.16 and 3.17)	Project Coordinator	<table><tr><td>X</td><td>EARS/ATF</td></tr><tr><td>X</td><td>PSE PEARS Report</td></tr></table> Retrospective Survey results	X	EARS/ATF	X	PSE PEARS Report
X	EARS/ATF						
X	PSE PEARS Report						

<p>Results Based Accountability Performance Measures:</p> <p>How much did we do?</p> <ul style="list-style-type: none"> # of school sites that will oversee the implementation of an aspect of the OUSD Wellness Policy # of direct nutrition education lessons # of classroom taste tests <p>How well did we do it?</p> <ul style="list-style-type: none"> % of teachers' positive response rate to a teacher survey (Goal 50%) <p>Is anyone better off?</p> <ul style="list-style-type: none"> % of the teacher respondents will report that their students are more enthusiastic about consuming fresh fruits and vegetables, decreasing consumption of sugar sweetened beverages, and growing and edible garden. (Goal 75%) 		<p>RBA results will be included in quarterly reports</p>
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EXHIBIT B - TERMS OF PAYMENT

Contracting Department	Alameda County Public Health Department
Contractor Name	Oakland Unified School District
Contract Period	October 1, 2016 – September 30, 2017
Type of Services	Nutrition Services, Education, Liaison, and Coordination
Contract Number (PO #)	
Contract Amt/Max	\$280,000

In addition to all terms of payment described in the Master Contract Terms and Conditions and any relevant exhibits and attachments, the parties to this Agreement shall abide by the following terms of payment:

I. Budget

Contractor shall use all payments solely in support of the program budget. See attached Budget.

II. Terms and Conditions of Payment**A. Contract Amount/Maximum**

The contract amount of this agreement shall not exceed the total amount of \$280,000 for the period of this agreement.

B. Budget Revision Procedures

Budget revisions are to be made in writing with modified budget sheet submitted to the Nutrition Services Program Director for written approval before any modifications take effect. Budget approvals are contingent on CDPH, CDSS, and USDA approval.

C. Cost Settlement/Final Payment Provisions

Payment of the final invoice will be contingent upon completion of the Scope of Work. Quarterly progress reports are to be submitted with quarterly payment invoices. Final invoice must be submitted to the Director of Nutrition Services by October 31, 2017.

D. Conditions of withholding payment: Incomplete or insufficient backup documentation to justify allowable, reasonable, and necessary expenses, or expenses that are not in alignment with the Scope of Work.**E. Definitions**

If at any time the Contractor has difficulty accomplishing activities or has program or staff changes, the Nutrition Services Program Monitor must be contacted immediately for technical assistance

III. Invoicing Procedures

The county will pay contractor upon submission of completed and originally signed invoices

detailing actual expenses incurred in accordance with the attached budget detail with backup documentation.

Invoices are to be submitted quarterly and will be approved by the Director of Nutrition Services. Payment of quarterly invoices will be contingent upon receipt of a quarterly progress report describing activities performed and/or services provided during the invoice period.

Invoicing Procedures:

- 1st payment January 15, 2017 upon submission of an invoice with supporting documentation and quarterly progress report
- 2nd payment April 15, 2017 upon submission of an invoice with supporting documentation and quarterly progress report
- 3rd payment July 15, 2017 upon submission of an invoice with supporting documentation and quarterly progress report
- 4th payment October 31, 2017 upon submission of an invoice with supporting documentation, quarterly progress report and submission of Final Progress Report (Final report due October 15, 2017)

Invoices should be submitted to Jenny Wang, Acting Director
Nutrition Services, Public Health Department
Alameda County Health Care Services Agency
3600 Telegraph Avenue
Oakland, CA 94609

Invoices submitted will be approved by the Director of Nutrition Services. Payment under the terms of this agreement shall not exceed the total amount of \$280,000 annually for the period of this agreement.

IV. Funding and Reporting Requirements:

Payment of invoices will be contingent upon receipt of progress reports and all supporting documentation for activities performed and/or services provided during the invoice period.

V. Additional Terms and Conditions of Payment

Not Applicable

SNAP-Ed FFY 2017 Budget

Organization Name: California Department of Public Health
 County/Jurisdiction: Alameda County Health Care Services Agency, Public Health Department, Nutrition Services
 Contract/Sub-Grant/Agreement: B (OUSO) Oakland Unified School District

1. Staffing: Salary/Benefits:

Position #	Budget Adjustment		Budget Adjustment		Position Name	SNAP-Ed Time Spent		Annual Salary	FTE	Total SNAP-Ed Salary	Benefit Rate	Total SNAP-Ed Benefits	SNAP-Ed Admin Costs	Total SNAP-Ed Funded Salary and Benefits	Budget Justification
	Add	Other	Reduce	Reallocate		% of SNAP-Ed Time spent on Mgmt/Admin Duties	% of SNAP-Ed Time spent on Direct SNAP-Ed Delivery								
1					Project Coordinator	20.00%	80.00%	\$80,685.20	1	\$80,685.20	37.50%	\$30,256.95	\$22,188.40	\$110,942	
2					Coordinator of Other Program	0.00%	100.00%	\$65,000.00	0.75	\$48,750.00	37.50%	\$18,281.25	\$0.00	\$67,031	
						Total Staffing: Salary/Benefits:			1.75	\$129,435		\$48,538	\$22,188	\$177,973	

Definition and basis for calculations of benefit rate(s):
 Describe what is covered in the benefit rate for your agency.

Payroll benefits includes medical, dental and vision benefits

SNAP-Ed FFY 2017 Budget

Organization Name: California Department of Public Health
 County/Jurisdiction: Alameda County Health Care Services Agency, Public Health Department, Nutrition Services
 Contract/Sub-Grant/Agreement: B (QLSD) Oakland Unified School District

2. Non-Capital Equipment/Supplies:

Item #	Disb- Budget FTE	Budget Item	Description/Justification	FTE	Cost per Item	# of Items	Total	Budget Justification
1							\$0	
							\$0	
							\$0	

3. Materials:

Item #	Disb- Budget FTE	Budget Item	Description/Justification	FTE	Cost per Item	# of Items	Total	Budget Justification
1		Taste Tests	Produce and supplies for classroom and after school cooking demos and taste testings		\$0.55	29870	\$16,429	
2		Nutrition Education and Support Materials	Handouts to food corps, wellness champions, teachers, salad bar champions and nutrition services educators		\$0.50	1,500	\$750	
10		Gardening Materials	Promote nutrition education through gardening classes using soil, gloves, pots, and other related supplies/materials		\$0.50	1500	\$750	
						Total Materials	\$17,929	

4. Travel:

Item #	Disb- Budget FTE	Position Title/Name	Location	Description/Justification	Trips	FTE	Days	Nights	Per Diem	Lodging	Air	Miles (\$1.50)	Registration Fee	Other	Total	Budget Justification
1		Project Coordinator, Nancy Mullin	Alameda County	Local Travel for Staff	170							23			\$1,102	
2		Project Coordinator, Nancy Mullin	San Francisco	Local Travel for Staff	1	1	2	1	\$30.00	\$110.00		120			\$235	
															\$0	
															\$1,337	

* Lodging costs include taxes. Reimbursement at CalHR rates.

5. Building/Space:

Item #	Disb- Budget FTE	Location Name/Address	Calculation Description	FTE	Cost per Month	# of Month(s)	Total	Budget Justification
1							\$0	
							\$0	

6. Maintenance:

Item #	Disb- Budget FTE	Location Name/Address	Calculation Description	FTE	Cost per Month	# of Month(s)	Total	Budget Justification
1							\$0	
							\$0	

7. Equipment and Other Capital Expenditures:

Item #	Disb- Budget FTE	Budget Item	Description/Justification	FTE	Cost per Item	# of Items	Misc	Total	Budget Justification
1								\$0	
								\$0	
								\$0	

SNAP-Ed FFY 2017 Budget

8. Contracts/Sub-Grants/Agreements:

New 2023 Applications			8. Contracts/Sub-Grants/Agreements:		Description of Service(s)	Total Grant	Budget Justification	Comments/Notes
Check Status	Unit Number	Organisation Name						
					Compensation for School Site Garden Stewards to oversee garden infrastructure and usage. 10 champions @ \$406 each.	\$4,060		
					Compensation for parents to conduct NE, implement marketing strategies, connect to broader nutrition promotion and obesity prevention efforts, and increase healthier food selection at point of service. 18 Champions x \$500 stipend per Champion.	\$9,000		
					Compensation for Nutrition Services Educators to conduct NE in 3rd grade classrooms. 100 units of classes and trainings of Nutrition Services Educators at \$30 per class.	\$3,000		
					Compensation for Food Corps Service Members to co-teach nutrition and garden education and conduct taste testing demos. 3 @ \$6,000 each.	\$18,000		
					Compensation for 25 School Site - Nutrition or Garden Wellness Champions to oversee nutrition education, garden education and wellness policy implementation (25 x \$850)	\$21,250		
					Compensation for 3 trainings for 25 School Site Nutrition or Garden Wellness Champions for time (25 x 3 x \$56)	\$4,200		
					Compensation for 5 School Site - Middle School Garden Wellness Champions to oversee nutrition education, garden education and wellness policy implementation (5 x \$850)	\$4,250		
					Compensation for 3 trainings for 5 School Site - Middle School Wellness Champions for time (5 x 3 x \$56)	\$840		
					Compensation for 1 training for 30 School Site - School Wellness Champions for time (30 x 1 x \$123)	\$3,690		
					Total Contracts/Sub-Grants/Agreements:	\$66,290		

Total Direct Costs:	\$265,529
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9. Indirect Costs:

Project Information		Budget Justification	
Project Name	Project Number	Budget Category	Budget Amount
9. Indirect Costs:			
Indirect Cost Type	Indirect Cost Rate	Indirect Cost Amount	Indirect Cost Total
Administrative	5.45%	\$285,529.00	\$14,471
Total Indirect Costs:			\$14,471
Total Direct			
Total Budget:			\$280,000

EXHIBIT C

COUNTY OF ALAMEDA MINIMUM INSURANCE REQUIREMENTS

Without limiting any other obligation or liability under this Agreement, the Contractor, at its sole cost and expense, shall secure and keep in force during the entire term of the Agreement or longer, as may be specified below, the following insurance coverage, limits and endorsements:

TYPE OF INSURANCE COVERAGES	MINIMUM LIMITS
A Commercial General Liability Premises Liability; Products and Completed Operations; Contractual Liability; Personal Injury and Advertising Liability	\$1,000,000 per occurrence (CSL) Bodily Injury and Property Damage
B Commercial or Business Automobile Liability All owned vehicles, hired or leased vehicles, non-owned, borrowed and permissive uses. Personal Automobile Liability is acceptable for individual contractors with no transportation or hauling related activities	\$1,000,000 per occurrence (CSL) Any Auto Bodily Injury and Property Damage
C Workers' Compensation (WC) and Employers Liability (EL) Required for all contractors with employees	WC: Statutory Limits EL: \$100,000 per accident for bodily injury or disease
D Endorsements and Conditions: <ol style="list-style-type: none"> 1. ADDITIONAL INSURED: All insurance required above with the exception of Personal Automobile Liability, Workers' Compensation and Employers Liability, shall be endorsed to name as additional insured: County of Alameda, its Board of Supervisors, the individual members thereof, and all County officers, agents, employees and representatives. 2. DURATION OF COVERAGE: All required insurance shall be maintained during the entire term of the Agreement with the following exception: Insurance policies and coverage(s) written on a claims-made basis shall be maintained during the entire term of the Agreement and until 3 years following termination and acceptance of all work provided under the Agreement, with the retroactive date of said insurance (as may be applicable) concurrent with the commencement of activities pursuant to this Agreement. 3. REDUCTION OR LIMIT OF OBLIGATION: All insurance policies shall be primary insurance to any insurance available to the Indemnified Parties and Additional Insured(s). Pursuant to the provisions of this Agreement, insurance effected or procured by the Contractor shall not reduce or limit Contractor's contractual obligation to indemnify and defend the Indemnified Parties. 4. INSURER FINANCIAL RATING: Insurance shall be maintained through an insurer with a A.M. Best Rating of no less than A:VII or equivalent, shall be admitted to the State of California unless otherwise waived by Risk Management, and with deductible amounts acceptable to the County. Acceptance of Contractor's insurance by County shall not relieve or decrease the liability of Contractor hereunder. Any deductible or self-insured retention amount or other similar obligation under the policies shall be the sole responsibility of the Contractor. 5. SUBCONTRACTORS: Contractor shall include all subcontractors as an insured (covered party) under its policies or shall furnish separate certificates and endorsements for each subcontractor. All coverages for subcontractors shall be subject to all of the requirements stated herein. 6. JOINT VENTURES: If Contractor is an association, partnership or other joint business venture, required insurance shall be provided by any one of the following methods: <ul style="list-style-type: none"> — Separate insurance policies issued for each individual entity, with each entity included as a "Named Insured (covered party), or at minimum named as an "Additional Insured" on the other's policies. — Joint insurance program with the association, partnership or other joint business venture included as a "Named Insured. 7. CANCELLATION OF INSURANCE: All required insurance shall be endorsed to provide thirty (30) days advance written notice to the County of cancellation. 8. CERTIFICATE OF INSURANCE: Before commencing operations under this Agreement, Contractor shall provide Certificate(s) of Insurance and applicable insurance endorsements, in form and satisfactory to County, evidencing that all required insurance coverage is in effect. The County reserves the rights to require the Contractor to provide complete, certified copies of all required insurance policies. The require certificate(s) and endorsements must be sent to: <ul style="list-style-type: none"> - Department/Agency issuing the contract - With a copy to Risk Management Unit (125 – 12th Street, 3rd Floor, Oakland, CA 94607) 	

CERTIFICATE OF COVERAGE

Issue Date

1/11/2017

ADMINISTRATOR:

Keenan & Associates
1111 Broadway, Suite 2000
Oakland, CA 94607

510-986-8750
www.keenan.com

LICENSE # 0451271

THIS CERTIFICATE IS ISSUED AS A MATTER OF INFORMATION ONLY
AND CONFERS NO RIGHTS UPON THE CERTIFICATE HOLDER. THIS
CERTIFICATE DOES NOT AMEND, EXTEND OR ALTER THE COVERAGE
AFFORDED BY THE COVERAGE DOCUMENTS BELOW.

ENTITIES AFFORDING COVERAGE:

ENTITY A: Northern California ReLIEF

ENTITY B:

ENTITY C:

ENTITY D:

ENTITY E:

COVERED PARTY:

Oakland Unified School District
1000 Broadway, Suite 300
Oakland CA 94607

THIS IS TO CERTIFY THAT THE COVERAGES LISTED BELOW HAVE BEEN ISSUED TO THE COVERED PARTY NAMED ABOVE FOR THE PERIOD INDICATED. NOTWITHSTANDING ANY REQUIREMENT, TERM OR CONDITION OF ANY CONTRACT OR OTHER DOCUMENT WITH RESPECT TO WHICH THIS CERTIFICATE MAY BE ISSUED OR MAY PERTAIN. THE COVERAGE AFFORDED HEREIN IS SUBJECT TO ALL THE TERMS AND CONDITIONS OF SUCH COVERAGE DOCUMENTS.

ENT LTR	TYPE OF COVERAGE	COVERAGE DOCUMENTS	EFFECTIVE/ EXPIRATION DATE	MEMBER RETAINED LIMIT / DEDUCTIBLE	LIMITS
A	GENERAL LIABILITY <input checked="" type="checkbox"/> GENERAL LIABILITY <input checked="" type="checkbox"/> CLAIMS MADE <input checked="" type="checkbox"/> OCCURRENCE <input checked="" type="checkbox"/> GOVERNMENT CODES <input checked="" type="checkbox"/> ERRORS & OMISSIONS	NCR 01711-08	7/1/2016 7/1/2017	\$ 250,000	COMBINED SINGLE LIMIT EACH OCCURRENCE \$ 1,000,000
A	AUTOMOBILE LIABILITY <input checked="" type="checkbox"/> ANY AUTO <input checked="" type="checkbox"/> HIRED AUTO <input checked="" type="checkbox"/> NON-OWNED AUTO <input checked="" type="checkbox"/> GARAGE LIABILITY <input checked="" type="checkbox"/> AUTO PHYSICAL DAMAGE	NCR 01711-08	7/1/2016 7/1/2017	\$ 250,000	COMBINED SINGLE LIMIT EACH OCCURRENCE \$ 1,000,000
A	PROPERTY <input checked="" type="checkbox"/> ALL RISK <input checked="" type="checkbox"/> EXCLUDES EARTHQUAKE & FLOOD <input type="checkbox"/> BUILDER'S RISK	NCR 01711-08	7/1/2016 7/1/2017	\$ 250,000	\$ 250,250,000 EACH OCCURRENCE
A	STUDENT PROFESSIONAL LIABILITY	NCR 01711-08	7/1/2016 7/1/2017	\$ 250,000	\$ Included EACH OCCURRENCE
	WORKERS COMPENSATION <input type="checkbox"/> EMPLOYERS' LIABILITY			\$	<input type="checkbox"/> WC STATUTORY LIMITS <input type="checkbox"/> OTHER \$ E.L. EACH ACCIDENT
C	EXCESS WORKERS COMPENSATION <input type="checkbox"/> EMPLOYERS' LIABILITY			\$	\$ E.L. DISEASE - EACH EMPLOYEE \$ E.L. DISEASE - POLICY LIMITS
	OTHER			\$	\$

DESCRIPTION OF OPERATIONS/LOCATIONS/VEHICLES/RESTRICTIONS/SPECIAL PROVISIONS:

As respects to agreement # 900322 between the Alameda County Public Health Department and Oakland Unified School District for their annual nutrition services grant for the Nutrition Education Obesity Prevention Program and Coordination through the coverage expiration date.

CERTIFICATE HOLDER:

Alameda County Public Health Department
1000 Broadway
Oakland CA 94607

CANCELLATION.....SHOULD ANY OF THE ABOVE DESCRIBED COVERAGES BE CANCELED BEFORE THE EXPIRATION DATE THEREOF, THE ISSUING ENTITY/JPA WILL ENDEAVOR TO MAIL 30 DAYS WRITTEN NOTICE TO THE CERTIFICATE HOLDER NAMED TO THE LEFT, BUT FAILURE TO MAIL SUCH NOTICE SHALL IMPOSE NO OBLIGATION OR LIABILITY OF ANY KIND UPON THE ENTITY/JPA, ITS AGENTS OR REPRESENTATIVES.



John Stephens

AUTHORIZED REPRESENTATIVE



CERTIFICATE OF LIABILITY INSURANCE

DATE (MM/DD/YYYY)
1/5/2017

THIS CERTIFICATE IS ISSUED AS A MATTER OF INFORMATION ONLY AND CONFERS NO RIGHTS UPON THE CERTIFICATE HOLDER. THIS CERTIFICATE DOES NOT AFFIRMATIVELY OR NEGATIVELY AMEND, EXTEND OR ALTER THE COVERAGE AFFORDED BY THE POLICIES BELOW. THIS CERTIFICATE OF INSURANCE DOES NOT CONSTITUTE A CONTRACT BETWEEN THE ISSUING INSURER(S), AUTHORIZED REPRESENTATIVE OR PRODUCER, AND THE CERTIFICATE HOLDER.

IMPORTANT: If the certificate holder is an **ADDITIONAL INSURED**, the policy(ies) must be endorsed. If **SUBROGATION IS WAIVED**, subject to the terms and conditions of the policy, certain policies may require an endorsement. A statement on this certificate does not confer rights to the certificate holder in lieu of such endorsement(s).

PRODUCER Alliant Insurance Services, Inc. 1301 Dove St Ste 200 Newport Beach CA 92660	CONTACT NAME: Debra Hardwick PHONE (A/C, No, Ext): 949-756-0271 FAX (A/C, No): 949-756-2713 E-MAIL ADDRESS: dhardwick@alliant.com
INSURED Oakland Unified School District 1000 Broadway Street Oakland CA 94607	INSURER(S) AFFORDING COVERAGE INSURER A: New York Marine Group INSURER B: State National Ins Co, Inc. INSURER C: INSURER D: INSURER E: INSURER F:
OAKLUNI-01	NAIC # 12831

COVERAGES

CERTIFICATE NUMBER: 897480448

REVISION NUMBER:

THIS IS TO CERTIFY THAT THE POLICIES OF INSURANCE LISTED BELOW HAVE BEEN ISSUED TO THE INSURED NAMED ABOVE FOR THE POLICY PERIOD INDICATED. NOTWITHSTANDING ANY REQUIREMENT, TERM OR CONDITION OF ANY CONTRACT OR OTHER DOCUMENT WITH RESPECT TO WHICH THIS CERTIFICATE MAY BE ISSUED OR MAY PERTAIN, THE INSURANCE AFFORDED BY THE POLICIES DESCRIBED HEREIN IS SUBJECT TO ALL THE TERMS, EXCLUSIONS AND CONDITIONS OF SUCH POLICIES. LIMITS SHOWN MAY HAVE BEEN REDUCED BY PAID CLAIMS.

INSR LTR	TYPE OF INSURANCE	ADOL SUBR INSD WVD	POLICY NUMBER	POLICY EFF (MM/DD/YYYY)	POLICY EXP (MM/DD/YYYY)	LIMITS
	COMMERCIAL GENERAL LIABILITY <input type="checkbox"/> CLAIMS-MADE <input type="checkbox"/> OCCUR GEN'L AGGREGATE LIMIT APPLIES PER: <input type="checkbox"/> POLICY <input type="checkbox"/> PRO-JECT <input type="checkbox"/> LOC OTHER:					EACH OCCURRENCE \$ DAMAGE TO RENTED PREMISES (Ea occurrence) \$ MED EXP (Any one person) \$ PERSONAL & ADV INJURY \$ GENERAL AGGREGATE \$ PRODUCTS - COMPROP AGG \$ OTHER \$
	AUTOMOBILE LIABILITY <input type="checkbox"/> ANY AUTO <input type="checkbox"/> ALL OWNED AUTOS <input type="checkbox"/> SCHEDULED AUTOS <input type="checkbox"/> HIRED AUTOS <input type="checkbox"/> NON-OWNED AUTOS					COMBINED SINGLE LIMIT (Ea accident) \$ BODILY INJURY (Per person) \$ BODILY INJURY (Per accident) \$ PROPERTY DAMAGE (Per accident) \$ OTHER \$
	UMBRELLA LIAB <input type="checkbox"/> OCCUR EXCESS LIAB <input type="checkbox"/> CLAIMS-MADE DED <input type="checkbox"/> RETENTION \$					EACH OCCURRENCE \$ AGGREGATE \$ OTHER \$
A B	WORKERS COMPENSATION AND EMPLOYERS' LIABILITY ANY PROPRIETOR/PARTNER/EXECUTIVE OFFICER/MEMBER EXCLUDED? (Mandatory in NH) If yes, describe under DESCRIPTION OF OPERATIONS below	Y/N N N/A	WC2016EPP00296 NDE-0864119-16	7/1/2016 7/1/2016	7/1/2017 7/1/2017	X PER STATUTE <input type="checkbox"/> OTH-ER <input type="checkbox"/> E.L. EACH ACCIDENT \$1,000,000 E.L. DISEASE - EA EMPLOYEE \$1,000,000 E.L. DISEASE - POLICY LIMIT \$1,000,000

DESCRIPTION OF OPERATIONS / LOCATIONS / VEHICLES (ACORD 101, Additional Remarks Schedule, may be attached if more space is required)

Evidence of Coverage Only. Subject to policy terms, conditions and exclusions.

As respects the annual nutrition services grant for the Health and Wellness Unit, Community Schools and Student Services Department. Term of agreement: January 5, 2017 - June 30, 2017. Coverage is primary and non-contributory.

CERTIFICATE HOLDER

CANCELLATION

Alameda County Public Health Department
Attn: Dale Mural
Program Specialist, Nutrition Services
1000 Broadway
Oakland CA 94607

SHOULD ANY OF THE ABOVE DESCRIBED POLICIES BE CANCELLED BEFORE THE EXPIRATION DATE THEREOF, NOTICE WILL BE DELIVERED IN ACCORDANCE WITH THE POLICY PROVISIONS.

AUTHORIZED REPRESENTATIVE

John A. Tawil

DISCLAIMER

The Certificate of Coverage on the reverse side of this form does not constitute a contract between the issuing entity(ies), authorized representative or producer, and the certificate holder, nor does it affirmatively or negatively amend, extend or alter the coverage afforded by the coverage documents listed thereon.

ENDORSEMENT

ADDITIONAL COVERED PARTY

COVERED PARTY	COVERAGE DOCUMENT	ADMINISTRATOR
Oakland Unified School District	NCR 01711-08	Keenan & Associates

Subject to all its terms, conditions, exclusions, and endorsements, such additional covered party as is afforded by the coverage document shall also apply to the following entity but only as respects to liability arising directly from the actions and activities of the covered party described under "as respects" below.

Additional Covered Party:

Alameda County Public Health Department
1000 Broadway
Oakland CA 94607

As Respects:

As respects to agreement # 900322 between the Alameda County Public Health Department and Oakland Unified School District for their annual nutrition services grant for the Nutrition Education Obesity Prevention Program and Coordination through the coverage expiration date.

The County of Alameda, its Board of Supervisors, the individual members thereof, and all County officers, agents, employees and representatives are included as an Additional Covered Party. This coverage shall be primary to the Certificate Holder's coverage.



Authorized Representative

Issue Date: 1/11/2017

Exhibit D

Audit Requirements

The County contracts with various organizations to carry out programs mandated by the Federal and State governments or sponsored by the Board of Supervisors. Under the Single Audit Act Amendments of 1996 (31 U.S.C.A. §§ 7501-7507) and Board policy, the County has the responsibility to determine whether organizations receiving funds through the County have spent them in accordance with applicable laws, regulations, contract terms, and grant agreements. To this end, effective with the first fiscal year beginning on and after December 26, 2014, the following are required.

I. AUDIT REQUIREMENTS

A. Funds from Federal Sources:

1. Non-Federal entities which are determined to be subrecipients by the supervising department according to 2 CFR § 200.330 and which expend annual Federal awards in the amount specified in 2 CFR § 200.501 are required to have a single audit performed in accordance with 2 CFR § 200.514.
2. When a non-Federal entity expends annual Federal awards in the amount specified in 2 CFR § 200.501(a) under only one Federal program (excluding R&D) and the Federal program's statutes, regulations, or terms and conditions of the Federal award do not require a financial statement audit of the auditee, the non-Federal entity may elect to have a program-specific audit conducted in accordance with 2 CFR § 200.507 (Program Specific Audits).
3. Non-Federal entities which expend annual Federal awards less than the amount specified in 2 CFR § 200.501(d) are exempt from the single audit requirements for that year except that the County may require a limited-scope audit in accordance with 2 CFR § 200.506(c).

B. Funds from All Sources:

Non-Federal entities which expend annual funds from any source (Federal, State, County, etc.) through the County in an amount of:

1. \$100,000 or more must have a financial audit in accordance with the U.S. Comptroller General's Generally Accepted Government Auditing Standards (GAGAS) covering all County programs.
2. Less than \$100,000 are exempt from these audit requirements except as otherwise noted in the contract.

Non-Federal entities that are required to have or choose to do a single audit in accordance with 2 CFR Subpart F, Audit Requirements are not required to have a financial audit in the same year. However, Non-Federal entities that are required to have a financial audit may also be required to have a limited-scope audit in the same year.

C. General Requirements for All Audits:

1. All audits must be conducted in accordance with Generally Accepted Government Auditing Standards issued by the Comptroller General of the United States (GAGAS).
2. All audits must be conducted annually, except for biennial audits authorized by 2 CFR § 200.504 and where specifically allowed otherwise by laws, regulations, or County policy.
3. The audit report must contain a separate schedule that identifies all funds received from or passed through the County that is covered by the audit. County programs must be identified by contract number, contract amount, contract period, and amount expended during the fiscal year by funding source. An exhibit number must be included when applicable.
4. If a funding source has more stringent and specific audit requirements, these requirements must prevail over those described above.

II. **AUDIT REPORTS**

A. For Single Audits

1. Within the earlier of 30 calendar days after receipt of the auditor's report or nine months after the end of the audit period, the auditee must electronically submit to the Federal Audit Clearinghouse (FAC) the data collection form described in 2 CFR § 200.512(b) and the reporting package described in 2 CFR § 200.512(c). The auditee and auditors must ensure that the reporting package does not include protected personally identifiable information. The FAC will make the reporting package and the data collection form available on a web site and all Federal agencies, pass-through entities and others interested in a reporting package and data collection form must obtain it by accessing the FAC. As required by 2 CFR § 200.512(a)(2), unless restricted by Federal statutes or regulations, the auditee must make copies available for public inspection.
2. A notice of the audit report issuance along with two copies of the management letter with its corresponding response should be sent to the County supervising department within ten calendar days after it is submitted to the FAC. The County supervising department is responsible for forwarding a copy of the notice to the County Auditor within one week of receipt.

B. For Audits other than Single Audits

At least two copies of the audit report package, including all attachments and any management letter with its corresponding response, should be sent to the County supervising department within six months after the end of the audit year, or other time frame as specified by the department. The County supervising department is responsible for forwarding a copy to the County Auditor within one week of receipt.

III. AUDIT RESOLUTION

Within 30 days of issuance of the audit report, the entity must submit to its County supervising department a corrective action plan consistent with 2 CFR § 200.511(c) to address each audit finding included in the current year auditor's report. Questioned costs and disallowed costs must be resolved according to procedures established by the County in the Contract Administration Manual. The County supervising department will follow up on the implementation of the corrective action plan as it pertains to County programs.

IV. ADDITIONAL AUDIT WORK

The County, the State, or Federal agencies may conduct additional audits or reviews to carry out their regulatory responsibilities. To the extent possible, these audits and reviews will rely on the audit work already performed under the audit requirements listed above.

Special Terms and Conditions

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

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

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

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

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

Index of Special Terms and Conditions

1. Federal Equal Employment Opportunity Requirements	17. Human Subjects Use Requirements
2. Travel and Per Diem Reimbursement	18. Novation Requirements
3. Procurement Rules	19. Debarment and Suspension Certification
4. Equipment Ownership / Inventory / Disposition	20. Smoke-Free Workplace Certification
5. Subcontract Requirements	21. Covenant Against Contingent Fees
6. Income Restrictions	22. Payment Withholds
7. Audit and Record Retention	23. Performance Evaluation
8. Site Inspection	24. Officials Not to Benefit
9. Federal Contract Funds	25. Four-Digit Date Compliance
10. Intellectual Property Rights	26. Prohibited Use of State Funds for Software
11. Air or Water Pollution Requirements	27. Use of Small, Minority Owned and Women's Businesses
12. Prior Approval of Training Seminars, Workshops or Conferences	28. Alien Ineligibility Certification
13. Confidentiality of Information	29. Union Organizing
14. Documents, Publications, and Written Reports	30. Contract Uniformity (Fringe Benefit Allowability)
15. Dispute Resolution Process	31. Lobbying Restrictions and Disclosure Certification
16. Financial and Compliance Audit Requirements	

1. Federal Equal Opportunity Requirements

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

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

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

2. Travel and Per Diem Reimbursement

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

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

3. Procurement Rules

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

a. Equipment definitions

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

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

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

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

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

To secure equipment above the annual maximum limit of \$50,000, the Contractor shall make arrangements through the appropriate CDPH Program Contract Manager, to have all remaining

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

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

4. Equipment Ownership / Inventory / Disposition

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

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

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

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

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

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

- (a) Include in the inventory report, equipment and/or property in the Contractor's possession and/or in the possession of a subcontractor (including independent consultants);

- (b) Submit the inventory report to CDPH according to the instructions appearing on the inventory form or issued by the CDPH Program Contract Manager.

- (c) Contact the CDPH Program Contract Manager to learn how to remove, trade-in, sell, transfer or survey off, from the inventory report, expired equipment and/or property that is no longer wanted, usable or has passed its life expectancy. Instructions will be supplied by CDPH's Asset Management Unit.

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

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

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

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

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

- f. Within sixty (60) calendar days prior to the termination or end of this Agreement, the Contractor shall provide a final inventory report of equipment and/or property to the CDPH Program Contract Manager and shall, at that time, query CDPH as to the requirements, including the manner and method, of returning state equipment and/or property to CDPH. Final disposition of equipment and/or property shall be at CDPH expense and according to CDPH instructions. Equipment and/or property disposition instructions shall be issued by CDPH immediately after receipt of the final inventory report. At the termination or conclusion of this Agreement, CDPH may at its discretion, authorize the continued use of state equipment and/or property for performance of work under a different CDPH agreement.

g. Motor Vehicles

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

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

Automobile Liability Insurance

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

- (e) The Contractor and/or Subcontractor, if not a self-insured government and/or public entity, must provide evidence, that any required certificates of insurance contain the following provisions:
 - [1] The insurer will not cancel the insured's coverage without giving thirty (30) calendar days prior written notice to the State (California Department of Public Health (CDPH)).
 - [2] The State of California, its officers, agents, employees, and servants are included as additional insureds, but only with respect to work performed for the State under this Agreement and any extension or continuation of this Agreement.
 - [3] The insurance carrier shall notify CDPH, in writing, of the Contractor's failure to pay premiums; its cancellation of such policies; or any other substantial change, including, but not limited to, the status, coverage, or scope of the required insurance. Such notices shall contain a reference to each agreement number for which the insurance was obtained.
- (f) The Contractor and/or Subcontractor is hereby advised that copies of certificates of insurance may be subject to review and approval by the Department of General Services (DGS), Office of Risk and Insurance Management. The Contractor shall be notified by CDPH, in writing, if this provision is applicable to this Agreement. If DGS approval of the certificate of insurance is required, the Contractor agrees that no work or services shall be performed prior to obtaining said approval.
- (g) In the event the Contractor and/or Subcontractor fails to keep insurance coverage, as required herein, in effect at all times during vehicle possession, CDPH may, in addition to any other remedies it may have, terminate this Agreement upon the occurrence of such event.

5. Subcontract Requirements

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

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

(1) Upon receipt of a written notice from CDPH requiring the substitution and/or termination of a subcontract, the Contractor shall take steps to ensure the completion of any work in progress and select a replacement, if applicable, within 30 calendar days, unless a longer period is agreed to by CDPH.

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

"(Subcontractor Name) agrees to maintain and preserve, until three years after termination of (Agreement Number) and final payment from CDPH to the Contractor, to permit CDPH or any duly authorized representative, to have access to, examine or audit any pertinent books, documents, papers and records related to this subcontract and to allow interviews of any employees who might reasonably have information related to such records."

- i. Unless otherwise stipulated in writing by CDPH, the Contractor shall be the subcontractor's sole point of contact for all matters related to performance and payment under this Agreement.
- j. Contractor shall, as applicable, advise all subcontractors of their obligations pursuant to the following numbered provisions of this Exhibit: 1, 2, 3, 4, 5, 6, 7, 8, 10, 11, 12, 13, 14, 17, 19, 20, 24, and 31 or other numbered provisions herein that deemed applicable.

6. Income Restrictions

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

7. Audit and Record Retention

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

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

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

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

8. Site Inspection

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

9. Federal Contract Funds

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

- a. It is mutually understood between the parties that this Agreement may have been written before ascertaining the availability of congressional appropriation of funds, for the mutual benefit of both parties, in order to avoid program and fiscal delays which would occur if the Agreement were executed after that determination was made.
- b. This agreement is valid and enforceable only if sufficient funds are made available to the State by the United States Government for the fiscal years covered by the term of this Agreement. In addition, this Agreement is subject to any additional restrictions, limitations, or conditions enacted by the Congress or any statute enacted by the Congress which may affect the provisions, terms or funding of this Agreement in any manner.

- c. It is mutually agreed that if the Congress does not appropriate sufficient funds for the program, this Agreement shall be amended to reflect any reduction in funds.
- d. CDPH has the option to invalidate or cancel the Agreement with 30-days advance written notice or to amend the Agreement to reflect any reduction in funds.

10. Intellectual Property Rights

a. Ownership

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

b. Retained Rights / License Rights

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

c. Copyright

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

d. Patent Rights

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

e. Third-Party Intellectual Property

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

Contractor's performance of this Agreement, Contractor shall obtain a license under terms acceptable to CDPH.

f. Warranties

(1) Contractor represents and warrants that:

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

(2) CDPH MAKES NO WARRANTY THAT THE INTELLECTUAL PROPERTY RESULTING FROM THIS AGREEMENT DOES NOT INFRINGE UPON ANY PATENT, TRADEMARK, COPYRIGHT OR THE LIKE, NOW EXISTING OR SUBSEQUENTLY ISSUED.

g. Intellectual Property Indemnity

- (1) Contractor shall indemnify, defend and hold harmless CDPH and its licensees and assignees, and its officers, directors, employees, agents, representatives, successors, and users of its products, ("Indemnitees") from and against all claims, actions, damages, losses, liabilities (or actions or proceedings with respect to any thereof), whether or not rightful, arising from any and all actions or claims by any third party or expenses related thereto (including, but not limited to, all legal expenses, court costs, and attorney's fees incurred in investigating, preparing, serving as a witness in, or defending against, any such claim, action, or proceeding, commenced or threatened) to which any of the Indemnitees may be subject, whether or not Contractor is a party to any pending or threatened litigation, which arise out of or are related to (i) the incorrectness or breach of any of the representations, warranties, covenants or agreements of Contractor pertaining to Intellectual Property; or (ii) any Intellectual Property infringement, or any other type of actual or alleged infringement claim, arising out of CDPH's use, reproduction, manufacture, sale, offer to sell, distribution, import, export, modification, public and private performance/display, license, and disposition of the Intellectual

Property made, conceived, derived from, or reduced to practice by Contractor or CDPH and which result directly or indirectly from this Agreement. This indemnity obligation shall apply irrespective of whether the infringement claim is based on a patent, trademark or copyright registration that issued after the effective date of this Agreement. CDPH reserves the right to participate in and/or control, at Contractor's expense, any such infringement action brought against CDPH.

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

h. Federal Funding

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

i. Survival

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

11. Air or Water Pollution Requirements

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

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

12. Prior Approval of Training Seminars, Workshops or Conferences

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

13. Confidentiality of Information

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

14. Documents, Publications and Written Reports

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

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

15. Dispute Resolution Process

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

the branch is organized within ten (10) working days from receipt of the Branch Chief's decision. The Deputy Director of the division in which the branch is organized or his/her designee shall meet with the Contractor to review the issues raised. A written decision signed by the Deputy Director of the division in which the branch is organized or his/her designee shall be directed to the Contractor within twenty (20) working days of receipt of the Contractor's second level appeal.

- b. If the Contractor wishes to appeal the decision of the Deputy Director of the division in which the branch is organized or his/her designee, the Contractor shall follow the procedures set forth in Division 25.1 (commencing with Section 38050) of the Health and Safety Code and the regulations adopted thereunder. (Title 1, Subchapter 2.5, commencing with Section 251, California Code of Regulations.)
- c. Disputes arising out of an audit, examination of an agreement or other action not covered by subdivision (a) of Section 20204, of Chapter 2.1, Title 22, of the California Code of Regulations, and for which no procedures for appeal are provided in statute, regulation or the Agreement, shall be handled in accordance with the procedures identified in Sections 51016 through 51047, Title 22, California Code of Regulations.
- d. Unless otherwise stipulated in writing by CDPH, all dispute, grievance and/or appeal correspondence shall be directed to the CDPH Program Contract Manager.
- e. There are organizational differences within CDPH's funding programs and the management levels identified in this dispute resolution provision may not apply in every contractual situation. When a grievance is received and organizational differences exist, the Contractor shall be notified in writing by the CDPH Program Contract Manager of the level, name, and/or title of the appropriate management official that is responsible for issuing a decision at a given level.

16. Financial and Compliance Audit Requirements

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

this provision apply if:

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

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

17. Human Subjects Use Requirements

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

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

18. Novation Requirements

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

19. Debarment and Suspension Certification

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

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

20. Smoke-Free Workplace Certification

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

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

21. Covenant Against Contingent Fees

(Applicable only to federally funded agreements.)

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

22. Payment Withholds

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

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

23. Performance Evaluation

(Not applicable to grant agreements.)

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

24. Officials Not to Benefit

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

25. Four-Digit Date Compliance

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

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

26. Prohibited Use of State Funds for Software

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

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

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

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

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

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

28. Alien Ineligibility Certification

(Applicable to sole proprietors entering federally funded agreements.)

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

29. Union Organizing

(Applicable only to grant agreements.)

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

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

30. Contract Uniformity (Fringe Benefit Allowability)

(Applicable only to nonprofit organizations.)

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

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

f. Earned/Accrued Compensation

- (1) Compensation for vacation, sick leave and holidays is limited to that amount earned/accrued within the agreement term. Unused vacation, sick leave and holidays earned from periods prior to the agreement term cannot be claimed as allowable costs. See Provision f (3)(a) for an example.
- (2) For multiple year agreements, vacation and sick leave compensation, which is earned/accrued but not paid, due to employee(s) not taking time off may be carried over and claimed within the overall term of the multiple years of the Agreement. Holidays cannot be carried over from one agreement year to the next. See Provision f (3)(b) for an example.
- (3) For single year agreements, vacation, sick leave and holiday compensation that is earned/accrued but not paid, due to employee(s) not taking time off within the term of the Agreement, cannot be claimed as an allowable cost. See Provision f (3)(c) for an example.

(a) Example No. 1:

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

(b) Example No. 2:

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

(c) Example No. 3:

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

31. Lobbying Restrictions and Disclosure Certification

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

a. Certification and Disclosure Requirements

- (1) Each person (or recipient) who requests or receives a contract or agreement, subcontract, grant, or subgrant, which is subject to Section 1352 of the 31, U.S.C., and which exceeds \$100,000 at any tier, shall file a certification (in the form set forth in Attachment 1, consisting of one page, entitled "Certification Regarding Lobbying") that the recipient has not made, and will not make, any payment prohibited by Paragraph b of this provision.
- (2) Each recipient shall file a disclosure (in the form set forth in Attachment 2, entitled "Standard Form-LLL 'disclosure of Lobbying Activities'") if such recipient has made or has agreed to make any payment using nonappropriated funds (to include profits from any covered federal action) in connection with a contract, or grant or any extension or amendment of that contract, or grant, which would be prohibited under Paragraph b of this provision if paid for with appropriated funds.
- (3) Each recipient shall file a disclosure form at the end of each calendar quarter in which there occurs any event that requires disclosure or that materially affect the accuracy of the information contained in any disclosure form previously filed by such person under Paragraph a(2) herein. An event that materially affects the accuracy of the information reported includes:

- (a) A cumulative increase of \$25,000 or more in the amount paid or expected to be paid for influencing or attempting to influence a covered federal action;
 - (b) A change in the person(s) or individuals(s) influencing or attempting to influence a covered federal action; or
 - (c) A change in the officer(s), employee(s), or member(s) contacted for the purpose of influencing or attempting to influence a covered federal action.
- (4) Each person (or recipient) who requests or receives from a person referred to in Paragraph a(1) of this provision a contract or agreement, subcontract, grant or subgrant exceeding \$100,000 at any tier under a contract or agreement, or grant shall file a certification, and a disclosure form, if required, to the next tier above.
- (5) All disclosure forms (but not certifications) shall be forwarded from tier to tier until received by the person referred to in Paragraph a(1) of this provision. That person shall forward all disclosure forms to CDPH Program Contract Manager.

b. Prohibition

Section 1352 of Title 31, U.S.C., provides in part that no appropriated funds may be expended by the recipient of a federal contract or agreement, grant, loan, or cooperative agreement to pay any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with any of the following covered federal actions: the awarding of any federal contract or agreement, the making of any federal grant, the making of any federal loan, entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any federal contract or agreement, grant, loan, or cooperative agreement.

STATE OF CALIFORNIA
CALIFORNIA DEPARTMENT OF PUBLIC HEALTH

CERTIFICATION REGARDING LOBBYING

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

(1) No Federal appropriated funds have been paid or will be paid, by or on behalf of the undersigned, to any person for influencing or attempting to influence an officer or employee of an agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with the making, awarding or entering into of this Federal contract, Federal grant, or cooperative agreement, and the extension, continuation, renewal, amendment, or modification of this Federal contract, grant, or cooperative agreement.

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

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

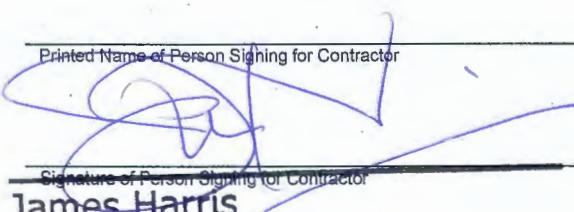
This certification is a material representation of fact upon which reliance was placed when this transaction was made or entered into. Submission of this certification is a prerequisite for making or entering into this transaction imposed by Section 1352, Title 31, U.S.C., any person who fails to file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

Name of Contractor

Printed Name of Person Signing for Contractor

Contract / Grant Number

Signature of Person Signing for Contractor

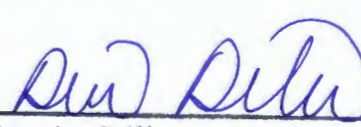

James Harris
President, Board of Education

Date

Title

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

California Department of Public Health


Devin Dillon, Ph.D.
Interim Secretary, Board of Education

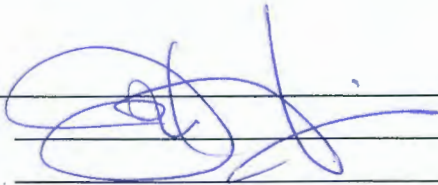
File ID Number: 17-0319
Introduction Date: 3-8-17
Enactment Number: 17-0290
Enactment Date: 3-8-17
By: [Signature]

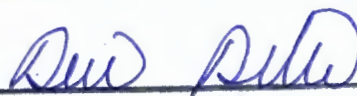
CDPH reserves the right to notify the contractor in writing of an alternate submission address.

CERTIFICATION REGARDING LOBBYING

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

Approved by OMB
0348-0046

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


 Devin Dillon, Ph.D.
 Interim Secretary, Board of Education

File ID Number: 17-0319
 Introduction Date: 3-8-17
 Enactment Number: 17-0290
 Enactment Date: 3-8-17
 By: _____

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

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

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

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

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

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

- I. Order of Precedence: With respect to information privacy and security requirements for all CDPH PCI, the terms and conditions of this Exhibit shall take precedence over any conflicting terms or conditions set forth in any other part of the agreement between Contractor and CDPH, including Exhibit A (Scope of Work), all other exhibits and any other attachments, and shall prevail over any such conflicting terms or conditions.
- II. Affect on lower tier transactions: The terms of this Exhibit shall apply to all contracts, subcontracts, and subawards, regardless of whether they are for the acquisition of services, goods, or commodities. When applicable the Contractor shall incorporate the relevant provisions of this Exhibit into each subcontract or subaward to its agents, subcontractors, or independent consultants.
- III. Definitions: For purposes of the agreement between Contractor and CDPH, including this Exhibit, the following definitions shall apply:
 - A. Breach: "Breach" means:
 1. the acquisition, access, use, or disclosure of CDPH PCI, in any medium (paper, electronic, oral), in violation of any state or federal law or in a manner not permitted under the agreement between Contractor and CDPH, including this Exhibit, that compromises the privacy, security or integrity of the information. For purposes of this definition, "compromises the privacy, security or integrity of the information" means poses a significant risk of financial, reputational, or other harm to an individual or individuals; or
 2. the same as the definition of "breach of the security of the system" set forth in California Civil Code section 1798.29(d).
 - B. Confidential Information: "Confidential information" means information that:
 1. does not meet the definition of "public records" set forth in California Government Code section 6252(e), or is exempt from disclosure under any of the provisions of Section 6250, et seq. of the California Government Code or any other applicable state or federal laws; or
 2. is contained in documents, files, folders, books or records that are clearly labeled, marked or designated with the word "confidential" by CDPH; or
 3. is "personal information" as defined in this Exhibit.
 - C. Disclosure: "Disclosure" means the release, transfer, provision of, access to, or divulging in any other manner of information.
 - D. Personal Information: "Personal information" means information, in any medium (paper, electronic, oral) that:

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1. by itself directly identifies or uniquely describes an individual; or
2. creates a substantial risk that it could be used in combination with other information to indirectly identify or uniquely describe an individual, or link an individual to the other information; or
3. meets the definition of "personal information" set forth in California Civil Code section 1798.3(a) or
4. is one of the data elements set forth in California Civil Code section 1798.29(e)(1),(2) or (3); or
5. meets the definition of "medical information" set forth in either California Civil Code section 1798.29(f)(2) or California Civil Code section 56.05(g); or
6. meets the definition of "health insurance information" set forth in California Civil Code section 1798.29(f)(3).

E. Security Incident: "Security Incident" means:

1. an attempted breach; or
2. the attempted or successful modification or destruction of CDPH PCI, in violation of any state or federal law or in a manner not permitted under the agreement between Contractor and CDPH, (including this Exhibit; or
3. the attempted or successful modification or destruction of, or interference with, Contractor's system operations in an information technology system, that negatively impacts the confidentiality, availability or integrity of CDPH PCI, or hinders or makes impossible Contractor's receipt, collection, creation, storage, transmission or use of PCI by Contractor for or on behalf of CDPH, pursuant to Contractor's agreement with CDPH, including this Exhibit.

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

- IV. Disclosure Restrictions:** The Contractor and its employees, agents, or subcontractors shall protect from unauthorized disclosure any CDPH PCI. The Contractor shall not disclose, except as otherwise specifically permitted by the agreement between Contractor and CDPH (including this Exhibit) , any CDPH PCI to anyone other than CDPH without prior written authorization from the CDPH Program Contract Manager, except if disclosure is required by State or Federal law.
- V. Use Restrictions:** The Contractor and its employees, agents, or subcontractors shall not use any CDPH PCI for any purpose other than carrying out the Contractor's obligations under its agreement with CDPH.
- VI. Safeguards:** The Contractor shall implement administrative, physical, and technical safeguards that reasonably and appropriately protect the privacy, confidentiality, security, integrity, and availability of CDPH PCI, including electronic or computerized CDPH PCI. The Contractor shall develop and maintain a written information privacy and security program that includes administrative, technical and physical safeguards appropriate to the size and complexity of the Contractor's operations and the nature and scope of its activities in performing its agreement with CDPH, including this Exhibit, and which incorporates the requirements of Section VII, Security, below. Contractor shall provide CDPH with Contractor's current and updated policies.
- VII. Security:** The Contractor shall take any and all steps necessary to ensure the continuous security of all computerized data systems containing CDPH PCI. These steps shall include, at a minimum:
- A. complying with all of the data system security precautions listed in the Contractor Data Security Standards set forth in Attachment 1 to this Exhibit;

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- B. providing a level and scope of security that is at least comparable to the level and scope of security established by the Office of Management and Budget in OMB Circular No. A-130, Appendix III- Security of Federal Automated Information Systems, which sets forth guidelines for automated information systems in Federal agencies; and

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

- VIII. Security Officer: The Contractor shall designate a Security Officer to oversee its compliance with this Exhibit and for communicating with CDPH on matters concerning this Exhibit.

- IX. Training: The Contractor shall provide training on its obligations under this Exhibit, at its own expense, to all of its employees who assist in the performance of Contractor's obligations under Contractor's agreement with CDPH, including this Exhibit, or otherwise use or disclose CDPH PCI.

- A. The Contractor shall require each employee who receives training to sign a certification, indicating the employee's name and the date on which the training was completed.
 B. The Contractor shall retain each employee's written certifications for CDPH inspection for a period of three years following contract termination.

- X. Employee Discipline: Contractor shall discipline such employees and other Contractor workforce members who intentionally violate any provisions of this Exhibit, including by termination of employment.

- XI. Breach and Security Incident Responsibilities:

- A. Notification to CDPH of Breach or Security Incident: The Contractor shall notify CDPH **immediately by telephone call plus email or fax** upon the discovery of a breach (as defined in this Exhibit), **or within twenty-four (24) hours by email or fax** of the discovery of any security incident (as defined in this Exhibit). Notification shall be provided to the CDPH Program Contract Manager, the CDPH Privacy Officer and the CDPH Chief Information Security Officer, using the contact information listed in Section XI(E), below. If the breach or security incident occurs after business hours or on a weekend or holiday and involves CDPH PCI in electronic or computerized form, notification to CDPH shall be provided by calling the CDPH IIT Service Desk at the telephone numbers listed in Section XI(E), below. For purposes of this Section, breaches and security incidents shall be treated as discovered by Contractor as of the first day on which such breach or security incident is known to the Contractor, or, by exercising reasonable diligence would have been known to the Contractor. A Contractor shall be deemed to have knowledge of a breach or security incident if such breach or security incident is known, or by exercising reasonable diligence would have been known, to any person, other than the person committing the breach or security incident, who is an employee or agent of the Contractor.

Contractor shall take:

1. prompt corrective action to mitigate any risks or damages involved with the breach or security incident and to protect the operating environment; and
2. any action pertaining to a breach required by applicable federal and state laws, including, specifically, California Civil Code section 1798.29.

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- B. Investigation of Breach:** The Contractor shall immediately investigate such breach or security incident, and within seventy-two (72) hours of the discovery, shall inform the CDPH Program Contract Manager, the CDPH Privacy Officer, and the CDPH Chief Information Security Officer of:
1. what data elements were involved and the extent of the data involved in the breach, including, specifically, the number of individuals whose personal information was breached; and
 2. a description of the unauthorized persons known or reasonably believed to have improperly used the CDPH PCI and/or a description of the unauthorized persons known or reasonably believed to have improperly accessed or acquired the CDPH PCI, or to whom it is known or reasonably believe have had the CDPH PCI improperly disclosed to them; and
 3. a description of where the CDPH PCI is believed to have been improperly used or disclosed; and
 4. a description of the probable causes of the breach or security incident; and
 5. whether Civil Code sections 1798.29 or any other federal or state laws requiring individual notifications of breaches have been triggered.
- C. Written Report:** The Contractor shall provide a written report of the investigation to the CDPH Program Contract Manager, the CDPH Privacy Officer, and the CDPH Chief Information Security Officer within five (5) working days of the discovery of the breach or security incident. The report shall include, but not be limited to, the information specified above, as well as a full, detailed corrective action plan, including information on measures that were taken to halt and/or contain the breach or security incident, and measures to be taken to prevent the recurrence of such breach or security incident.
- D. Notification to Individuals:** If notification to individuals whose information was breached is required under state or federal law, and regardless of whether Contractor is considered only a custodian and/or non-owner of the CDPH PCI, Contractor shall, at its sole expense, and at the sole election of CDPH, either:
1. make notification to the individuals affected by the breach (including substitute notification), pursuant to the content and timeliness provisions of such applicable state or federal breach notice laws. The CDPH Privacy Officer shall approve the time, manner and content of any such notifications, prior to the transmission of such notifications to the individuals; or
 2. cooperate with and assist CDPH in its notification (including substitute notification) to the individuals affected by the breach.
- E. CDPH Contact Information:** To direct communications to the above referenced CDPH staff, the Contractor shall initiate contact as indicated herein. CDPH reserves the right to make changes to the contact information below by giving written notice to the Contractor. Said changes shall not require an amendment to this Exhibit or the agreement to which it is incorporated.

CDPH Program Contract Manager	CDPH Privacy Officer	CDPH Chief Information Security Officer (and CDPH IT Service Desk)
See the Scope of Work exhibit for Program Contract Manager	Privacy Officer Privacy Office, c/o Office of Legal Services California Department of Public Health P.O. Box 997377, MS 0506	Chief Information Security Officer Information Security Office California Department of Public Health P.O. Box 997413, MS 6302 Sacramento, CA 95899-7413

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	Sacramento, CA 95899-7377 Email: privacy@cdph.ca.gov Telephone: (877) 421-9634	Email: cdphiso@cdph.ca.gov Telephone: IT Service Desk (916) 440-7000 or (800) 579-0874
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- XII. Documentation of Disclosures for Requests for Accounting: Contractor shall document and make available to CDPH or (at the direction of CDPH) to an Individual such disclosures of CDPH PCI, and information related to such disclosures, necessary to respond to a proper request by the subject Individual for an accounting of disclosures of personal information as required by applicable state or federal law.
- XIII. Requests for CDPH PCI by Third Parties: The Contractor and its employees, agents, or subcontractors shall promptly transmit to the CDPH Program Contract Manager all requests for disclosure of any CDPH PCI emanating from third parties to the agreement between Contractor and CDPH (and not emanating from an Individual for an accounting of disclosures of personal information pursuant to applicable state or federal law).
- XIV. Audits, Inspection and Enforcement: From time to time, CDPH may inspect the facilities, systems, books and records of Contractor to monitor compliance with this Exhibit. Contractor shall promptly remedy any violation of any provision of this Exhibit and shall certify the same to the CDPH Program Contract Manager in writing. The fact that CDPH inspects, or fails to inspect, or has the right to inspect, Contractor's facilities, systems and procedures does not relieve Contractor of its responsibility to comply with this Exhibit, nor does CDPH's:
- A. Failure to detect or
 - B. Detection, but failure to notify Contractor or require Contractor's remediation of any unsatisfactory practices constitute acceptance of such practice or a waiver of CDPH's enforcement rights under the agreement and this Exhibit.
- XV. Indemnification: Contractor shall indemnify, hold harmless and defend CDPH from and against any and all claims, losses, liabilities, damages, costs and other expenses (including attorneys fees) that result from or arise directly or indirectly out of or in connection with any negligent act or omission or willful misconduct of Contractor, its officers, employees, agents or subcontractors relative to the CDPH PCI, including without limitation, any violation s of Contractor's responsibilities under the agreement between it and CDPH, including this Exhibit, with respect to the CDPH PCI.
- XVI. Termination:
- A. Termination Upon Breach: A breach by Contractor of any provision of the Exhibit, as determined by CDPH, shall constitute a material breach of the agreement between Contractor and CDPH and grounds for immediate termination of the agreement by CDPH. At its sole discretion, CDPH may give Contractor 30 days to cure the breach.
 - B. Judicial or Administrative Proceedings: Contractor will notify CDPH if it is named as a defendant in a criminal proceeding related to a violation of this Exhibit. CDPH may terminate the agreement between Contractor and CDPH if Contractor is found guilty of a criminal violation related to a violation of this Exhibit. CDPH may terminate the agreement if a finding or stipulation that the

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Contractor has violated any security or privacy laws is made in any administrative or civil proceeding in which the Contractor is a party or has been joined.

XVII. Return or Destruction of CDPH PCI on Expiration or Termination: On expiration or termination of the agreement between Contractor and CDPH for any reason, Contractor shall return or destroy the CDPH PCI. If return or destruction is not feasible, Contractor shall explain to CDPH why, in writing, to the CDPH Program Contract Manager, the CDPH Privacy Officer and the CDPH Chief Information Security Officer, using the contact information listed in Section XI(c), above.

- A. Retention Required by Law: If Required by state or federal law, Contractor may retain, after expiration or termination, CDPH PCI for the time specified as necessary to comply with the law.
- B. Obligations Continue Until Return or Destruction: Contractor's obligations under this Exhibit shall continue until Contractor destroys the CDPH PCI or returns the CDPH PCI to CDPH; provided however, that on expiration or termination of the agreement between Contractor and CDPH, Contractor shall not further use or disclose the CDPH PCI except as Required by state or federal law.
- C. Notification of Election to Destroy CDPH PCI: Contractor elects to destroy the CDPH PCI, Contractor shall certify in writing, to the CDPH Program Contract Manager, the CDPH Privacy Officer and the CDPH Chief Information Security Officer, using the contact information listed in Section XI(c), above, that the CDPH PCI has been destroyed.

XVIII. Amendment: The parties acknowledge that Federal and State laws relating to information security and privacy are rapidly evolving and that amendment of this Exhibit may be required to provide for procedures to ensure compliance with such laws. The parties specifically agree to take such action as is necessary to implement new standards and requirements imposed by regulations and other applicable laws relating to the security or privacy of CDPH PCI. Upon CDPH' request, Contractor agrees to promptly enter into negotiations with CDPH concerning an amendment to this Exhibit embodying written assurances consistent with new standards and requirements imposed by regulations and other applicable laws. CDPH may terminate this agreement upon thirty (30) days written notice in the event:

- A. Contractor does not promptly enter into negotiations to amend this Exhibit when requested by CDPH pursuant to this Section or
- B. Contractor does not enter into an amendment providing assurances regarding the safeguarding of CDPH PCI that CDPH in its sole discretion deems sufficient to satisfy the standards and requirements of applicable laws and regulations relating to the security or privacy of CDPH PCI.

XIX. Assistance in Litigation or Administrative Proceedings: Contractor shall make itself and any subcontractors, employees or agents assisting Contractor in the performance of its obligations under the agreement between Contractor and CDPH, available to CDPH at no cost to CDPH to testify as witnesses, or otherwise, in the event of litigation or administrative proceedings being commenced against CDPH, its director, officers or employees based upon claimed violation of laws relating to security and privacy, which involves inactions or actions by the Contractor, except where Contractor or its subcontractor, employee or agent is a named adverse party.

XX. Disclaimer: CDPH makes no warranty or representation that compliance by Contractor with this Exhibit will be adequate or satisfactory for Contractor's own purposes or that any information in Contractor's possession or control, or transmitted or received by Contractor, is or will be secure from unauthorized use

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or disclosure. Contractor is solely responsible for all decisions made by Contractor regarding the safeguarding of CDPH PCI.

- XXI. No Third-Party Beneficiaries: Nothing express or implied in the terms and conditions of this Exhibit is intended to confer, nor shall anything herein confer, upon any person other than CDPH or Contractor and their respective successors or assignees, any rights, remedies, obligations or liabilities whatsoever.
- XXII. Interpretation: The terms and conditions in this Exhibit shall be interpreted as broadly as necessary to implement and comply with regulations and applicable State laws. The parties agree that any ambiguity in the terms and conditions of this Exhibit shall be resolved in favor of a meaning that complies and is consistent with Federal and State regulations.
- XXIII. Survival: The respective rights and obligations of Contractor under Sections VI, VII and XI of this Exhibit shall survive the termination or expiration of the agreement between Contractor and CDPH.

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Attachment 1
Contractor Data Security Standards

1. General Security Controls

- a. **Confidentiality Statement.** All persons that will be working with CDPH PCI must sign a confidentiality statement. The statement must include at a minimum, General Use, Security and Privacy safeguards, Unacceptable Use, and Enforcement Policies. The statement must be signed by the workforce member prior to access to CDPH PCI. The statement must be renewed annually. The Contractor shall retain each person's written confidentiality statement for CDPH inspection for a period of three (3) years following contract termination.
- b. **Background check.** Before a member of the Contractor's workforce may access CDPH PCI, Contractor must conduct a thorough background check of that worker and evaluate the results to assure that there is no indication that the worker may present a risk for theft of confidential data. The Contractor shall retain each workforce member's background check documentation for a period of three (3) years following contract termination.
- c. **Workstation/Laptop encryption.** All workstations and laptops that process and/or store CDPH PCI must be encrypted using a FIPS 140-2 certified algorithm, such as Advanced Encryption Standard (AES), with a 128bit key or higher. The encryption solution must be full disk unless approved by the CDPH Information Security Office.
- d. **Server Security.** Servers containing unencrypted CDPH PCI must have sufficient administrative, physical, and technical controls in place to protect that data, based upon a risk assessment/system security review.
- e. **Minimum Necessary.** Only the minimum necessary amount of CDPH PCI required to perform necessary business functions may be copied, downloaded, or exported.
- f. **Removable media devices.** All electronic files that contain CDPH PCI data must be encrypted when stored on any removable media or portable device (i.e. USB thumb drives, floppies, CD/DVD, Blackberry, backup tapes etc.). Must be encrypted using a FIPS 140-2 certified algorithm, such as Advanced Encryption Standard (AES), with a 128bit key or higher.
- g. **Antivirus software.** All workstations, laptops and other systems that process and/or store CDPH PCI must install and actively use comprehensive anti-virus software solution with automatic updates scheduled at least daily.
- h. **Patch Management.** All workstations, laptops and other systems that process and/or store CDPH PCI must have security patches applied, with system reboot if necessary. There must be a documented patch management process which determines installation timeframe based on risk assessment and vendor recommendations. At a maximum, all applicable patches must be installed within 30 days of vendor release.
- i. **User IDs and Password Controls.** All users must be issued a unique user name for accessing CDPH PCI. Username must be promptly disabled, deleted, or the password changed upon the transfer or termination of an employee with knowledge of the password. Passwords are not to be shared. Must be at least eight characters. Must be a non-dictionary word. Must not be stored in readable format on the computer. Must be changed every 60 days. Must be changed if revealed

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or compromised. Must be composed of characters from at least three of the following four groups from the standard keyboard:

- Upper case letters (A-Z)
- Lower case letters (a-z)
- Arabic numerals (0-9)
- Non-alphanumeric characters (punctuation symbols)

- j. **Data Sanitization.** All CDPH PCI must be sanitized using NIST Special Publication 800-88 standard methods for data sanitization when the CDPH PSCI is no longer needed.

2. System Security Controls

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

3. Audit Controls

- A. **System Security Review.** All systems processing and/or storing CDPH PCI must have at least an annual system risk assessment/security review which provides assurance that administrative, physical, and technical controls are functioning effectively and providing adequate levels of protection. Reviews shall include vulnerability scanning tools.
- B. **Log Reviews.** All systems processing and/or storing CDPH PCI must have a routine procedure in place to review system logs for unauthorized access.

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

4. Business Continuity / Disaster Recovery Controls

- a. **Disaster Recovery.** Contractor must establish a documented plan to enable continuation of critical business processes and protection of the security of electronic CDPH PCI in the event of an emergency. Emergency means any circumstance or situation that causes normal computer operations to become unavailable for use in performing the work required under this agreement for more than 24 hours.
- b. **Data Backup Plan.** Contractor must have established documented procedures to backup CDPH PCI to maintain retrievable exact copies of CDPH PCI. The plan must include a regular schedule for making backups, storing backups offsite, an inventory of backup media, and the amount of time to restore CDPH PCI should it be lost. At a minimum, the schedule must be a weekly full backup and monthly offsite storage of CDPH data.

5. Paper Document Controls

- A. **Supervision of Data.** CDPH PCI in paper form shall not be left unattended at any time, unless it is locked in a file cabinet, file room, desk or office. Unattended means that information is not being observed by an employee authorized to access the information. CDPH PCI in paper form shall not be left unattended at any time in vehicles or planes and shall not be checked in baggage on commercial airplanes.
- B. **Escorting Visitors.** Visitors to areas where CDPH PCI is contained shall be escorted and CDPH PHI shall be kept out of sight while visitors are in the area.
- C. **Confidential Destruction.** CDPH PCI must be disposed of through confidential means, using NIST Special Publication 800-88 standard methods for data sanitization when the CDPH PSCI is no longer needed.
- D. **Removal of Data.** CDPH PCI must not be removed from the premises of the Contractor except with express written permission of CDPH.
- E. **Faxing.** Faxes containing CDPH PCI shall not be left unattended and fax machines shall be in secure areas. Faxes shall contain a confidentiality statement notifying persons receiving faxes in error to destroy them. Fax numbers shall be verified with the intended recipient before sending.
- F. **Mailing.** CDPH PCI shall only be mailed using secure methods. Large volume mailings of CDPH PHI shall be by a secure, bonded courier with signature required on receipt. Disks and other transportable media sent through the mail must be encrypted with a CDPH approved solution, such as a solution using a vendor product specified on the CSSI.