



REVISED

AGENDA _____ January 25, 2011

January 4, 2011

AGENCY ADMIN. & FINANCE
1000 San Leandro Blvd, Suite 300
San Leandro, CA 94577
Tel: (510) 618-3452
Fax: (510) 351-1367

The Honorable Board of Supervisors
County Administration Building
1221 Oak Street
Oakland, CA 94612

Dear Board Members:

SUBJECT: Acceptance of Standard Agreement from the California Department of Public Health and Subcontract from the Public Health Institute for Alameda County Public Health Department, Community Health Services, Nutrition Services Network Program

RECOMMENDATION:

1. Accept and authorize the President of the Board to sign in original signature four (4) copies of Standard Agreement #10-10085 from the California Department of Public Health in the amount of \$12,276,737 for the period October 1, 2010 through September 30, 2013 to improve the health and well-being of low-income residents through nutrition education and physical activity promotion;
2. Accept and authorize the President of the Board to sign in original signature two (2) copies of the Subcontract No. 1016468 from the Public Health Institute in the amount of \$12,000 for the period December 6, 2010 through June 1, 2011 to enhance and maintain the Soda Free Summer materials development and website;
3. Authorize the Auditor-Controller to increase appropriation and revenue in the amount of \$164,408 as outlined in the attached Financial Recommendation;
4. Approve and authorize spending authority for supermarket gift cards to purchase food and intervention materials for nutrition education taste test in school and community interventions;
5. Approve an amendment to Master Contract #900322 with Oakland Unified School District (Principal: Anthony Smith, Ph.D., Location: Oakland, CA); an increase of \$125,000 from \$250,000 to \$375,000 for period July 1, 2010 through June 30, 2011. The contract amendment is to increase physical activity for children;
6. Authorize the Director or her designee to sign in original signature of Contractor Certification Clauses (CCC-307), Certification Regarding Lobbying and three (3) copies of Local Share Budget; and

7. Authorize the Director or her designee to sign the Master Contract Exhibit A&B amendment and submit originals to the Clerk of the Board for filing.

SUMMARY/DISCUSSION/FINDINGS:

The Health Care Services Agency, Public Health Department has received a three year grant award from the California Department of Public Health in the amount of \$12,276,737 for the period October 1, 2010 through September 30, 2013. The approved budget amount of \$3,994,811, \$4,092,246, and \$4,189,680 has allocated to funding years October 1, 2010 - September 30, 2011, October 1, 2011 - September 30, 2012, and October 1, 2012 - September 30, 2013 respectively. There is a required match of 100% to the award amount for each funding year which will be provided by the Oakland Unified School District and Public Health Department.

By accepting the award, the Alameda County Public Health Department will provide nutrition education and physical activity promotion to Food Stamp Nutrition Education (FSNE) eligible families. The primary goals of these activities are to increase the consumption of fruit and vegetables by the children, parents, food service workers, and teachers in multiple schools of the Oakland Unified School District and other school districts in Alameda County. In addition, to promote healthy eating and increase physical activity among children and seniors, the Public Health Department will collaborate and partner with City of Oakland Parks and Recreation Department and Department of Human Services, Senior Services.

The grantor is also allowing the department to purchase supermarket or produce gift cards that can be used to purchase food and intervention materials for nutrition education taste test in schools and community interventions. The total amounts requested are \$29,628 for 10/1/10-9/30/11, \$24,025 for 10/1/11-9/30/12, and \$30,192 for 10/1/12-9/30/13.

Oakland Unified School District (OUSD) is receiving an increase of \$125,000 from \$250,000 to \$375,000 to establish Harvest of the Month at thirty-five elementary and middle schools in Oakland. These schools are providing samples of fruit or vegetable highlighted in the curriculum in all classrooms. The increased in contract amount is the result of increasing fruit and vegetable costs for taste tests in these schools and the need for staff to coordinate the nutrition education interventions throughout all thirty-five sites. This contract amendment is funded from the State Nutrition Network grant.

SELECTION CRITERIA/PROCESS:

Nutrition services staff looked at possible contractors for these services and identified OUSD as the only contractor able to provide these services in Oakland schools. These services are furnished by the district through their Nutrition services department which is the only path group available and responsible to implement these services. OUSD is SLEB exempt due to their status as community based organizations.

FINANCING:

Funding for this grant is included in the adjust budget for FY 2010-11, however budget adjustments are necessary to reflect the \$164,408 increase in grant award received; therefore changes in appropriation and revenue are necessary. There will be no impact on net County cost.

Very truly yours,



Alex Briscoe, Director
Health Care Services Agency

DJK:sj
cc: Auditor-Controller
County Counsel

Ref PHG02CH42200

FINANCIAL RECOMMENDATION**AGENDA DATE:** 1/25/2011**Subject of Board Letter:**

Acceptance of Standard Agreement from the California Department of
Public Health and Subcontract from the Public Health Institute for the
Public Health Department, Nutrition Network Program

BY: 2011**FUND:** 22405

The use of Designations, as follows:

NAME OF DESIGNATION	ORG	AMOUNT

The increase (decrease) in anticipated revenue, as follows:

Informational				
ORG	ACCT	PROG	PROJ/GR	AMOUNT
350900	456120	00000	PHG02CH42200	\$164,408
ORG TOTAL				\$164,408

2011

Informational				
ORG	ACCT	PROG	PROJ/GR	AMOUNT
ORG TOTAL				\$0

GRAND TOTAL ANTICIPATED REVENUE \$164,408

The increase (decrease) in appropriations, as follows:

Informational				
ORG	ACCT	PROG	PROJ/GR	AMOUNT
350900	610000	00000	PHG02CH42200	\$164,408
ORG TOTAL				\$164,408

Informational				
ORG	ACCT	PROG	PROJ/GR	AMOUNT
ORG TOTAL				\$0

GRAND TOTAL APPROPRIATION \$164,408

REGISTRATION NUMBER

AGREEMENT NUMBER

10-10085

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

STATE AGENCY'S NAME

(Also referred to as CDPH or the State)

California Department of Public Health

CONTRACTOR'S NAME

(Also referred to as Contractor)

Alameda County Health Care Services Agency

2. The term of this Agreement is: 10/01/2010 through 09/30/2013

3. The maximum amount of this Agreement is: \$ 12,276,737
Twelve Million Two Hundred Seventy Six Thousand Seven Hundred Thirty Seven Dollars

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

Exhibit A – Scope of Work	20 pages
Exhibit B – Budget Detail and Payment Provisions	5 pages
Exhibit B, Attachment I – Budget (Year 1)	3 pages
Exhibit B, Attachment II – Budget (Year 2)	3 pages
Exhibit B, Attachment III – Budget (Year 3)	3 pages
Exhibit C * – General Terms and Conditions	GTC 610
Exhibit D(F) – Special Terms and Conditions (Attached hereto as part of this agreement)	25 pages
[Notwithstanding provision 6 which does not apply to this agreement]	
Exhibit E – Additional Provisions	2 pages
Exhibit F – Contractor's Release	1 page
Exhibit G – Travel Reimbursement Information	2 pages
Exhibit H – Information Privacy and Security Requirements	10 pages
Exhibit I – Contractor Equipment Purchased With CDPH Funds	2 pages
Exhibit J – Inventory/Disposition of CDPH-Funded Equipment	2 pages

See Exhibit E, Provision 1 for additional incorporated exhibits.

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

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

CONTRACTOR

CONTRACTOR'S NAME (if other than an individual, state whether a corporation, partnership, etc.)

Alameda County Health Care Services Agency

BY (Authorized Signature)

DATE SIGNED (Do not type)

PRINTED NAME AND TITLE OF PERSON SIGNING

Approved as to Form:

Alice Lai Bittker, President of the Board of Supervisors

ADDRESS

Deputy County Counsel

1221 Oak Street, Suite 536, Oakland, CA 94612

STATE OF CALIFORNIA

AGENCY NAME

California Department of Public Health

BY (Authorized Signature)

DATE SIGNED (Do not type)

PRINTED NAME AND TITLE OF PERSON SIGNING

Sandra Winters, Chief, Contracts and Purchasing Services Section

ADDRESS

1501 Capitol Avenue, Suite 71.5178, MS 1802, PO Box 997377
Sacramento, CA 95899-7377

California Department of
General Services Use Only

☐ Exempt per:

Exhibit A
Scope of Work

5. Allowable Informal Scope of Work (SOW) Changes

- A. Changes and revisions to the SOW contained in the agreement, utilizing the “**allowable cost payment system**”, may be proposed by the Contractor in writing. All requested changes and revisions are subject to the approval of the State. Failure to notify the State of proposed revisions to the SOW may result in an audit finding.
- B. The State will respond, in writing, as to the approval or disapproval of all such requests for changes or revisions to the SOW within 30 calendar days of the date the request is received in the program. Should the State fail to respond to the Contractor’s request within 30 calendar days of receipt, the Contractor’s request shall be deemed approved.
- C. The State may also request changes and revisions to the SOW. The State will make a good-faith effort to provide the Contractor 30 calendar days advance written notice of said changes or revisions.

6. Progress Reports

- A. The Contractor shall submit one original semi-annual progress report to CDPH in the format prescribed by the State. The progress reports shall describe progress made in completing agreement deliverables, challenges encountered, and solutions proposed.
- B. Progress report periods and due dates are:
- | | <u>Budget Period</u> | <u>Report Period</u> | <u>Due Date</u> |
|----------------|----------------------|-----------------------------------|-----------------|
| <u>Year 1:</u> | First Semiannual | October 1, 2010 – March 31, 2011 | 04/16/2011 |
| | Second Semiannual | April 1, 2011– September 30, 2011 | 09/30/2011 |
| <u>Year 2:</u> | First Semiannual | October 1, 2011 – March 31, 2012 | 04/16/2012 |
| | Second Semiannual | April 1, 2012– September 30, 2012 | 09/30/2012 |
| <u>Year 3:</u> | First Semiannual | October 1, 2012 – March 31, 2013 | 04/16/2013 |
| | Second Semiannual | April 1, 2013– September 30, 2013 | 09/30/2013 |
- C. If the State does not receive complete and accurate progress reports by the required dates, further payments to the Contractor may be suspended until complete and accurate reports are received.

7. Contractor Requirements

The Contractor shall comply with the guidelines for the development of all education materials as outlined in the Local Incentive Award Program Guidelines Manual. These Guidelines have been incorporated into this agreement and made a part hereof by reference in Exhibit E, Additional Provisions, paragraph 1. In particular, the Contractor shall comply with the following requirements:

- A. Submit any news release related to this agreement to the State for review prior to its release.

Exhibit A
Scope of Work

1. Service Overview

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

Contractor will provide nutrition education and physical activity promotion to United States Department of Agriculture (USDA) Supplemental Nutrition Assistance Program Education (SNAP-Ed) eligible families described herein.

2. Service Location

The services shall be performed at applicable facilities in the County of Alameda.

3. Service Hours

The services shall be provided during normal contractor working hours and days.

4. Project Representative

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

California Department of Public Health	Name of Contracting Organization
CDPH Contract Manager: Narinder Padma Telephone: (916) 449-5424 Fax: (916) 449-5414 E-mail: narinder.padma@cdph.ca.gov	Project Director: Diane Woloshin Telephone: (510) 595-6458 Fax: (510) 595-6486 E-mail: Diane.Woloshin@acgov.org

B. Direct all inquiries to:

California Department of Public Health	Name of Contracting Organization
<i>Network for a Healthy California</i> Attention: Antoinette Souza-King, Manager 1616 Capitol Avenue, Suite 74.516, MS 7204 P.O. Box 997377, MS 7204 Sacramento, CA 95899-7377 Telephone: (916) 445-2521 Fax: (916) 449-5414 E-mail: asouzaki@cdph.ca.gov	Alameda County Health Care Services Agency Attention: Alice Lai Bittker President of the Board of Supervisors 1221 Oak Street, Suite 536 Oakland, CA 94612 Telephone: (510) 272-6693 Fax: (510) 268-8004 E-mail: Dist3@acgov.org

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

Exhibit A
Scope of Work

- B. The Contractor agrees to cooperate with the State in data collection related to evaluation of program effectiveness as requested in the manner, format, and timeline prescribed by the State. Data shall include, at a minimum, demographic descriptions of the population served, audience reach, and items to measure program effectiveness. The data shall be submitted in the required form prescribed by the State.
 - C. The Contractor agrees to cooperate with the State in the review and, when appropriate, the field testing of statewide evaluation instruments and newly developed educational materials.
 - D. The Contractor shall ensure that the USDA SNAP-Ed is clearly identified as a sponsor or support organization on all materials and products funded by the agreement (electronic, print, audiovisual, media, etc.). The Contractor agrees to abide by the guidelines set for usage of the *Network* logos on any products generated by the Contractor.
 - E. The Contractor agrees to cooperate with the State by participating in statewide meetings and site visits, as deemed necessary by the State.
8. See the following pages for a detailed description of the services to be performed.

GOAL 1: SNAP-Ed eligible families (≤185% Federal Poverty Level) will consume the recommended daily amounts of colorful fruits and vegetables and participate in daily physical activity.

Objective 1: Annually, complete and submit all required reports and forms on or before each deadline and participate in *Network*-sponsored community events and trainings.

Social Ecological Model: ☐ Individual ☐ Interpersonal: Social Groups ☒ Institutional/Organizational ☒ Community

Target Audience: Race/Ethnicities/ Ages: See Project Summary

Activities	Responsible Party	Evaluation	Timeframe
1) Semi-Annual Activity Reports (SAAR) online.	Project Coordinator	Documents completed and submitted to <i>Network</i>	10/2010-9/2013 each October and April
2) Semi-Annual, Annual and Final Reports, including progress reports, progress report narratives, labeled attachments and Activity Tracking Forms.	Project Coordinator	Documents completed and submitted to <i>Network</i>	10/2010-9/2013 each October and April
3) Contractors with over \$350,000 Federal Share: Conduct Impact Evaluation of an intervention to increase fruit and vegetable consumption. This includes attending regional trainings as appropriate.	Project Coordinator	Documents completed and submitted to <i>Network</i>	10/2010-9/2013 each July
4) For Local Health Department Contractors: Implement <i>Communities of Excellence in Nutrition, Physical Activity and Obesity Prevention (CX³)</i> , a pre-program planning tool, by evaluating neighborhood nutrition indicators and assets. a) Participate in any <i>Network</i> -sponsored CX ³ training being offered for testing instruments and/or implementing CX ³ . b) Implement CX ³ , including organizing community groups to assist in the needs assessment process, select appropriate geographical area(s), collect data using CX ³ tools, and analyze local data and information. c) Provide ongoing information and feedback to the <i>Network</i> . d) Based on CX ³ findings, prioritize identified problem areas, and develop a strategic Scope of Work objective that is <i>Network</i> allowable or revise an existing objective to incorporate a nutrition education strategy that addresses one of the community priorities.	Project Coordinator	Documents completed and submitted to <i>Network</i>	10/2010-9/2013

Legend: OUSD = Oakland Unified School District; HOTM = Harvest of the Month; HLC = Healthy Living Council; TCE = The California Endowment
CCLHO = California Conference of Local Health Officers, CCLHDN = California Conference of Local Health Dept. Nutritionists, SNAP = State Nutrition Action Plan, CAN-ACT = California Association of Nutrition and Activity Providers, Doof = Food Spelled Backwards Educational Program, HEAC = Healthy Eating Active Community, HOPE = Health for Oakland People and Environment, WIC = Women Infant Children, C-NAP = Alameda County Nutrition Action Partners, CX³ = Communities of Excellence in Nutrition Physical Activity and Obesity Prevention, SHAPE = Shaping Health as Partners In Education, PM = Project Manager, BANPAC = Bay Area Nutrition and Physical Activity Collaborative, NS = Nutrition Services, PA = Physical Activity

EXHIBIT A
Scope of Work

Alameda County Health Care Services Agency
10-10085

Activities	Responsible Party	Evaluation	Timeframe
5) Participate in ongoing community activities supporting statewide initiatives and provide nutrition education/physical activity promotion resources to local programs, including collaboration with existing University of California Cooperative Extension Food Stamp Nutrition Education agencies and organizations conducting food stamp outreach when appropriate.	Project Coordinator	Record of participation in activities on file	10/2010-9/2013
6) Attend <i>Regional Network</i> related meetings (e.g., Fruit & Vegetable campaign meetings, collaborative meetings, etc.) to provide input into planning <i>Network</i> regional activities and participate in <i>Network</i> regional activities including the educational initiative efforts.	Project Coordinator	Copies of agendas, record of participation on file	10/2010-9/2013
7) Attend a minimum of three (3) <i>Network</i> -sponsored trainings and conferences including: annual <i>Network</i> Conference and other <i>Network</i> -sponsored regional trainings; school districts or Local Incentive Awardees working with schools also attend the <i>Network</i> -sponsored regional Shaping Health as Partners in Education (SHAPE) California meetings (spring) and Harvest of the Month Trainings; local health departments also attend annual California Conference of Local Health Department Nutritionists (CCLHDN).	Project Coordinator	Copies of agendas, record of participation on file	10/2010-9/2013
8) Use United States Department of Agriculture guidelines to ensure State Share activities are allowable and appropriately documented.	Project Coordinator	State Share budget	10/2010-9/2013

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GOAL 1: SNAP-Ed eligible families (≤185% Federal Poverty Level) will consume the recommended daily amounts of colorful fruits and vegetables and participate in daily physical activity.

Objective 2: IMPACT: Annually carry out and report on an Impact/Outcome Evaluation of a minimum of 100 matched 4th and 5th graders at target schools to measure change in fruit and vegetable consumption and related factors such as access to fruit and vegetables at home and perceived parental consumption. Annually carry out and report on an Impact/Outcome Evaluation of adults to measure changes in fruit and vegetable consumption and other factors such as perceived benefits of eating fruits and vegetables, perceived control, self-efficacy, readiness to eat more fruit, readiness to eat more vegetables, and perceived diet quality.

Social Ecological Model: ☒ Individual ☒ Interpersonal: Social Groups ☒ Institutional/Organizational ☐ Community

Activities	Responsible Party	Evaluation	Timeframe
1) Develop an evaluation plan in concert with the PM and Research and Evaluation Unit. Submit final Impact Evaluation plan, using the <i>Network's</i> impact evaluation plan template, one month prior to beginning nutrition education activities	Project Coordinator Coordinator of Other Program Evaluation Subcontractor	Submit Plan	7/2011, 7/2012, 7/2013
2) Annually administer a minimum of 100 matched pre- and post-tests to 4 th and 5 th graders at target schools to evaluate increases in fruit/vegetable consumption, self-efficacy, preferences, physical activity, and/or knowledge. Data will be analyzed and a report of findings submitted.	Project Coordinator Evaluation Subcontractor	Submit report and data	7/2011, 7/2012, 7/2013
3) In years two and three add a comparison school site with similar demographic make-up to evaluate impact of nutrition education at intervention sites	Project Coordinator Evaluation subcontractor	Submit report and data	7/2012, 7/2013
4) Annually conduct needs assessments of nutrition and physical activity issues and interests with Healthy Living Champions for Change council participants along with a process evaluation of councils. Outcomes of the process evaluations will be incorporated in yearly program planning efforts.	Project Coordinator Coordinator of Other Programs Evaluation subcontractor	Submit process evaluation report	7/2011, 7/2012, 7/2013

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EXHIBIT A
Scope of Work

Alameda County Health Care Services Agency
10-10085

Activities	Responsible Party	Evaluation	Timeframe
5) Annually conduct impact evaluation with Healthy Living Champion for Change Council participants to evaluate increases in fruit/vegetable consumption, self-efficacy knowledge, preferences, physical activity levels, social cohesion, and ability to influence change. Data will be analyzed and a report of findings submitted.	Project Coordinator And evaluation subcontractor	Submit report and data	7/2011, 7/2012, 7/2013

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GOAL 2: To increase collaborations and partnerships that expand nutrition education and physical activity opportunities to low-income populations in eligible census tracts

Objective 1: By September 30, 2013, Nutrition Services staff will work in collaboration with partner agencies and organizations, including school districts, and participate in at least five (5) statewide coalitions, community-based coalitions and/or countywide collaborative efforts that promote healthy eating and physical activity across numerous channels reaching SNAP eligible populations

Social Ecological Model: ☐ Individual ☒ Interpersonal: Social Groups ☒ Institutional/Organizational ☒ Community

Activities	Responsible Party	Evaluation	Timeframe
1) Convene Alameda County federal food programs to coordinate nutrition education messages and efforts. Building on C-NAP, continue to develop collaborative interventions to promote fruit and vegetable consumption amongst food stamp eligible population throughout Alameda County.	Collaborations Coordinator Project Coordinator	Meeting Minutes, Action Plans on file	10/2010–9/2013
2) Provide leadership in the various regional and statewide coalitions, collaborative, and advisory groups including: CCLHO/ CCLHDN, SNAP, BANPAC, Health for Oakland People and Environment (HOPE), Alameda County Obesity Prevention Partnership, California Convergence, OUSD District Health Initiative, OUSD Coordinated School Health Council, Oakland Food and Policy Council, Alameda County Breastfeeding Taskforce, SHAPE meetings, CAN-ACT, and Joint Steering Committee.	Administrator Project Coordinators and appropriate staff	Meeting minutes and plans on file	10/2010 – 9/2013
3) Convene bi-monthly Alameda County Health Department professional staff participating in community health/wellness initiatives targeted to low-income SNAP eligible populations to ensure coordination of Network nutrition education activities, message consistency, and overall effectiveness. (i.e. HEAC, HOPE, TCE Building Healthy Communities, Place Matters).	Administrator Project Coordinators and appropriate staff	Attendance Logs, Meeting Minutes, Action Plans on file	10/2010 – 9/2013
4) Collaborate with neighboring programs/counties within the region to facilitate exchange of innovative strategies and best practices and to coordinate nutrition messages.	Administrator Project Coordinator and appropriate staff	Attendance Logs, Meeting Minutes, Action Plans on file	10/2010 – 9/2013

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EXHIBIT A
Scope of Work

Alameda County Health Care Services Agency
10-10085

Activities	Responsible Party	Evaluation	Timeframe
5) Assess agency partners serving SNAP eligible populations and determine potential collaborative efforts such as train-the-trainer with agency staff, direct client nutrition education, and materials and technical support. Agency partners include: other public health department programs, social services, food bank agencies, faith based organizations, and others	Project Coordinator and appropriate staff	Training and support provided and documentation on file	10/2010 – 9/2013
6) Collaborate with targeted retail food partners that sell/distribute food, to SNAP eligible populations to integrate nutrition education messages and promote consumption of fruits and vegetables.	Project Coordinators Dietitians	Interventions documented in Activity Tracking Log	10/2010 – 9/2013

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GOAL 3: Promote adoption of healthy lifestyle behaviors, including increased consumption of colorful fruits and vegetables and increased physical activity among low-income SNAP eligible ($\leq 185\%$ Federal Poverty Level) Alameda County adults, children and families.

Objective 1: By September 30, 2013, provide training and support to partner agencies/organizations, providers, volunteers, and staff to build broad capacity for ongoing nutrition education and physical activity promotion among their constituents and communities.

Social Ecological Model: ☒ Individual ☒ Interpersonal: Social Groups ☒ Institutional/Organizational ☒ Community

Activities	Responsible Party	Evaluation	Timeframe
1) Using a train-the-trainer model, NS staff will conduct up to three (3) workshops each year, to reach partners who work with the SNAP eligible population to provide nutrition education modules, physical activity promotion messages and ongoing follow-up and technical assistance to assure their use of the training materials. Follow-up will be provided on a regular basis and could include phone calls, face-to-face meetings, and additional training. Target audiences may include: WIC, childcare and preschool providers, after school providers, summer program directors, public health nurses, Social Services program staff, Public Health program staff, Head Start, faith-based organizations, medical/clinic providers, dental providers, University of California Cooperative Extension, Alameda County Community Food Bank staff.	Administrator Project Coordinators Dietitians Nutrition Aides Communications Consultant	Attendance records, training agenda and materials on file. Sample will be provided.	10/2010 – 9/2013
2) Each year, initiate and/or collaborate with up to two (2) peer health education programs to integrate nutrition/PA curricula into the training content, engaging youth and adults in teaching their peers. This includes identifying/developing appropriate nutrition education/PA materials, providing training for the peer health educators, providing support and technical assistance to the program staff and peer educators to assure the materials are being utilized and are effective. Potential partners include: school-based health centers, C-NAP partner organizations, resident councils, youth organizations and existing promotoras programs.	Project Coordinators Dietitians Nutrition Aides	Attendance records, training agenda and materials on file. Sample will be provided.	10/2010 – 9/2013
3) Initiate WIC based peer health education program with graduates of WIC breastfeeding support groups. Emphasis will be on promotion of healthy early childhood feeding and the development of healthy habits with parents of preschool age children	Dietitians Nutrition Aides	Attendance records, training agenda and materials on file. Sample will be provided.	10/2010 – 9/2013

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**EXHIBIT A
Scope of Work**

**Alameda County Health Care Services Agency-
Public Health/Nutrition
10-10085**

Activities	Responsible Party	Evaluation	Timeframe
4) Provide up to three (3) trainings for partner agencies/organizations each year to promote healthy eating/PA promotion within their agency for their constituents/clients. Partners may include: daycare providers, foster care home directors, after school and summer youth program directors, dental providers.	Project Coordinators Dietitians Nutrition Aides Communications Consultant	Attendance records, training agenda and materials on file. Sample will be provided.	10/2010 – 9/2013
5) Collaborate with up to two (2) volunteer organizations to integrate nutrition education/PA promotion into their training programs and facilitate the placement of volunteers in efforts to support healthy food and active environments.	Project Coordinators Dietitians Nutrition Aides	Attendance records, training agenda and materials on file. Sample will be provided.	10/2010 – 9/2013
6) Annually, conduct a needs assessment of staff training needs. Facilitate ways in which staff training needs can be met i.e. attending workshops, staff led presentations, inviting trainers to staff meetings, etc.	Administrator Project Coordinators	Attendance records and training agendas on file.	10/2010 – 9/2013

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GOAL 3: Promote adoption of healthy lifestyle behaviors, including increased consumption of colorful fruits and vegetables and increased physical activity among low-income SNAP eligible Alameda County adults, children and families.

Objective 2: By September 30, 2013 convene up to 20 SNAP eligible resident groups through Healthy Living Champions for Change Councils at targeted schools, senior centers, community centers, and WIC sites; as well as participate in at least 8 events reaching a minimum of 1000 individuals to promote healthy eating and physical activity and to improve the likelihood that SNAP eligible residents will make healthy food and activity choices.

Social Ecological Model: ☒ Individual ☒ Interpersonal: Social Groups ☒ Institutional/Organizational ☒ Community

Activities	Responsible Party	Evaluation	Timeframe
1) Map the location of underserved, high-risk areas in the County and select Network eligible intervention sites to identify potential additional community "centers" for future activity (i.e. faith-based locations, schools, stores, senior centers, childcare centers, WIC sites, and medical clinics. To maximize reach, selected Network eligible sites will coordinate with other initiatives such as HOPE and Place Matters	Administrator Program Coordinators Coordinator of Other Programs Dietitians Nutrition Assistants	Documents completed and on file	10/2010 – 9/2013
2) Maintain and/or establish up to ten (10) School-based Healthy Living Champions for Change groups serving low-income residents at Network preapproved school sites. Network activities could include: nutrition education, Harvest of the Month cooking demonstrations/taste-tests, promotion of physical activity, participant recruitment and retention, facilitation of regular meetings including building consensus, issue identification using assessment tools (such as CX ³ tools), providing resources, and providing linkages to community based resources funded by appropriate entities.	Program Coordinators Coordinator of Other Programs Dietitians Nutrition Aides	Attendance Records, Notes, and materials on file. Sample provided.	10/2010-9/2013

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**EXHIBIT A
Scope of Work**

Activities	Responsible Party	Evaluation	Timeframe
3) Maintain and/or establish up to six (6) Senior Healthy Living Councils serving low income residents in pre-approved census tracts. Network activities could include: nutrition education, Harvest of the Month cooking demonstrations/taste-tests, promotion of physical activity, participant recruitment and retention, facilitation of regular meetings including building consensus, issue identification using assessment tools (such as CX ³ tools), providing resources, and providing linkages to community based resources funded by appropriate entities.	Program Coordinators Coordinator of Other Programs Dietitians Nutrition Aides	Attendance Records, Notes, and materials on file. Sample provided.	10/2010-9/2013
4) Pilot up to two (2) Community-based Healthy Living Champions for Change groups by mapping the target neighborhood for schools, community-based organizations, Parks & Recreation sites, faith-based institutions, businesses, government agencies and other community institutions. Staff will partner with agencies and residents to convene a group that reflects the assets of that neighborhood and will consider cultural norms, needs for language specific services, etc. Meeting locations, times, and membership determined by the community. Network activities could include: nutrition education, Harvest of the Month cooking demonstrations/taste-tests, promotion of physical activity, participant recruitment and retention, facilitation of regular meetings including building consensus, issue identification using assessment tools (such as CX ³ tools), providing resources, and providing linkages to community based resources funded by appropriate entities.	Program Coordinators Coordinator of Other Programs Dietitians Nutrition Aides	Attendance Records, Notes, and materials on file. Sample provided.	10/2010-9/2013
5) Pilot one (1) WIC site based Healthy Living Champions for Change group, recruiting WIC parents. Network activities could include: nutrition education, Harvest of the Month cooking demonstrations/taste-tests, promotion of physical activity, participant recruitment and retention, facilitation of regular meetings including building consensus, issue identification using assessment tools (such as CX ³ tools), providing resources, and providing linkages to community based resources funded by appropriate entities.	Program Coordinators Coordinator of Other Programs Dietitians Nutrition Aides	Attendance Records, Notes, and materials on file. Sample provided.	10/2010-9/2013

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**EXHIBIT A
Scope of Work**

**Alameda County Health Care Services Agency-
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10-10085**

Activities	Responsible Party	Evaluation	Timeframe
6) Pilot one (1) intensive, high-frequency, and timed (e.g. daily, weekly, or six- to eight-week -to be determined) intervention with an identified school or community Healthy Living Champions for Change group. The group will build consensus to identify areas of nutrition education focus/action items. Group leaders will be identified and trained to lead the group and continue the efforts at the end of the intervention period. Staff will ensure that support, training and technical assistance is provided to group leaders on a regular basis. A yearly assessment of effectiveness and impact will be conducted and replication will be dependent on assessment results.	Project Coordinators Coordinator of Other Programs Nutrition Aides Dietitian	Attendance Records, Notes, and materials on file. Sample provided.	10/2010-9/2013
7) Participate in at least two (2) major events in pre-approved sites annually reaching at least 200 SNAP eligible community members per event and at least six (6) health or cultural fairs or faith based community events.	Nutrition Aides Dietitian Coordinators of Other Programs	Event Requests on file	10/2010-9/2013

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GOAL 3: Promote adoption of healthy lifestyle behaviors, including increased consumption of colorful fruits and vegetables and Increased physical activity among low-income SNAP eligible Alameda County adults, children and families.

Objective 3: By September 30, 2013, 15,000 students, parents, and school staff in eligible schools of OUSD will participate annually in a minimum of five (5) school-wide nutrition interventions, such as classroom education, parent education and outreach, staff development, connections to the cafeteria, garden based nutrition education, and after school program education.

Social Ecological Model: ☒ Individual ☒ Interpersonal: Social Groups ☒ Institutional/Organizational ☒ Community

Activities	Responsible Party	Evaluation	Timeframe
1. Annually, provide up to nine (9) seasonal HOTM produce boxes for in-classroom nutrition education and taste testing in up to 35 OUSD elementary and middle schools reaching up to 13,000 students. Provide corresponding student workbooks, classroom preference tally posters, teacher and family newsletters, stickers, and taste test related supplies. Promote HOTM in the cafeteria setting, including things such as posters, stickers, and other Network approved promotional materials.	Project Coordinators Dietitians Nutrition Aides OUSD Subcontractor	OUSD documentation of produce delivered to each site. Activity tracking log for documentation of delivery of monthly newsletters to teachers and family.	10/2010-9/2013
2. Annually, provide up to five (5) school-wide Nutrition Education and Physical Activity Promotion interventions that are linked to CA state educational standards and the K-12 CA Health Framework, in up to 35 OUSD elementary and middle schools. Network Activities may include: quarterly in-class nutrition education lesson plans, a parent nutrition education component, after school nutrition and cooking classes, garden based nutrition education, behaviorally focused point of service education, HOTM classroom toolkit, DooF, Importance of Breakfast, Smart Snacking, Sugar Savvy, and TV Turnoff Week. Provide taste tests and supporting materials as appropriate for each intervention.	Project Coordinators Dietitians Nutrition Aides OUSD Subcontractor	Activity tracking log for documentation of nutrition interventions. Notes from informal qualitative feedback from teachers, students, and parents on file.	10/2010-9/2013

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Activities	Responsible Party	Evaluation	Timeframe
3. Conduct research with administrators, teachers, parents, and students to identify effective communication strategies with our target populations. Based on research results, annually, implement up to five (5) communications strategies to promote healthy eating and physical activity in up to 35 OUSD elementary and middle schools. Activities may include: HOTM calendars, mini HOTM posters for each classroom monthly, updating nutrition bulletin boards monthly, menu-back education messages, parent and staff newsletters, banners, cafeteria displays, materials distribution at school wide events, and text messaging for teachers, parents, middle, and high school students. New materials will be submitted to Program Manager for pre-approval. Annually review strategies and modify as appropriate in year two and three of contract.	Project Coordinators Dietitians Nutrition Aides OUSD Subcontractor Communications Contractor	Activity tracking log for documentation of communication strategies implemented and samples of materials.	10/2010-9/2013
4. Meet quarterly with administrators and teachers at school staff meetings to introduce school wide nutrition education initiatives and enroll teachers. Facilitate implementation of initiatives by sharing campaign/intervention materials and modeling lesson plans.	Project Coordinators Dietitians Nutrition Aides	Activity tracking log for documentation of quarterly meetings	10/2010-9/2013
5. Coordinate with OUSD Nutrition Service Administration and school cafeteria staff to provide technical assistance on menu incorporation of HOTM, connecting cafeteria to the classroom, behaviorally focused point of service nutrition education that details nutrition information of cafeteria foods served and HOTM produce distribution to the classrooms. Provide training and nutrition education to OUSD nutrition service managers and workers as part of overall strategy to promote fruit and vegetable consumption at the point of service.	Project Coordinators Dietitians Nutrition Aides OUSD Subcontractor	Activity tracking log for documentation of coordination meetings and training	10/2010-9/2013
6. Maintain an outdoor nutritional learning program for OUSD, utilizing school gardens and other pre-existing nutrition education venues, and linking the learning program with HOTM. Facilitate the utilization of garden based nutrition curricula aligned with state educational standards and the K-12 CA Health Framework, by modeling lesson plans and providing technical assistance.	Project Coordinators Dietitians Nutrition Aides OUSD Subcontractor	Activity tracking log for documentation of garden based nutrition lessons conducted and sample lessons on file	10/2010-9/2013

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Activities	Responsible Party	Evaluation	Timeframe
7. Collaborate with School Based Health Center Staff in the development of the nutrition education component of Middle School Based Health Centers to ensure delivery of consistent nutrition messages and more comprehensive programs. Coordinating in-classroom and afterschool nutrition education programming and youth and parent engagement efforts.	Project Coordinators Dietitians	Activity tracking log for documentation of coordination meetings and efforts	10/2010-9/2013
8. Provide nutrition education and HOTM promotion by conducting taste tests and cooking demos at up to ten (10) Oakland Farm to School Network Produce Stands. Pilot one (1) youth led nutrition education cooking demonstration project at a school based produce stand.	Project Coordinators Dietitians Nutrition Aides OUSD Subcontractor	Activity Tracking Log for documentation of taste tests and cooking demos	10/2010-9/2013
9. Annually, provide two (2) customized, grade specific elementary school nutrition and physical activity demonstrations that integrate into the district's math and language arts academic curriculum in up to 27 elementary schools. Provide support to teachers to ensure delivery and enhance quality.	Project Coordinators Dietitians Nutrition Aides	Activity Tracking Log for documentation of lesson delivery and Network pre-approved lesson plans	10/2010-9/2013
10. Annually, provide two (2) customized, grade specific middle school nutrition lessons that integrate into subjects such as mathematics, science, social studies, language arts, and physical education in up to 10 middle schools. Provide support to teachers to ensure delivery and enhance quality.	Project Coordinators Dietitians Nutrition Aides	Activity Tracking Log for documentation of lesson delivery and Network pre-approved lesson plans	10/2010-9/2013
11. Annually, host and/or join existing school wide family events/fairs that will highlight nutrition and support/encourage student, family and teacher involvement in up to 10 OUSD elementary and middle schools. Events/fairs will feature such activities as: nutrition education stations, highlight of student nutrition science projects, highlight of school-wide nutrition education campaigns, and/or promotion of community/neighborhood involvement in improving access to healthy foods.	Project Coordinators Dietitians Nutrition Aides	Activity Tracking Log for documentation of events and fairs	10/2010-9/2013

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**EXHIBIT A
Scope of Work**

**Alameda County Health Care Services Agency-
Public Health/Nutrition
10-10085**

Activities	Responsible Party	Evaluation	Timeframe
12. Annually, host at least one (1) district wide professional development summit on the promotion of nutrition and physical activity for elementary and/or middle school teachers.	Project Coordinators Dietitians Nutrition Aides OUSD Subcontractors	Activity Tracking Log for documentation of summit, materials and attendance records on file	10/2010-9/2013
13. Annually, partner with OUSD to provide up to six (6) professional development workshops on nutrition education and physical activity promotion and reinforcement topics for teachers, school garden coordinators, and other staff.	Project Coordinators Dietitians Nutrition Aides OUSD Subcontractors	Activity Tracking Log for documentation of professional development workshops and attendance records on file	10/2010-9/2013
14. Annually, partner with OUSD to provide up to two (2) nutrition trainings to school nurses and after school program coordinators in the district. Coordinate nutrition education efforts with school nurses and after school program coordinators.	Project Coordinators Dietitian	Activity Tracking Log for documentation of trainings, materials and attendance records on file	10/2010-9/2013
15. Research, develop, and pilot a Harvest of the Month intervention in up to five (5) elementary school sites' after school programs. All materials associated with the intervention will be preapproved by the Network. Depending on pilot results, improve program and expand to additional after school programs in year two and year three of contract.	Project Coordinators Dietitian	Activity Tracking Log for documentation of pilot activities and pilot results on file	10/2010-9/2013
16. Research, develop, and pilot up to two (2) High School based youth led nutrition education programs, such as nutrition clubs, peer health education, HOTM promoting healthy cooking classes as elective or in an after school program, field trips to local farms or food justice organizations, school wide youth-led nutrition and physical activity challenges/campaigns, art/video/spoken word contests, using text messages, blogs, and other social media to reinforce nutrition messages and actions. All materials associated with the intervention will be preapproved by the Network.	Project Coordinators Dietitian Coordinators of Other Programs	Activity Tracking Log for documentation of pilot activities and sample of materials on file	10/2010-9/2013
17. Annually implement one nutrition club in up to five (5) middle schools that can be used as a venue for student education, engagement, and empowerment around nutrition education and physical activity related topics including activities such as; nutrition classes, cooking, peer health education training, and or providing student service learning credits for promoting a) the nutritional benefits of salad bars, b) produce stands and c) the ensuring adherence of the school wellness policy.	Project Coordinators Dietitian Coordinators of Other Programs	Activity Tracking Log for documentation of nutrition club activities and attendance records on file	10/2010-9/2013

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GOAL 3: Promote adoption of healthy lifestyle behaviors, including increased consumption of colorful fruits and vegetables and increased physical activity among low-income SNAP eligible Alameda County adults, children and families.

Objective 4: By September 30, 2013, will develop and implement a communication plan that details effective strategies and consistent messages targeted at SNAP eligible residents to promote nutrition education and physical activity in schools and community.

Social Ecological Model: ☒ Individual ☒ Interpersonal: Social Groups ☒ Institutional/Organizational ☒ Community

Activities	Responsible Party	Evaluation	Timeframe
1. Conduct formative research to determine effective communication channels and strategies with various populations within Alameda County and develop a comprehensive communication plan.	Administrator Communications Consultant Project Coordinators	Completed Communication Plan	10/2010-6/2011
2. Develop graphic templates and tools for Nutrition Services staff to use to ensure consistent look and messaging and easy recognition of both <i>Network</i> and program brands. All materials will be preapproved by the Network.	Administrator Communications Consultant Project Coordinators	Completed graphic templates and tools	10/2010-6/2011
3. Based on research results, implement selected strategies and channels which may include: billboards, bus ads, sticker campaign, local-cable television, website, social media, text messages, blogs, etc..	Administrator Communications Consultant Project Coordinators	Activity tracking log for documentation of completed activities	4/2011- 9/2013
4. Connect to statewide <i>Network</i> campaign by developing local grassroots component to Champions for Change social marketing campaign and secondary messages such as "eat right when money's tight". This will include components that are aimed at individual, group, institutional, and environmental change efforts to promote healthy eating, specifically increased consumption of fruits and vegetables and the promotion of physical activity.	Administrator Communications Consultant Project Coordinators	Activity tracking log for documentation of completed activities	4/2011- 9/2013
5. Evaluate effectiveness of communications strategies and modify plan for years two and three.	Administrator Communications Consultant Project Coordinators	Revised communication plans	10/2011-9/2013
6. Develop a community engagement and outreach tool that provides a detailed description of Alameda County Nutrition Services programs. This will be used to market nutrition education programs to those serving SNAP eligible residents such as community based organizations, health clinics, social services, faith organizations and others. All materials will be preapproved by the Network.	Administrator Communications Consultant Project Coordinators	Outreach tool developed	10/2010-6/2011

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GOAL 3: Promote adoption of healthy lifestyle behaviors, including increased consumption of colorful fruits and vegetables and increased physical activity among low-income SNAP eligible Alameda County adults, children and families.

Objective 5: By September 30, 2013, up to 3,500 students, parents, and school staff in eligible schools of Alameda Unified School District (AUSD) will participate annually in 1100 school-wide nutrition interventions such as: classroom education, staff development, and parent education and outreach.

Social Ecological Model: ☒ Individual ☒ Interpersonal: Social Groups ☒ Institutional/Organizational ☒ Community

Activities	Responsible Party	Evaluation	Timeframe
1) Conduct 783 school day nutrition education sessions that promote consumption of fruits and vegetables and daily physical activity promotion in two (2) Alameda County Unified School District (AUSD) schools: Ruby Bridges Elementary and Chipman Middle School. Possible expansion to two (2) additional elementary schools; Haight and Washington, one (1) additional middle schools: Will C. Wood and one (1) high school; Encinal	AUSD Contractor	Sample of lesson plans and materials developed for curriculum; examples of students work on file	10/2010 - 9/2013
2) Provide three (3) trainings annually for school-day staff teams and after school staff in nutrition preapproved by the Network.	AUSD Contractor	Training calendar, record of staff participation in training on file	10/2010 - 9/2013
3) Pilot a nutrition education outreach program for parents that include recruiting, training and involving parent liaisons (Parent Nutrition Educators) in both the school day and after school programs at preapproved schools.	AUSD Contractor	Parent attendance, parent recruitment materials, sample lesson plans and curricular materials on file	10/2010 - 9/2013
4) Pilot nutrition education sessions (average of 3 per year) that promote consumption of fruits and vegetables and awareness of Federal nutrition assistance programs among parents at one to two preapproved school sites.	AUSD Contractor	Parent attendance, parent recruitment materials, sample lesson plans and curricular materials on file	10/2010 - 9/2013

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Exhibit B
Budget Detail and Payment Provisions

1. Invoicing and Payment

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

Narinder Padda
California Department of Public Health
Network for a Healthy California
1616 Capitol Avenue, Suite 74.516
MS 7204
P.O. Box 997377
Sacramento, CA 95899-7377

C. Invoice shall:

- 1. Be prepared on company letterhead. If invoices are not on produced letterhead invoices then it must be signed by an authorized official, employee or agent certifying that the expenditures claimed represent actual expenses for the service performed under this agreement.
 - 2. Bear the Contractor's name as shown on the agreement.
 - 3. Identify the billing and/or performance period covered by the invoice.
 - 4. Itemize costs for the billing period in the same or greater level of detail as indicated in this agreement. Subject to the terms of this agreement, reimbursement may only be sought for those costs and/or cost categories expressly identified as allowable in this agreement and approved by CDPH.
- D. Quarterly invoices shall be submitted for payment within sixty (60) days following the end of each calendar quarter in which the work was performed and costs incurred in the performance of the agreement, unless the agreement has reached the expiration or termination date (see paragraph 5, Timely Submission of Final Invoice) or a later or alternate deadline is agreed to in writing by the program contract manager.
- E. The State may, at its discretion, choose not to honor any delinquent invoice if the Contractor fails to obtain prior written State approval of an alternate invoice submission deadline.

2. Budget Contingency Clause

- A. It is mutually agreed that if the Budget Act of the current year and/or any subsequent years covered under this Agreement does not appropriate sufficient funds for the program, this Agreement shall be of no further force and effect. In this event, the State shall have no liability to pay any funds whatsoever to Contractor or to furnish any other considerations under this Agreement and Contractor shall not be obligated to perform any provisions of this Agreement.

Exhibit B
Budget Detail and Payment Provisions

- B. If funding for any fiscal year is reduced or deleted by the Budget Act for purposes of this program, the State shall have the option to either cancel this Agreement with no liability occurring to the State, or offer an agreement amendment to Contractor to reflect the reduced amount.

3. Prompt Payment Clause

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

4. Amounts Payable

- A. The amount payable under this agreement shall not exceed:
- 1) \$3,994,811 for the budget period of 10/01/2010 through 09/30/2011.
 - 2) \$4,092,246 for the budget period of 10/01/2011 through 09/30/2012.
 - 3) \$4,189,680 for the budget period of 10/01/2012 through 09/30/2013.
- B. Reimbursement shall be made for allowable expenses up to the amount annually encumbered commensurate with the state fiscal year in which services are performed and/or goods are received.
- C. The Contractor must maintain records reflecting actual expenditures for each state fiscal year covered by the term of this agreement.

5. Timely Submission of Final Invoice

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

Exhibit B
Budget Detail and Payment Provisions

6. Allowable Line Item Shifts

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

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

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

7. Expense Allowability / Fiscal Documentation

- A. Invoices, received from a Contractor and accepted and/or submitted for payment by the State, shall not be deemed evidence of allowable agreement costs.
- B. Contractor shall maintain for review and audit and supply to CDPH upon request, adequate documentation of all expenses claimed pursuant to this agreement to permit a determination of expense allowability.
- C. If the allowability or appropriateness of an expense cannot be determined by the State because invoice detail, fiscal records, or backup documentation is nonexistent or inadequate according to generally accepted accounting principles or practices, all questionable costs may be disallowed and payment may be withheld by the State. Upon receipt of adequate documentation supporting a disallowed or questionable expense, reimbursement may resume for the amount substantiated and deemed allowable.
- D. If travel is a reimbursable expense, receipts must be maintained to support the claimed expenditures. For more information on allowable travel and per diem expenses and required documentation, see **Exhibit G entitled, "Travel Reimbursement Information"**.
- E. Costs and/or expenses deemed unallowable are subject to recovery by CDPH.
See provision 8 in this exhibit entitled, "Recovery of Overpayments" for more information.

8. Recovery of Overpayments

- A. Contractor agrees that claims based upon a contractual agreement or an audit finding and/or an auditing finding that is appealed and upheld, will be recovered by the State and/or Federal Government by one of the following options:
- 1) Contractor's remittance to the State of the full amount of the audit exception within 30 days following the State's request for repayment;

Exhibit B
Budget Detail and Payment Provisions

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

9. Contractor's State Share Requirements

- A. The Contractor shall contribute qualifying network nutrition education contributions from its own resources as detailed in the Contractor's State Share Budgets signed and approved as final by both parties. These State Share Budgets have been incorporated into this agreement and made a part hereof by reference in Exhibit E, Additional Provisions, paragraph 1.A. The Contractor's State Share contribution must be from a public, non-Federal source.* The Contractor's State Share contribution cannot be used to match another Federal program. In addition, the qualifying nutrition education intervention must target Supplemental Nutrition Assistance Program Education (SNAP-Ed) recipients and/or other similar households living at not higher than 185 percent of the Federal Poverty Level or for school districts and other education agencies, interventions must target low-resource schools, defined as those with 50% of students or more eligible for free or reduced-price school meals.

*Exception: Indian Tribal Organizations can use federal grant funds that are designated as an allowable source of State Share dollars directed toward nutrition education.

- B. The Contractor is responsible for maintaining verifiable records of all State Share contributions. The Contractor shall submit quarterly, State Share reports documenting State Share contributions. The State Share documentation report shall be submitted in a form and format prescribed by the State. The Contractor shall be reimbursed for services satisfactorily performed at a rate of not more than 50% of every allowable state share dollar Contractor contributes and for which Contractor provides adequate documentation.
- C. The Contractor shall return any funds necessary to repay the State for any State or Federal audit exceptions resulting in the disallowance of agreement funds in which the Contractor has not complied with the requirements of this agreement and applicable Federal requirements.

Exhibit B
Budget Detail and Payment Provisions

- D. The Contractor agrees to match each Federal dollar with two dollars of Contractor's State Share contributions as detailed in the Contractor's State Share Budgets. The Contractor's State Share Budgets represent the minimum support the Contractor agrees to provide in exchange for the payments received. Any changes to the Contractor's State Share Budgets as referenced in Exhibit E, Additional Provisions, paragraph 1.A. may be proposed by the Contractor. All changes are subject to prior written approval by the State. Changes to State Share Budgets do not require a formal amendment.

10. Revenue

- A. This provision supersedes and replaces provision 6 entitled, "Income Restrictions" appearing in Special Terms and Conditions Exhibit D(F).
- B. If the Contractor realizes a profit from the sale of nutrition education materials (videos, literature, etc. paid with agreement dollars), it must report the amount to the State as Contractor income on the SF-269 form. The Contractor shall make the SF-269 form available to the State on request. The Contractor shall place any income, fees, or reimbursements accruing to or received by the Contractor for services rendered under this agreement into a separate identifiable account. Revenues generated by the Contractor as a result of this State agreement must be utilized to meet identified, agreed upon, program-related needs of the Contractor, or must be returned to the State. Any revenues accruing to the Contractor, based on services supported in whole or in part by the State pursuant to this agreement, shall be used to defray costs incurred by this project to measurably expand the program or improve the quality of services detailed in this agreement, and must be approved in writing by the State. Adequate documentation of the use of these funds shall be maintained.

11. Advance Payment

No advance payment is allowed under this agreement.

Exhibit B Attachment I
BUDGET
(Year 1)
(10/01/2010 through 09/30/2011)

*Personnel	\$1,666,878
Fringe Benefits (47% of Personnel)	\$783,433
*Operating Expenses	\$279,029
*Equipment	\$ 12,000
Travel (Travel costs as required to meet stated objectives as outlined in the Scope of Work. All travel rates will align with current DPA rates as stated in the contract.)	\$ 32,207
*Subcontracts (Per Exhibit D(F) Paragraph 5.a(3)(g) of this agreement and State Contracting Manual Volume 1. 3.06, D.1., this contract is exempt from bidding requirements and subcontracting restrictions based on the contract's classification as a Direct Service/Subvention Agreement.)	\$700,000
*Other Costs	\$181,023
Indirect Costs (11.51575% of modified Total Costs less subcontracts over \$25,000)	\$340,241
Total	\$ <u>3,994,811</u>

*See Page 2 and 3 for itemization of line items as appropriate to this contract.

Exhibit B Attachment I
BUDGET
(Year 1)
(10/01/2010 through 09/30/2011)

Line Item Itemization

Personnel

Amounts shown in the "Budget" column may be slightly higher or lower due to rounding off of figures or as a result of mathematical formulas used to calculate.

\$1,666,878

Position Title	Annual Salary/Range	Total FTE %	Budget
Chief Executive Officer	\$89,534	25%	\$22,382
Administrator (multiple staff-2 total; 2 staff x \$84,718 x .90 FTE)	\$84,718	90%	\$152,494
Project Coordinator	\$77,106	90%	\$69,395
Project Coordinator	\$77,106	80%	\$61,684
Coordinator of Other Program (multiple staff-3 total; 3 staff x \$69,898 x 1.000 FTE)	\$69,898	100%	\$209,694
Dietitian (multiple staff-6 total; 6 staff x \$64,311 x 1.000 FTE)	\$64,311	100%	\$385,866
Nutrition Aides (multiple staff-7 total; 7 staff x \$47,522 x 1.000 FTE)	\$47,522	100%	\$332,654
Nutrition Aides (multiple staff-2 total; 2 staff x \$47,522 x .50 FTE)	\$47,522	50%	\$47,522
Nutrition Aides	\$47,522	80%	\$38,017
Nutrition Aides (multiple staff-2 total; 2 staff x \$47,990 x .40 FTE)	\$47,990	40%	\$38,392
Contract Manager (multiple staff-2 total; 2 staff x \$72,748 x 1.000 FTE)	\$72,748	100%	\$145,496
Administrative Coordinator	\$66,030	50%	\$33,015
Accountant/Finance Analyst	\$48,610	100%	\$48,610
Office Manager/Secretary/Admin Asst	\$54,954	25%	\$13,738
Office Manager/Secretary/Admin Asst	\$45,279	50%	\$22,640
Office Manager/Secretary/Admin Asst	\$45,279	100%	\$45,279

Operating Expenses

\$279,029

Space Expense	\$102,194
Security	\$192
Communications	\$10,020
Printing and Duplicating	\$97,695
Office Supplies	\$48,928
Professional Liability Insurance	\$20,000

Equipment

\$12,000

Computer(s) to support staff listed under personnel	\$12,000
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Subcontracts

\$700,000

Communications TBD	\$250,000
Alameda Unified School District	\$45,000
Oakland Unified School District	\$375,000
Evaluation Consultant TBD	\$30,000

Exhibit B Attachment I
BUDGET
(Year 1)
(10/01/2010 through 09/30/2011)

Other Costs

\$181,023

Nut. Ed and Phys Act Training, Healthy Living Council Support Activities: Provide material to train 700 teachers/partners on nutrition ed interventions and physical activity promotion such as fact sheets, activity sheets, lesson plans and tool kits. Activities include providing monthly training on nutrition ed topics, Harvest of the Month and conducting annual assessments in the community to support Healthy Living Council activities.	\$112,508
Administrative or educational materials/handouts with a nutrition education message	\$23,887
Food and supplies for food demonstrations and taste testings to support SOW activities (\$2.50 per person for 11,851 participants)	\$29,628
Minor supplies: May include carts, chairs, calculators, and other items.	\$15,000

Exhibit B Attachment II
BUDGET
(Year 2)
(10/01/2011 through 09/30/2012)

*Personnel	\$1,766,623
Fringe Benefits (47% of Personnel)	\$830,313
*Operating Expenses	\$242,970
*Equipment	\$ 12,000
Travel (Travel costs as required to meet stated objectives as outlined in the Scope of Work. All travel rates will align with current DPA rates as stated in the contract.)	\$ 32,207
*Subcontracts (Per Exhibit D(F) Paragraph 5.a(3)(g) of this agreement and State Contracting Manual Volume 1. 3.06, D.1., this contract is exempt from bidding requirements and subcontracting restrictions based on the contract's classification as a Direct Service/Subvention Agreement.)	\$700,000
*Other Costs	\$157,920
Indirect Costs (11.51247% of modified Total Costs less subcontracts over \$25,000)	\$350,213
Total	\$ <u>4,092,246</u>

*See Page 2 and 3 for itemization of line items as appropriate to this contract.

Exhibit B Attachment II
BUDGET
(Year 2)
(10/01/2011 through 09/30/2012)

Line Item Itemization

Personnel

Amounts shown in the "Budget" column may be slightly higher or lower due to rounding off of figures or as a result of mathematical formulas used to calculate.

\$1,766,623

Position Title	Annual Salary/Range	Total FTE %	Budget
Chief Executive Officer	\$89,534	25%	\$22,381
Administrator (multiple staff-2 total; 2 staff x \$84,718 x .90 FTE)	\$84,718	90%	\$152,494
Project Coordinator	\$77,106	90%	\$69,395
Project Coordinator	\$77,106	80%	\$61,684
Project Coordinator	\$77,106	100%	\$77,106
Coordinator of Other Program (multiple staff-3 total; 3 staff x \$69,898 x 1.000 FTE)	\$69,898	100%	\$209,694
Dietitian (multiple staff-6 total; 6 staff x \$64,311 x 1.000 FTE)	\$64,311	100%	\$385,866
Nutrition Aides (multiple staff-7 total; 7 staff x \$47,522 x 1.000 FTE)	\$47,522	100%	\$332,654
Nutrition Aides (multiple staff-2 total; 2 staff x \$47,522 x .50 FTE)	\$47,522	50%	\$47,522
Nutrition Aides	\$47,522	80%	\$38,017
Nutrition Aides (multiple staff-2 total; 2 staff x \$47,990 x .40 FTE)	\$47,990	40%	\$38,392
Contract Manager (multiple staff-2 total; 2 staff x \$72,748 x 1.000 FTE)	\$72,748	100%	\$145,496
Administrative Coordinator	\$66,030	50%	\$33,015
Accountant/Finance Analyst	\$48,610	100%	\$48,610
Office Manager/Secretary/Admin Asst	\$54,954	25%	\$13,738
Office Manager/Secretary/Admin Asst (multiple staff-2 total; 2 staff x \$45,279 x .50 FTE)	\$45,279	50%	\$45,280
Office Manager/Secretary/Admin Asst	\$45,279	100%	\$45,279

Operating Expenses

\$242,970

Space Expense	\$103,756
Security	\$192
Communications	\$10,020
Printing and Duplicating	\$60,074
Office Supplies	\$48,928
Professional Liability Insurance	\$20,000

Equipment

\$12,000

Computer(s) to support staff listed under personnel and not purchased for in year one.	\$12,000
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Exhibit B Attachment II
BUDGET
(Year 2)
(10/01/2011 through 09/30/2012)

Subcontracts

\$700,000

Communications TBD	\$250,000
Alameda Unified School District	\$45,000
Oakland Unified School District	\$375,000
Evaluation Consultant TBD	\$30,000

Other Costs

\$157,920

Nut. Ed and Phys Act Training, Healthy Living Council Support Activities: Provide material to train 700 teachers/partners on nutrition ed interventions and physical activity promotion such as fact sheets, activity sheets, lesson plans and tool kits. Activities include providing monthly training on nutrition ed topics, Harvest of the Month and conducting annual assessments in the community to support Healthy Living Council activities.	\$112,508
Administrative or educational materials/handouts with a nutrition education message	\$16,387
Food and supplies for food demonstrations and taste testings to support SOW activities (\$2.50 per person for 9,610 participants)	\$24,025
Minor supplies: May include carts, chairs, calculators, and other items.	\$5,000

Exhibit B Attachment III
BUDGET
(Year 3)
(10/01/2012 through 09/30/2013)

*Personnel	\$1,814,145
Fringe Benefits (47% of Personnel)	\$852,648
*Operating Expenses	\$256,910
*Equipment	\$ 12,000
Travel (Travel costs as required to meet stated objectives as outlined in the Scope of Work. All travel rates will align with current DPA rates as stated in the contract.)	\$ 32,207
*Subcontracts (Per Exhibit D(F) Paragraph 5.a(3)(g) of this agreement and State Contracting Manual Volume 1. 3.06, D.1., this contract is exempt from bidding requirements and subcontracting restrictions based on the contract's classification as a Direct Service/Subvention Agreement.)	\$700,000
*Other Costs	\$161,587
Indirect Costs (11.5093% of modified Total Costs less subcontracts over \$25,000)	\$360,183
Total	\$ <u>4,189,680</u>

*See Page 2 and 3 for itemization of line items as appropriate to this contract.

**Exhibit B Attachment III
BUDGET
(Year 3)
(10/01/2012 through 09/30/2013)**

Line Item Itemization

Personnel

Amounts shown in the "Budget" column may be slightly higher or lower due to rounding off of figures or as a result of mathematical formulas used to calculate. **\$1,814,145**

Position Title	Annual Salary/Range	Total FTE %	Budget
Chief Executive Officer	\$89,534	25%	\$22,381
Administrator (multiple staff-2 total; 2 staff x \$84,718 x .90 FTE)	\$84,718	90%	\$152,494
Project Coordinator	\$77,106	90%	\$69,395
Project Coordinator	\$77,106	80%	\$61,684
Project Coordinator	\$77,106	100%	\$77,106
Coordinator of Other Program (multiple staff-3 total; 3 staff x \$69,898 x 1.000 FTE)	\$69,898	100%	\$209,694
Dietitian (multiple staff-6 total; 6 staff x \$64,311 x 1.000 FTE)	\$64,311	100%	\$385,866
Nutrition Aides (multiple staff-8 total; 8 staff x \$47,522 x 1.000 FTE)	\$47,522	100%	\$380,176
Nutrition Aides (multiple staff-2 total; 2 staff x \$47,522 x .50 FTE)	\$47,522	50%	\$47,522
Nutrition Aides	\$47,522	80%	\$38,018
Nutrition Aides (multiple staff-2 total; 2 staff x \$47,990 x .40 FTE)	\$47,990	40%	\$38,392
Contract Manager (multiple staff-2 total; 2 staff x \$72,748 x 1.000 FTE)	\$72,748	100%	\$145,496
Administrative Coordinator	\$66,030	50%	\$33,015
Accountant/Finance Analyst	\$48,610	100%	\$48,610
Office Manager/Secretary/Admin. Asst	\$54,954	25%	\$13,738
Office Manager/Secretary/Admin. Asst (multiple staff-2 total; 2 staff x \$45,279 x .50 FTE)	\$45,279	50%	\$45,279
Office Manager/Secretary/Admin. Asst	\$45,279	100%	\$45,279

Operating Expenses

\$256,910

Space Expense	\$107,696
Security	\$192
Communications	\$10,020
Printing and Duplicating	\$70,074
Office Supplies	\$48,928
Professional Liability Insurance	\$20,000

Equipment

\$12,000

Computer(s) to support staff listed under personnel and not purchased for in years one and two.	\$12,000
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Exhibit B Attachment III
BUDGET
(Year 3)
(10/01/2012 through 09/30/2013)

Subcontracts

\$700,000

Communications TBD	\$250,000
Alameda Unified School District	\$45,000
Oakland Unified School District	\$375,000
Evaluation Consultant TBD	\$30,000

Other Costs

\$161,587

Nut. Ed and Phys Act Training, Healthy Living Council Support Activities: Provide material to train 700 teachers/partners on nutrition ed interventions and physical activity promotion such as fact sheets, activity sheets, lesson plans and tool kits. Activities include providing monthly training on nutrition ed topics, Harvest of the Month and conducting annual assessments in the community to support Healthy Living Council activities.	\$112,508
Administrative or educational materials/handouts with a nutrition education message	\$13,887
Food and supplies for food demonstrations and taste testings to support SOW activities (\$2.50 per person for 12,077 participants)	\$30,192
Minor supplies: May include carts, chairs, calculators, and other items.	\$5,000

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

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6. Income Restrictions	22. Payment Withholds
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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.

SUBCONTRACT BETWEEN
PUBLIC HEALTH INSTITUTE
AND
ALAMEDA COUNTY HEALTH CARE SERVICES AGENCY

This subcontract is entered into on the subscribed date by the Public Health Institute, 555 12th Street, Tenth Floor, Oakland, CA 94607-4046, 510-285-5500, Fax: 510-285-5501, hereinafter referred to as PHI, and the following Subcontractor: Alameda County Health Care Services Agency, 3600 Telegraph Avenue, Oakland, CA 94609, Phone: (510) 595-6458, Fax: (510) 595-6486, hereinafter referred to as SUBCONTRACTOR.

1. RECITALS: PHI is a recipient of Grant # 20081868 from The California Endowment (TCE) to conduct the Healthy Eating, Active Communities (HEAC) Phase II and Central California Schools Program.
2. TERM OF AGREEMENT: The term of this subcontract shall be from December 6, 2010 to June 1, 2011.
3. SCOPE OF WORK: SUBCONTRACTOR shall provide services as set forth in Exhibit A, Scope of Work, a copy of which is attached and made a part hereof by reference.
4. PAYMENT FOR SUBCONTRACTOR'S SERVICES:
 - A. The maximum amount payable shall not exceed \$12,000.00, in accordance with Exhibit B, Budget, a copy of which is attached and made a part hereof by reference. PHI shall have no obligation to pay invoices received more than 30 days after the expiration of the term or termination of this agreement.

PHI shall reimburse SUBCONTRACTOR not more frequently than monthly, in arrears, upon receipt of SUBCONTRACTOR'S invoice(s) and approval by PHI representative Peggy Agron, for allowable costs incurred in accordance with Exhibit B, Budget, which is attached and made a part hereof by reference.
 - B. Amounts paid to SUBCONTRACTOR that are determined by audit or otherwise to be unallowable shall be deducted from subsequent payments due SUBCONTRACTOR, or SUBCONTRACTOR shall refund such amounts to PHI on demand.
 - C. SUBCONTRACTOR shall submit its final invoice for each funding stream no later than 30 days after the date of expiration of the term or termination of the budget period as designated in Exhibit B. PHI may approve an extension of this deadline if requested by SUBCONTRACTOR.
 - D. Invoices shall be submitted on a form acceptable to PHI with supporting

documentation as PHI may require, including name and address of SUBCONTRACTOR, project or subcontract number (if any), time period covered by the invoice, current period expenditures, cumulative expenditures to date, remaining balance due for each line item in Exhibit B and the original signature of SUBCONTRACTOR's authorized representative. **Invoices must be made out to the Public Health Institute.**

- E. SUBCONTRACTOR may modify Exhibit A (Scope of Work/Budget) with the prior written approval of PHI, but no such modification shall increase the maximum amount payable for the contract or for an individual budget.
- 5. **TERMINATION:** This subcontract may be terminated as follows: (i) Either party may terminate without cause upon 15 days written notice to the other party; (ii) PHI may terminate, effective on the date SUBCONTRACTOR receives written notice, if the prime grant or contract terminates in whole or in relevant part or if SUBCONTRACTOR materially fails to comply with the terms and conditions of this subcontract. When it either sends or receives notice of termination, SUBCONTRACTOR shall cancel as many outstanding obligations as possible, and on the date of termination work shall stop and SUBCONTRACTOR shall not incur any new obligations. In the event of termination without cause, upon receipt of all completed or partially-completed deliverables, PHI shall pay SUBCONTRACTOR for costs incurred through the termination date (including the allowable cost of uncancelable obligations) if this is a cost-reimbursement type subcontract, and for services rendered through the termination date if this is a fixed price type subcontract. SUBCONTRACTOR shall incorporate the requirements of this clause in all lower tier subcontracts.
- 6. **SUBCONTRACTING APPROVAL:** SUBCONTRACTOR shall not enter into any lower-tier subcontracts without the prior written approval of PHI.
- 7. **COPYRIGHT:** Any copyrightable works made by SUBCONTRACTOR under this subcontract shall be and hereby are assigned to PHI as its sole and exclusive property. If requested by PHI, SUBCONTRACTOR shall assist at its expense, during and after the expiration or termination of this agreement, to obtain and enforce copyright and other protections for these works. SUBCONTRACTOR shall incorporate the requirements of this clause in all lower tier subcontracts.
- 8. **PUBLIC STATEMENTS/MATERIALS:** SUBCONTRACTOR shall not distribute any announcement, press release, advertising, publicity or other information regarding this agreement, the work or The California Endowment without obtaining PHI's prior written consent.
- 9. **NONDISCRIMINATION IN EMPLOYMENT, SERVICES, BENEFITS, AND FACILITIES:**
 - A. SUBCONTRACTOR agrees and assures PHI that SUBCONTRACTOR and any subcontractors shall comply with all applicable federal, state, and local

antidiscrimination laws, regulations, and ordinances and to not unlawfully discriminate, harass, or allow harassment against any employee, applicant for employment, employee or agent of PHI or Commission, or recipient of services contemplated to be provided under this Agreement, because of race, ancestry, marital status, color, religious creed, political belief, national origin, ethnic group identification, sex, sexual orientation, age (over 40), medical condition (including HIV and AIDS), or physical or mental disability. SUBCONTRACTOR shall ensure that the evaluation and treatment of its employees and applicants for employment, the treatment of PHI and Commission employees and agents, and recipients of services are free from such discrimination and harassment.

- B. SUBCONTRACTOR represents that it is in compliance with and agrees that it will continue to comply with the Americans with Disabilities Act of 1990 (42 U.S.C. 12101 et seq.) and regulations and guidelines issued pursuant thereto.
- C. SUBCONTRACTOR agrees to compile data, maintain records, and submit reports to permit effective enforcement of all applicable anti-discrimination laws and this provision.
- D. SUBCONTRACTOR shall include this nondiscrimination provision in all subcontracts related to this agreement.
- E. If SUBCONTRACTOR is a faith-based organization or contracts with a faith-based organization for services to be performed under this Agreement, participation in the faith shall not be a prerequisite for receiving services. Outreach for services utilizing Proposition 10 dollars will be to the community at large, and shall not be limited to those members of the community that share the same faith as SUBCONTRACTOR or its agents.

10. CONFIDENTIALITY: SUBCONTRACTOR shall comply with all applicable State and/or Federal confidentiality statutes to assure that:

- A. All applications and records concerning an individual made or kept by SUBCONTRACTOR, PHI, or any public officer or agency in connection with the administration of any provisions of the Welfare and Institutions Code relating to any form of public social services or for services provided under this Agreement, for which grants in aid are received by this State from the Federal Government, shall be confidential and shall not be open to examination for any purpose not directly connected with the administration of such public social services, without the written consent of PHI.
- B. No person shall publish or disclose, or use, or permit, or cause to be published, disclosed, or used, any confidential information pertaining to a participant, including the fact of the participant's status as an applicant for or recipient of public social services.

C. SUBCONTRACTOR shall inform all of its officers, employees, agents, subcontractors, and partners of the above provisions, and that a knowing and intentional violation of said provisions of State and/or Federal law may be a misdemeanor.

11. **AUDIT AND INSPECTION:** SUBCONTRACTOR shall preserve and retain all of its financial records and supporting documentation and all other records, documents, papers and other materials pertinent to this subcontract for four years from the date of final payment, except that records relating to any audit, appeal, claim or litigation arising out of this subcontract shall be retained until such matters are finally resolved or the retention period ends, whichever is later. SUBCONTRACTOR shall make the foregoing financial and other records and materials available to PHI and the funding agency, if any, at any reasonable time for audit, examination, excerpt and transcription. SUBCONTRACTOR shall incorporate the requirements of this clause in all lower tier subcontracts.
12. **PROPRIETARY RIGHTS:** The Contractor shall promptly disclose to PHI all proprietary information, including without limitation, all discoveries, inventions, improvements, copyrights, patents and trademarks, arising from the provision of the Work or the Contractor's performance under this Agreement ("Proprietary Information"). PHI will own all right, title and interest in the Work and to the Proprietary Information. All Proprietary Information will be considered works made for hire to the extent allowable under law. If PHI does not automatically own as a work made for hire any of the Proprietary Information upon their creation by the Contractor, then the Contractor hereby assigns to PHI ownership of all right, title and interest in and to such Proprietary Information, including all other intellectual property rights in such Proprietary Information. The Contractor shall execute all documents reasonably requested by PHI to further effect and evidence the foregoing assignment and to provide all reasonable assistance to PHI in perfecting or protecting PHI's rights in such Proprietary Information. The Contractor shall require that any person performing services pursuant to this Agreement on behalf of the Contractor to enter into a work for hire/assignment agreement on the same terms as this Agreement.
13. **INDEMNIFICATION:** Each party agrees to indemnify, defend and hold harmless the other party and its directors, officers, members, employees, contractors and agents, and SUBCONTRACTOR agrees to indemnify, defend and hold harmless the funding agency, if any, from and against any and all claims, losses, damages, costs, expenses or other liability resulting directly or indirectly from any intentional, grossly negligent or negligent act or failure to act by the indemnifying party's directors, officers, employees or agents in the performance of this subcontract, including without limitation any accident or injury to persons or property or any liability for copyright, patent or trademark infringement. The parties' obligations under this section shall survive the expiration or termination of this subcontract until all claims involving any of the indemnified matters are fully and finally resolved or barred by applicable statutes of limitation.
14. **REPRESENTATIONS AND WARRANTIES:** SUBCONTRACTOR represents and warrants that services will be performed in a good and workmanlike manner, free from defects, and by personnel with the requisite skill, qualifications, and licenses.

15. INDEPENDENT CONTRACTOR: SUBCONTRACTOR is an independent contractor and for no purpose shall any of its officers, directors, members, employees, volunteers, subcontractors or agents be considered an employee of PHI or the funding agency, if any.
16. APPLICABILITY TO LOWER-TIER SUBCONTRACTORS AND SUPPLIERS: SUBCONTRACTOR shall require its subcontractors, suppliers, employees, consultants and agents to comply with the applicable provisions of this subcontract.
17. EXCUSABLE DELAY: If SUBCONTRACTOR is delayed in the performance its obligations by reason of labor troubles, power failure, acts of government, acts of God or the public enemy, or any other reasons or causes beyond its reasonable control, performance shall be excused for the period of delay and, if agreed to in writing by the parties, the subcontract shall be extended for a period equivalent to the delay.
18. INTERFERING CONDITIONS: SUBCONTRACTOR agrees to promptly notify PHI of any condition that might interfere with this subcontract. Notification shall not relieve SUBCONTRACTOR of any responsibilities hereunder.
19. COMPLIANCE WITH LAW: SUBCONTRACTOR agrees to comply with all relevant state and federal statutes and regulations.
20. ASSIGNMENT: This subcontract is not assignable by SUBCONTRACTOR without the prior written consent of PHI.
21. SEVERABILITY: If any provision of this subcontract is held in conflict with law, the validity of the remaining provisions shall not be affected.
22. SURVIVAL OF OBLIGATIONS: Expiration or termination of this subcontract shall not extinguish any previously-accrued rights or obligations of the parties.
23. GOVERNING LAW: The validity, construction, and effect of this subcontract shall be governed by the laws of the United States of America and the State of California.
24. CAPTIONS: Captions are for convenience and reference only and are not intended to affect the interpretation of this subcontract.
25. NOTICES: Notices and other communications hereunder are deemed given three business days after the date of mailing by certified mail to the address set forth at the beginning of this agreement.

26. ENTIRE AGREEMENT: This is the entire agreement between the parties. It supersedes all prior oral or written agreements or understandings and it may be amended only in writing.

FOR PUBLIC HEALTH INSTITUTE

FOR SUBCONTRACTOR

Signature

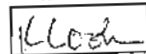
Liza Bolante
Senior Grants & Contracts Specialist

Name/Title

Signature

Name/Title

Date



G&C Review 12-9-10

Date

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APPROVED AS TO FORM
RICHARD E. WINNIE

By 



Alameda County Public Health Department, Nutrition Services Scope of Work

Alameda County Nutrition Services will complete the following deliverables for California Project LEAN (CPL).

A. Enhance and Maintain the Soda Free Summer Website: Cost: \$5,000

From mid-December through June 1, 2011, develop a “member’s only” section (approximately 2 pages) for agencies coordinating a Soda Free Summer campaign. The members-only section will feature the materials noted below in the *Soda Free Summer Materials Development* section.

B. Soda Free Summer Materials Development: \$5,000

By June 1, 2011, develop and/or update:

- A sample press release announcing the Soda Free Summer campaign.
- Sample speaking points for media interviews.
- Campaign timelines for implementing a Soda Free Summer campaign that identifies steps, activities and time frame required to implement a successful campaign.
- Tips for organizations interested in implementing the Soda Free Summer campaign that addresses lessons learned, successes, and challenges.

C. Soda Free Summer Webinar: \$2,000

By June 1, 2011, develop and conduct one Soda Free Summer Webinar and complete the following steps leading up to the webinar:

- Work with CPL staff to select a date for the webinar.
- Provide the webinar draft outline/agenda to CPL staff for approval at least six weeks prior to the webinar.
- Submit materials (e.g., handouts, PowerPoints) to CPL for final approval at least one month prior to the webinar.
- Identify and prepare the webinar speakers and moderator by conducting a practice run of the webinar with CPL staff at least three weeks prior to the webinar and finalize the webinar content with CPL feedback.
- Advertise the webinar electronically at least one month before the webinar.
- Conduct *the Soda Free Summer Webinar*.
- Evaluate the webinar.

Healthy Living

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Alameda County Public Health Department

OVERVIEW OF BUDGET

Enhance/Maintain Soda Free Summer Website	\$5,000
Develop Soda Free Summer Materials	\$5,000
Develop, Conduct Soda Free Summer Webinar	\$2,000
TOTAL	<u>\$12,000</u>