Health Services
LOS ANGELES COUNTY

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To improve health through leadership, service and education

ADOPTED
BOARD OF SUPERVISORS
COUNTY OF LOS ANGELES

21 JUNE 16, 2009

SACHI A. HAMAI
EXECUTIVE OFFICER

June 16, 2009

The Honorable Board of Supervisors
County of Los Angeles
383 Kenneth Hahn Hall of Administration
500 West Temple Street
Los Angeles, California 90012

Dear Supervisors:

REQUEST FOR APPROVAL AND AWARD OF APPORTIONMENT CONSULTING SERVICES MASTER AGREEMENTS (ALL SUPERVISORIAL DISTRICTS) (3 VOTES)

SUBJECT

Request approval of Apportionment Consulting Services Master Agreements with qualified consultants.

IT IS RECOMMENDED BY THE DEPARTMENT OF HEALTH SERVICES THAT YOUR BOARD:

1. Authorize the Interim Director of Health Services, or his designee, to execute Apportionment Consulting Services Master Agreements with qualified consultants, at the rate of $225.00 per hour, effective upon Board approval through June 30, 2012, with two one-year extensions exercisable by the Interim Director, or his designee, with the approval of County Counsel and the Chief Executive Office.

2. Delegate authority to the Interim Director, or his designee, subject to review and approval by the Chief Executive Office and County Counsel, to execute Master Agreements with new consultants as they are identified as qualified by the Department of Health Services (DHS).

PURPOSE/JUSTIFICATION OF RECOMMENDED ACTIONS

Approval of the recommendations will allow the Interim Director to execute Apportionment Consultation Services Master Agreements with

pre-qualified consultants to ensure the County makes accurate and timely reports to the California State Medical Board regarding settlements of medical malpractice litigation against the County. Apportionment determinations need to be made on an intermittent, but ongoing basis to comply with mandatory reporting requirements of California *Business & Professions Code §801.01.*

These professional services are intermittent and as needed, requiring a licensed medical doctor with a *Juris Doctor* degree and substantial experience in medical malpractice litigation. Your Board's approval of the Master Agreements will allow the Department to continue to obtain apportionment services.

Currently, the Department utilizes two consultants under temporary sole source purchase orders, Dr. Robert Bitonte and Dr. David Shapiro, who will be transitioned to the Master Agreements upon Board approval. The two current consultants have outstanding performance records with the County.

Delegated authority is necessary to execute future Master Agreements for apportionment consultant services and will allow the Department to develop a highly qualified panel of experts to ensure compliance with *Business & Professions Code §801.01* reporting requirements for County.

Implementation of Strategic Plan Goals

The recommended actions support Goal 1, Operational Effectiveness and Goal 4, Health and Mental Health, of the County's Strategic Plan.

FISCAL IMPACT/FINANCING

Expenditures under these Master Agreements will vary from year to year based on the needs of the Department. DHS has the responsibility for ensuring it has adequate funding prior to requesting services under the agreements. Funding is included in Health Services Administration's Fiscal Year (FY) 2008-09 Final Budget, included in the FY 2009-10 Proposed Budget, and will be requested in future fiscal years. Subsequent year funding will be requested in the FY budget for each annual term and any extensions. Expenditures over the term of the Master Agreements in any given year will remain within the Department's budgeted appropriation for such services at $200,000 annually. Consultants will not be asked to perform services which exceed the amounts, scope of work and dates specified in each agreement.

Other County departments will be able to utilize the apportionment consulting services under these Master Agreements and will be billed separately. Each department

accessing services under these Agreements is responsible for allocating sufficient resources within each department's FY annual budget.

FACTS AND PROVISIONS/LEGAL REQUIREMENTS

Both County Counsel and the Chief Executive Office agree to the need and recommend approval of the Master Agreement. The terms and conditions of the proposed Master Agreement have been approved as to form by County Counsel. It contains your Board's required contract provisions.

The Master Agreements contain professional liability indemnification to the consultant similar to physicians performing direct patient care for County. While apportionment recommendations are made by the consultants after review of pertinent records and documentation, the Department makes the final determination as to the apportionment reportable to the State Medical Board. These apportionment determinations carry serious consequences for reported physicians and there is a heightened risk of litigation exposure as a result of the determination. As such, professional liability indemnification to the contractors is appropriate to ensure contractors will agree to perform services for County.

The apportionment consultation service Master Agreement is not a Proposition A agreement due to the intermittent and as needed type of service and, therefore, not subject to the Living Wage Program (County Code Chapter 2.201). It has been determined that the services under these agreements do not impact Board Policy No. 5.030, "Low Cost Labor Resource Program", because of the specialized training and education needed to perform the work.

CONTRACTING PROCESS

Current consultants working under purchase orders will be asked to execute the new Master Agreement in order to continue providing apportionment services to the Department. New consultants will be identified after review of qualifications, education and experience and asked to execute a Master Agreement as appropriate to the needs of the Department.

IMPACT ON CURRENT SERVICES (OR PROJECTS)

Approval of the recommended actions will ensure continuity of uninterrupted apportionment consulting services to the Department.

Respectfully submitted,

John F. Schunhoff, Ph.D.
Interim Director

JFS:kkh

Attachment

c: Chief Executive Officer
Acting County Counsel
Executive Officer, Board of Supervisors

Consulting Services Master Agreements BI

AGREEMENT

BY AND BETWEEN

COUNTY OF LOS ANGELES

AND

_____

FOR

MEDICAL MALPRACTICE

APPORTIONMENT CONSULTANT SERVICES

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SAMPLE AGREEMENT

FOR

APPORTIONMENT CONSULTANT SERVICES

This Agreement and Exhibits made and entered into this _____ day of _____, 2009 by and between the County of Los Angeles, hereinafter referred to as "County" and _____, hereinafter referred to as "Contractor".

WHEREAS, this Agreement is authorized by California Government Code Section 31000; and

WHEREAS, this Agreement is therefore authorized under Section 44.7 of the Los Angeles County Charter and Los Angeles County Codes Section 2.121.250; and

WHEREAS, County has determined that it is legal, feasible, and cost-effective to contract for medical malpractice apportionment services for reporting to the Medical Board of the State of California and other agencies regarding settlement of medical malpractice litigation against the County; and

WHEREAS, the Department of Health Services has determined that existing staff do not have sufficient manpower, that it is difficult to recruit personnel to perform the services hereunder, and that the services to be provided hereunder are of a specialized, professional, temporary and extraordinarily specialized and technical nature; and

WHEREAS, other County Departments also have a need for qualified apportionment consultants and may request Contractor's services under this Agreement, as long as the service sites are added by County's Director of Health Services during the term of this Agreement; and,

WHEREAS, Contractor is duly licensed and qualified to practice medicine in the State of California, possesses a *Juris Doctor* degree from an American Bar Association accredited law school and has substantive medical malpractice legal/medical casework experience and is well qualified to make apportionment determinations;

NOW THEREFORE, in consideration of the mutual covenants contained herein, and for good and valuable consideration, the parties agree to the following:

1.0 APPLICABLE DOCUMENTS

Exhibits A through H are attached to and form a part of this Agreement. In the event of any conflict or inconsistency in the definition or interpretation of any word, responsibility, schedule, or the contents or description of any task, deliverable, goods, service, or other work, or otherwise between the base Agreement and the Exhibits, or between Exhibits, such conflict or inconsistency shall be resolved by giving precedence first to the Agreement and then to the Exhibits in their respective order.

Standard Exhibits:

1.1	A	CONTRACTOR'S EEO CERTIFICATION
1.2	B	COUNTY'S ADMINISTRATION
1.3	C	CONTRACTOR'S ADMINISTRATION
1.4	D	CONTRACTOR ACKNOWLEDGEMENT AND CONFIDENTIALITY AGREEMENT
1.5	E	JURY SERVICE ORDINANCE
1.6	F	SAFELY SURRENDERED BABY LAW
1.7	G	CONTRACTOR'S OBLIGATIONS AS A "BUSINESS ASSOCIATE" UNDER THE HEALTH INSURANCE PORTABILITY & ACCOUNTABILITY ACT OF 1996
1.8	H	COUNTY RISK MANAGEMENT FORM

This Agreement and the Exhibits hereto constitute the complete and exclusive statement of understanding between the parties, and supersedes all previous agreements, written and oral, and all communications between the parties relating to the subject matter of this Agreement. No change to this Agreement shall be valid unless prepared pursuant to Sub-paragraph 8.1 - Amendments and signed by both parties.

2.0 DEFINITIONS

The headings herein contained are for convenience and reference only and are not intended to define the scope of any provision thereof. The following words as used herein shall be construed to have the following meaning, unless otherwise apparent from the context in which they are used.

2.1 Agreement: Agreement executed between County and Contractor. It sets forth the terms and conditions for performance of the work specified in Paragraph 3.0.

2.2 Contractor: The sole proprietor, partnership, or corporation that has entered into an Agreement with County to perform or execute the work covered by the Agreement.

2.3 County Project Director: The Chief Medical Officer of DHS.

2.4 **Day(s):** Calendar day(s) unless otherwise specified.

2.5 **DHS**: Department of Health Services.

2.6 **Director**: Director of Health Services or his/her authorized designee.

2.7 **Fiscal Year:** The twelve (12) month period beginning July 1st and ending the following June 30th.

3.0 WORK

3.1 Pursuant to the provisions of this Agreement, Contractor shall fully perform, complete and deliver on time, the following tasks and services, including:

3.1.1 Provide apportionment consultant services in regards to Reports to the California Medical Board and other appropriate agencies per *Business & Professions Code §801.01.*

3.1.2 Contractor will make apportionment recommendations with respect to reports to the Medical Board of the State of California, or other appropriate agencies, under the applicable provisions of the California *Business & Professions Code §801.01* and related sections, regarding settlements, verdicts and awards of medical malpractice litigation against the County of Los Angeles and its employees.

3.1.3 Contractor will be responsible for making apportionment recommendations under *Business & Professions Code §801.01* for persons "named or alleged" by plaintiff(s), which will be entered on the forms provided by the Medical Board for reports made. Contractor will make such recommendations after reviewing pertinent records and documentation and participating in such conferences and meetings as requested by County, including but not limited to, meetings with County and/or facility representatives, in which Contractor will be provided County's perspective on the facts of the case and the settlements. As appropriate and necessary, additional information may be provided to Contractor by counsel and others involved in the defense of the case. Contractor may also provide services to County in connection with any litigation after the final apportionment report as necessary and as approved by County Counsel.

3.1.4 Contractor will be asked to make such apportionment recommendations. In the event Contractor's review leads to the preliminary conclusion that a

report to the Medical Board may not be required under the circumstances, Contractor will so indicate to County. If, after review, County determines that apportionment is required, Contractor shall make the apportionment.

3.1.5 The information provided to Contractor will include privileged and confidential attorney-client and attorney-work product communications. In addition, Contractor may also be provided confidential patient medical information, other protected health information and County employee information. Contractor will preserve the confidentiality of such records and communications and will not reveal such in the absence of a final court order to do so.

3.2 If Contractor provides any tasks and services, or other work, other than as specified in this Agreement, the same shall be deemed to be a gratuitous effort on the part of Contractor, and Contractor shall have no claim whatsoever against County.

4.0 TERM OF AGREEMENT

4.1 The term of this Agreement shall be for three (3) years commencing on July 1, 2009 through June 30, 2012 and the County shall have the sole option to extend this Agreement term for up to two (2) additional one-year period extensions. Each such option and extension shall be exercised at the discretion of the Director, as authorized by the Board of Supervisors.

5.0 BILLING AND PAYMENT

5.1 Contractor shall be paid at the rate of $_____.00 per hour billed in arrears. All miscellaneous travel expenses will be reimbursed in accordance with Los Angeles County Auditor Controller Guidelines as approved by County.

5.2 **No Payment for Services Provided Following Expiration/ Termination of Agreement.**

Contractor shall have no claim against County for payment of any money or reimbursement, of any kind whatsoever, for any service provided by Contractor after the expiration or other termination of this Agreement. Should Contractor receive any such payment it shall immediately notify County and shall immediately repay all such funds to County. Payment by County for services rendered after expiration/termination of this Agreement shall not constitute a

waiver of County's right to recover such payment from Contractor. This provision shall survive the expiration or other termination of this Agreement.

5.3 **Invoices and Payments**

5.3.1 Contractor shall invoice the County department for which services are being provided and will only invoice those amounts for providing the tasks and services as provided hereunder in Paragraph 3.0. Contractor shall prepare invoices, which shall include the charges owed to Contractor by County under the terms of this Agreement. Contractor shall be paid only for the tasks and services as approved in writing by the County department requesting services. If the County department requesting services under the Agreement does not approve work in writing no payment shall be due to Contractor for that work.

5.3.2 Contractor's invoices shall contain the necessary detail to enable County to verify, audit and confirm the provision and delivery of every task or services for which Contractor seeks payment.

5.3.3 Contractor shall submit the monthly invoices to the requesting County department by the 15th calendar day of the month following the month of service.

5.3.4 All invoices under this Agreement shall be submitted in duplicate to:

County Department Requesting Services

5.3.5 **County Approval of Invoices**

All invoices submitted by Contractor for payment must have the written approval of the requesting County department director prior to any payment thereof. In no event shall County be liable or responsible for any payment prior to such written approval. Approval for payment will not be unreasonably withheld.

5.4 **Taxes**

Except as otherwise provided elsewhere in this Agreement, County shall have no liability or responsibility for any taxes, including, but not limited to, sales, income, real or personal property taxes, which may be imposed in connection with or resulting from this Agreement or Contractor's performance hereunder, and Contractor shall have full liability and responsibility for all such taxes.

6.0 ADMINISTRATION OF AGREEMENT - COUNTY

COUNTY ADMINISTRATION

The Director shall have the authority to administer this Agreement on behalf of County. Director retains professional and administrative responsibility for the services rendered under this Agreement. County shall notify Contractor in writing of any change in the names or addresses shown.

6.1 County's Project Director – Chief Medical Officer

The responsibilities of the County's Project Director include:

- Meeting with the Contractor's Project Manager on a regular basis; and,
- Inspecting any and all tasks and services, or other work provided by Contractor.
- Monitoring the Contractor's performance.

The County's Project Director is not authorized to make any changes in any of the terms and conditions of this Agreement and is not authorized to further obligate County in any respect whatsoever.

7.0 ADMINISTRATION OF AGREEMENT - CONTRACTOR

7.1 Contractor's Project Manager

7.1.1 The Contractor's Project Manager is designated as _____. Contractor shall notify County in writing of any change in the name or address of the Contractor's Project Manager.

7.1.2 The Contractor's Project Manager shall be responsible for the Contractor's day-to-day activities as related to this Agreement and shall coordinate with County's Project Director on a regular basis.

7.2 Approval of Contractor's Staff

County has the absolute right to approve or disapprove all of the Contractor's staff performing work hereunder and any proposed changes in the Contractor's staff, including, but not limited to, the Contractor's Project Manager.

7.3 Contractor's Staff Identification

7.3.1 If County requests the removal of Contractor's staff, Contractor shall retrieve and return all County property on the next business day after the employee has been removed from working at County Facility.

7.3.2 Contractor shall also provide, at its sole expense, a photo ID badge to allow any of Contractor's employees to be identified by County personnel as a contracted and not County employee.

7.3.3 All of Contractor's employees assigned to County facilities are required to have a Contractor Identification (ID) badge on their person and visible at all times.

7.4 Background Investigations

7.4.1 All Contractor staff performing work under this Contract shall undergo and pass, to the satisfaction of County, a background investigation as a condition of beginning and continuing to work under this Contract. County shall use its discretion in determining the method of background clearance to be used, which may include, but is not limited to, fingerprinting. The fees associated with obtaining the background information shall be at the expense of the Contractor, regardless if the Contractor's staff passes or fails the background clearance investigation. County shall perform the background check and bill Contractor for the cost or deduct such amount from funds owed by County to Contractor.

7.4.2 County may request that the Contractor's staff be immediately removed from working at any County facility at any time during the term of this Agreement. County will not provide to Contractor nor to the Contractor's staff any information obtained through County conducted background clearance.

7.4.3 County may immediately, at the sole discretion of County, deny or terminate facility access to any of Contractor's staff that does not pass such investigation(s) to the satisfaction of County or whose background or conduct is incompatible with County facility access.

7.4.4 Disqualification, if any, of the Contractor's staff, pursuant to this Sub-paragraph 7.4, shall not relieve Contractor of its obligation to complete all work in accordance with the terms and conditions of this Agreement.

7.5 Confidentiality

7.5.1 Contractor shall maintain the confidentiality of all records and information in accordance with all applicable Federal, State and local laws, rules,

regulations, ordinances, directives, guidelines, policies and procedures relating to confidentiality, including, without limitation, County policies concerning information technology security and the protection of confidential records and information.

7.5.2 Contractor shall indemnify, defend, and hold harmless County, its officers, employees, and agents, from and against any and all claims, demands, damages, liabilities, losses, costs and expenses, including, without limitation, defense costs and legal, accounting and other expert, consulting, or professional fees, arising from, connected with, or related to any failure by Contractor, its officers, employees, agents, or subcontractors, to comply with this Paragraph 7.5, as determined by County in its sole judgment. Any legal defense pursuant to Contractor's indemnification obligations under this Paragraph 7.5 shall be conducted by Contractor and performed by counsel selected by Contractor and approved by County. Notwithstanding the preceding sentence, County shall have the right to participate in any such defense at its sole cost and expense, except that in the event Contractor fails to provide County with a full and adequate defense, as determined by County in its sole judgment, County shall be entitled to retain its own counsel, including, without limitation, County Counsel, and reimbursement from Contractor for all such costs and expenses incurred by County in doing so. Contractor shall not have the right to enter into any settlement, agree to any injunction, or make any admission, in each case, on behalf of County without County's prior written approval.

7.5.3 Contractor shall inform all of its officers, employees, agents and subcontractors providing services hereunder of the confidentiality and indemnification provisions of this Agreement.

7.5.4 Contractor shall sign and adhere to the provisions of the "*Contractor Acknowledgement and Confidentiality Agreement*", Exhibit D.

8.0 STANDARD TERMS AND CONDITIONS

8.1 AMENDMENTS

8.1.1 For any change which affects the scope of work, term, payments, or any term or condition included under this Agreement, an Amendment shall be

prepared and executed by Contractor and the Director, subject to the approval of Counsel and the Chief Executive Office.

8.1.2 The County's Board of Supervisors or Chief Executive Officer or his/her designee may require the addition and/or change of certain terms and conditions in the Agreement during the term of this Agreement. County reserves the right to add and/or change such provisions as required by the County's Board of Supervisors or Chief Executive Officer. To implement such changes, an Amendment to the Agreement shall be prepared and executed by Contractor and the Director.

8.1.3 The Director may at his/her sole discretion, unilaterally authorize extensions of time as defined in Paragraph 4.0 – Term of Agreement. Contractor agrees that such extensions of time shall not change any other term or condition of this Agreement, unless specified, during the period of such extensions. To implement an extension of time, an Amendment to the Agreement shall be prepared and executed by Contractor and by Director.

8.1.4 The Director may at his/her sole discretion, unilaterally authorize apportionment consultation work by Contractor for other departments in County and shall designate billing and payment mechanisms as appropriate.

8.2 ASSIGNMENT AND DELEGATION

8.2.1 Contractor shall not assign its rights or delegate its duties under this Agreement, or both, whether in whole or in part, without the prior written consent of County, in its discretion, and any attempted assignment or delegation without such consent shall be null and void. For purposes of this Sub-paragraph, County consent shall require a written amendment to the Agreement, which is formally approved and executed by the parties. Any payments by County to any approved delegate or assignee on any claim under this Agreement shall be deductible, at County's sole discretion, against the claims, which Contractor may have against County.

8.2.2 Shareholders, partners, members, or other equity holders of Contractor may transfer, sell, exchange, assign, or divest themselves of any interest

they may have therein. However, in the event any such sale, transfer, exchange, assignment, or divestment is effected in such a way as to give majority control of Contractor to any person(s), corporation, partnership, or legal entity other than the majority controlling interest therein at the time of execution of the Agreement, such disposition is an assignment requiring the prior written consent of County in accordance with applicable provisions of this Agreement.

8.2.3 If any assumption, assignment, delegation, or takeover of any of the Contractor's duties, responsibilities, obligations, or performance of same by any entity other than Contractor, whether through assignment, subcontract, delegation, merger, buyout, or any other mechanism, with or without consideration for any reason whatsoever without County's express prior written approval, shall be a material breach of the Agreement which may result in the termination of this Agreement. In the event of such termination, County shall be entitled to pursue the same remedies against Contractor as it could pursue in the event of default by Contractor.

8.3 AUTHORIZATION WARRANTY

Contractor represents and warrants that the person executing this Agreement for Contractor is an authorized agent who has actual authority to bind Contractor to each and every term, condition, and obligation of this Agreement and that all requirements of Contractor have been fulfilled to provide such actual authority.

8.4 BUDGET REDUCTIONS

In the event that the County's Board of Supervisors adopts, in any Fiscal Year, a County Budget which provides for reductions in the salaries and benefits paid to the majority of County employees and imposes similar reductions with respect to County contracts, County reserves the right to reduce its payment obligation under this Agreement correspondingly for that fiscal year and any subsequent fiscal year during the term of this Agreement (including any extensions), and the services to be provided by Contractor under this Agreement shall also be reduced correspondingly. The County's notice to Contractor regarding said reduction in payment obligation shall be provided within thirty (30) calendar days

of the Board's approval of such actions. Except as set forth in the preceding sentence, Contractor shall continue to provide all of the Services set forth in this Agreement.

8.5 COMPLAINTS – Not Applicable; Intentionally Omitted.

8.6 COMPLIANCE WITH APPLICABLE LAW, RULES AND REGULATIONS

8.6.1 In the performance of this Agreement, Contractor shall comply with all current and applicable Federal, State and local laws, rules, regulations, ordinances, directives, guidelines, policies and procedures, including, but not limited to standards of the Joint Commission on the Accreditation of Healthcare Organizations, its National Patient Safety Goals, CCR, Title 22 regulations and all other applicable industry best practices standards. All provisions required thereby to be included in this Agreement are hereby incorporated herein by reference.

8.6.2 Contractor shall indemnify, defend, and hold harmless County, its officers, employees, and agents, from and against any and all claims, demands, damages, liabilities, losses, administrative penalties, fines, costs, and expenses, including, without limitation, defense costs and legal, accounting and other expert, consulting or professional fees, arising from, connected with, or related to any failure by Contractor, its officers, employees, agents, or subcontractors, to comply with any such laws, rules, regulations, ordinances, directives, guidelines, policies, or procedures, as determined by County in its sole judgment. Any legal defense pursuant to Contractor's indemnification obligations under this Paragraph 8.6 shall be conducted by Contractor and performed by counsel selected by Contractor and approved by County. Notwithstanding the preceding sentence, County shall have the right to participate in any such defense at its sole cost and expense, except that in the event Contractor fails to provide County with a full and adequate defense, as determined by County in its sole judgment, County shall be entitled to retain its own counsel, including, without limitation, County Counsel, and reimbursement from Contractor for all such costs and expenses incurred by County in doing so. Contractor shall not have the

right to enter into any settlement, agree to any injunction or other equitable relief, or make any admission, in each case, on behalf of County without County's prior written approval.

8.6.3 During the time that Contractor's agents, employees, or subcontractors are at a Facility, Contractor and such persons shall be subject to the rules and regulations of that Facility. Facility's Administrator shall furnish a copy of rules and regulations to Contractor pertaining to the Facility prior to the execution of this Agreement and, during the term of this Agreement, shall furnish Contractor with any changes thereto as from time to time may be adopted. It is the responsibility of Contractor to acquaint all persons who may provide services hereunder with such rules and regulations. Contractor agrees to immediately and permanently withdraw any of its employees or subcontractors from the provision of services hereunder upon receipt of written notice from the Director that: (1) such employee or subcontractor has violated such rules or regulations, or (2) such employee's or subcontractor's actions while on County premises, indicate that such employee or subcontractor may adversely affect the delivery of health care services to County patients. The Director must submit with such notice a written statement of the facts supporting any such alleged violation or action.

8.7 COMPLIANCE WITH CIVIL RIGHTS LAWS

Contractor hereby assures that it will comply with Subchapter VI of the *Civil Rights Act of 1964*, 42 USC §§ 2000 (e) (1) through 2000 (e) (17), to the end that no person shall, on the grounds of race, creed, color, sex, sexual orientation, religion, ancestry, age, condition of physical handicap, marital status, political affiliation, or national origin, be excluded from participation in, be denied the benefits of, or be otherwise subjected to discrimination under this Agreement or under any project, program, or activity supported by this Agreement. Contractor shall comply with Exhibit A – Contractor's EEO Certification.

8.8 COMPLIANCE WITH THE COUNTY'S JURY SERVICE PROGRAM

8.8.1 Jury Service Program:

This Agreement is subject to the provisions of the County's ordinance entitled Contractor Employee Jury Service ("Jury Service Program") as codified in Sections 2.203.010 through 2.203.090 of the Los Angeles County Code, a copy of which is attached as Exhibit E and incorporated by reference into and made a part of this Agreement.

8.8.2 **Written Employee Jury Service Policy.**

1. Unless Contractor has demonstrated to the County's satisfaction either that Contractor is not a "Contractor" as defined under the Jury Service Program (Section 2.203.020 of the County Code) or that Contractor qualifies for an exception to the Jury Service Program (Section 2.203.070 of the County Code), Contractor shall have and adhere to a written policy that provides that its Employees shall receive from Contractor, on an annual basis, no less than five days of regular pay for actual jury service. The policy may provide that Employees deposit any fees received for such jury service with Contractor or that Contractor deduct from the Employee's regular pay the fees received for jury service.
2. For purposes of this Sub-paragraph, "Contractor" means a person, partnership, corporation or other entity which has a contract with County or a subcontract with a County Contractor and has received or will receive an aggregate sum of $50,000 or more in any 12-month period under one or more County contracts or subcontracts. "Employee" means any California resident who is a full-time employee of Contractor. "Full-time" means 40 hours or more worked per week, or a lesser number of hours if: 1) the lesser number is a recognized industry standard as determined by County, or 2) Contractor has a long-standing practice that defines the lesser number of hours as full-time. Full-time employees providing short-term, temporary services of 90 days or less within a 12-month period are not considered full-time for purposes of the Jury Service Program. If Contractor uses any Subcontractor to perform services for County under the Agreement, the Subcontractor shall also be subject to the provisions of this Sub-paragraph. The provisions of this Sub-paragraph shall be inserted into any such subcontract

agreement and a copy of the Jury Service Program shall be attached to the agreement.

3. If Contractor is not required to comply with the Jury Service Program when the Agreement commences, Contractor shall have a continuing obligation to review the applicability of its "exception status" from the Jury Service Program, and Contractor shall immediately notify County if Contractor at any time either comes within the Jury Service Program's definition of "Contractor" or if Contractor no longer qualifies for an exception to the Jury Service Program. In either event, Contractor shall immediately implement a written policy consistent with the Jury Service Program. County may also require, at any time during the Agreement and at its sole discretion, that Contractor demonstrate to the County's satisfaction that Contractor either continues to remain outside of the Jury Service Program's definition of "Contractor" and/or that Contractor continues to qualify for an exception to the Program.
4. Contractor's violation of this Sub-paragraph of the Agreement may constitute a material breach of the Agreement. In the event of such material breach, County may, in its sole discretion, terminate the Agreement and/or bar Contractor from the award of future County contracts for a period of time consistent with the seriousness of the breach.

8.9 CONFLICT OF INTEREST

8.9.1 No County employee whose position with County enables such employee to influence the award of this Agreement or any competing Agreement, and no spouse or economic dependent of such employee, shall be employed in any capacity by Contractor or have any other direct or indirect financial interest in this Agreement. No officer or employee of Contractor who may financially benefit from the performance of work hereunder shall in any way participate in the County's approval, or ongoing evaluation, of such work, or in any way attempt to unlawfully influence the County's approval or ongoing evaluation of such work.

8.9.2 Contractor shall comply with all conflict of interest laws, ordinances, and regulations now in effect or hereafter to be enacted during the term of this Agreement. Contractor warrants that it is not now aware of any facts that create a conflict of interest. If Contractor hereafter becomes aware of any facts that might reasonably be expected to create a conflict of interest, it shall immediately make full written disclosure of such facts to County. Full written disclosure shall include, but is not limited to, identification of all persons implicated and a complete description of all relevant circumstances. Failure to comply with the provisions of this Sub-paragraph shall be a material breach of this Agreement.

8.10 CONSIDERATION OF HIRING COUNTY EMPLOYEES TARGETED FOR LAYOFF/OR RE-EMPLOYMENT LIST

Should Contractor require additional or replacement personnel after the effective date of this Agreement to perform the services set forth herein, Contractor shall give first consideration for such employment openings to qualified, permanent County employees who are targeted for layoff or qualified, former County employees who are on a re-employment list during the life of this Agreement.

8.11 CONSIDERATION OF HIRING GAIN/GROW PROGRAM PARTICIPANTS

8.11.1 Should Contractor require additional or replacement personnel after the effective date of this Agreement, Contractor shall give consideration for any such employment openings to participants in the County's Department of Public Social Services Greater Avenues for Independence (GAIN) Program or General Relief Opportunity for Work (GROW) Program who meet the Contractor's minimum qualifications for the open position. For this purpose, consideration shall mean that Contractor will interview qualified candidates. County will refer GAIN/GROW participants by job category to Contractor.

8.11.2 In the event that both laid-off County employees and GAIN/GROW participants are available for hiring, county employees shall be given first priority.

8.12 CONTRACTOR RESPONSIBILITY AND DEBARMENT

8.12.1 Responsible Contractor

A responsible Contractor is a Contractor who has demonstrated the attribute of trustworthiness, as well as quality, fitness, capacity and experience to satisfactorily perform the Agreement. It is the County's policy to conduct business only with responsible Contractors.

8.12.2 Chapter 2.202 of the County Code

Contractor is hereby notified that, in accordance with Chapter 2.202 of the County Code, if County acquires information concerning the performance of Contractor on this or other contracts which indicates that Contractor is not responsible, County may, in addition to other remedies provided in the Agreement, debar Contractor from bidding or proposing on, or being awarded, and/or performing work on County contracts for a specified period of time, which generally will not exceed five years but may exceed five years or be permanent if warranted by the circumstances, and terminate any or all existing contracts Contractor may have with County.

8.12.3 Non-responsible Contractor

County may debar a Contractor if the Board of Supervisors finds, in its discretion, that Contractor has done any of the following: (1) violated a term of a contract with County or a nonprofit corporation created by County, (2) committed an act or omission which negatively reflects on the Contractor's quality, fitness or capacity to perform a contract with County, any other public entity, or a nonprofit corporation created by County, or engaged in a pattern or practice which negatively reflects on same, (3) committed an act or offense which indicates a lack of business integrity or business honesty, or (4) made or submitted a false claim against County or any other public entity.

8.12.4 Contractor Hearing Board

1. If there is evidence that Contractor may be subject to debarment, the Department will notify Contractor in writing of the evidence which is the basis for the proposed debarment and will advise Contractor of the scheduled date for a debarment hearing before the Contractor Hearing Board.

2. The Contractor Hearing Board will conduct a hearing where evidence on the proposed debarment is presented. Contractor and/or the Contractor's representative shall be given an opportunity to submit evidence at that hearing. After the hearing, the Contractor Hearing Board shall prepare a tentative proposed decision, which shall contain a recommendation regarding whether Contractor should be debarred, and, if so, the appropriate length of time of the debarment. Contractor and the Department shall be provided an opportunity to object to the tentative proposed decision prior to its presentation to the Board of Supervisors.
3. After consideration of any objections, or if no objections are submitted, a record of the hearing, the proposed decision, and any other recommendation of the Contractor Hearing Board shall be presented to the Board of Supervisors. The Board of Supervisors shall have the right to modify, deny, or adopt the proposed decision and recommendation of the Contractor Hearing Board.
4. If a Contractor has been debarred for a period longer than five (5) years, that Contractor may after the debarment has been in effect for at least five (5) years, submit a written request for review of the debarment determination to reduce the period of debarment or terminate the debarment. County may, in its discretion, reduce the period of debarment or terminate the debarment if it finds that Contractor has adequately demonstrated one or more of the following: (1) elimination of the grounds for which the debarment was imposed; (2) a bona fide change in ownership or management; (3) material evidence discovered after debarment was imposed; or (4) any other reason that is in the best interests of County.
5. The Contractor Hearing Board will consider a request for review of a debarment determination only where (1) Contractor has been debarred for a period longer than five (5) years; (2) the debarment has been in effect for at least five (5) years; and (3) the request is in writing, states one or more of the grounds for reduction of the

debarment period or termination of the debarment, and includes supporting documentation. Upon receiving an appropriate request, the Contractor Hearing Board will provide notice of the hearing on the request. At the hearing, the Contractor Hearing Board shall conduct a hearing where evidence on the proposed reduction of debarment period or termination of debarment is presented. This hearing shall be conducted and the request for review decided by the Contractor Hearing Board pursuant to the same procedures as for a debarment hearing.

6. The Contractor Hearing Board's proposed decision shall contain a recommendation on the request to reduce the period of debarment or terminate the debarment. The Contractor Hearing Board shall present its proposed decision and recommendation to the Board of Supervisors. The Board of Supervisors shall have the right to modify, deny, or adopt the proposed decision and recommendation of the Contractor Hearing Board.

8.12.5 Subcontractors of Contractor

These terms shall also apply to Subcontractors of County Contractors.

8.13 CONTRACTOR'S ACKNOWLEDGEMENT OF COUNTY'S COMMITMENT TO THE SAFELY SURRENDERED BABY LAW

Contractor acknowledges that County places a high priority on the implementation of the Safely Surrendered Baby Law. Contractor understands that it is the County's policy to encourage all County Contractors to voluntarily post the County's "Safely Surrendered Baby Law" poster in a prominent position at the Contractor's place of business. Contractor will also encourage its Subcontractors, if any, to post this poster in a prominent position in the Subcontractor's place of business. The County's Department of Children and Family Services will supply Contractor with the poster to be used.

8.14 CONTRACTOR'S WARRANTY OF ADHERENCE TO COUNTY'S CHILD SUPPORT COMPLIANCE PROGRAM

8.14.1 Contractor acknowledges that County has established a goal of ensuring that all individuals who benefit financially from County through this

Agreement are in compliance with their court-ordered child, family and spousal support obligations in order to mitigate the economic burden otherwise imposed upon County and its taxpayers.

8.14.2 As required by the County's Child Support Compliance Program (County Code Chapter 2.200) and without limiting the Contractor's duty under this Agreement to comply with all applicable provisions of law, Contractor warrants that it is now in compliance and shall during the term of this Agreement maintain in compliance with employment and wage reporting requirements as required by the Federal Social Security Act (42 USC Section 653a) and California Unemployment Insurance Code Section 1088.5, and shall implement all lawfully served Wage and Earnings Withholding Orders or Child Support Services Department Notices of Wage and Earnings Assignment for Child, Family or Spousal Support, pursuant to Code of Civil Procedure Section 706.031 and Family Code Section 5246(b).

8.15 COUNTY'S QUALITY ASSURANCE PLAN

County or its agent will evaluate the Contractor's performance under this Agreement on not less than an annual basis. Such evaluation will include assessing the Contractor's compliance with all Agreement terms and conditions and performance standards. Contractor deficiencies which County determines are severe or continuing and that may place performance of the Agreement in jeopardy if not corrected will be reported to the Board of Supervisors. The report will include improvement/corrective action measures taken by County and Contractor. If improvement does not occur consistent with the corrective action measures, County may terminate this Agreement or impose other penalties as specified in this Agreement.

8.16 DAMAGE TO COUNTY FACILITIES, BUILDINGS OR GROUNDS

8.16.1 Contractor shall repair, or cause to be repaired, at its own cost, any and all damage to County facilities, buildings, or grounds caused by Contractor or employees or agents of Contractor. Such repairs shall be made immediately after Contractor has become aware of such damage, but in no event later than ten (10) days after the occurrence.

8.16.2 If Contractor fails to make timely repairs, County may make any necessary repairs. All costs incurred by County, as determined by County, for such repairs shall be repaid by Contractor by cash payment upon demand.

8.16.3 County reserves the unilateral right to make any repairs which Director determines, in his/her sole discretion, to be a public safety issue requiring immediate repair. County will bill Contractor for the cost of said repair or deduct said cost from any outstanding amounts owed by County to Contractor.

8.17 EMPLOYMENT ELIGIBILITY VERIFICATION

8.17.1 Contractor warrants that it fully complies with all Federal and State statutes and regulations regarding the employment of aliens and others and that all its employees performing work under this Agreement meet the citizenship or alien status requirements set forth in Federal and State statutes and regulations. Contractor shall obtain, from all employees performing work hereunder, all verification and other documentation of employment eligibility status required by Federal and State statutes and regulations including, but not limited to, the Immigration Reform and Control Act of 1986, (P.L. 99-603), or as they currently exist and as they may be hereafter amended. Contractor shall retain all such documentation for all covered employees for the period prescribed by law.

8.17.2 Contractor shall indemnify, defend, and hold harmless, County, its agents, officers, and employees from employer sanctions and any other liability which may be assessed against Contractor or County or both in connection with any alleged violation of any Federal or State statutes or regulations pertaining to the eligibility for employment of any persons performing work under this Agreement.

8.18 FACSIMILE REPRESENTATIONS

The Director and the Contractor hereby agree to regard facsimile representations of original signatures of authorized officers of each party, when appearing in appropriate places on the Amendments prepared pursuant to sub-paragraph 8.1,

and received via communications facilities, as legally sufficient evidence that such original signatures have been affixed to Amendments to this Agreement, such that the parties need not follow up facsimile transmissions of such documents with subsequent (non-facsimile) transmission of "original" versions of such documents.

8.19 FAIR LABOR STANDARDS

Contractor shall comply with all applicable provisions of the Federal Fair Labor Standards Act and shall indemnify, defend, and hold harmless County and its agents, officers, and employees from any and all liability, including, but not limited to, wages, overtime pay, liquidated damages, penalties, court costs, and attorneys' fees arising under any wage and hour law, including, but not limited to, the *Federal Fair Labor Standards Act*, for work performed by the Contractor's employees for which County may be found jointly or solely liable.

8.20 GOVERNING LAW, JURISDICTION, AND VENUE

This Agreement shall be governed by, and construed in accordance with, the laws of the State of California. Contractor agrees and consents to the exclusive jurisdiction of the courts of the State of California for all purposes regarding this Agreement and further agrees and consents that venue of any action brought hereunder shall be exclusively in the County of Los Angeles.

8.21 INDEPENDENT CONTRACTOR STATUS

8.21.1 This Agreement is by and between County and Contractor and is not intended, and shall not be construed, to create the relationship of agent, servant, employee, partnership, joint venture, or association, as between County and Contractor. The employees and agents of one party shall not be, or be construed to be, the employees or agents of the other party for any purpose whatsoever.

8.21.2 Contractor shall be solely liable and responsible for providing to, or on behalf of, all persons performing work pursuant to this Agreement all compensation and benefits. County shall have no liability or responsibility for the payment of any salaries, wages, unemployment benefits, disability benefits, Federal, State, or local taxes, or other compensation, benefits,

or taxes for any personnel provided by or on behalf of Contractor.

8.21.3 Contractor understands and agrees that all persons performing work pursuant to this Agreement are, for purposes of Workers' Compensation liability, solely employees of Contractor and not employees of County. Contractor shall be solely liable and responsible for furnishing any and all Workers' Compensation benefits to any person as a result of any injuries arising from or connected with any work performed by or on behalf of Contractor pursuant to this Agreement.

8.21.4 Contractor shall adhere to the provisions stated in Sub-paragraph 7.5 – Confidentiality.

8.22 INDEMNIFICATION – COUNTY PROFESSIONAL LIABILITY

8.22.1 County shall indemnify, defend, and save harmless Contractor, its officers, and employees (for purposes of this Paragraph hereafter collectively referred to as "Contractor") from liability, expense and claims for damages resulting from or related to the provision of apportionment consulting services arising as a result of this Agreement or the provision of services hereunder.

8.22.2 County's indemnification of Contractor hereunder shall only apply to payments of settlements, judgments, and awards to third parties, including legal defense expenses. To the extent that County is obligated to provide an indemnification program hereunder, County will also provide claims administration and legal defense on behalf of Contractor.

8.22.3 Contractor will give prompt telephonic notice (within twenty-four [24] hours) to County Counsel of any incident, action, or claim to which this indemnification applies and shall fully cooperate with County and its claims representatives, in any defense, settlement, or other disposition of such incident, action or claim. Such telephonic notice shall be immediately followed by written notice to County Counsel. Such written notice shall include all of the information listed in Department of Health Services Risk Management Form. Contractor hereby acknowledges receipt of said Department of Health Services Risk Management Form, Exhibit H.

8.22.4 County shall have the right to investigate any incident, action or claim. As a condition of County's indemnification obligation, Contractor shall allow County representatives access to both the medical records and reports pertaining to the services provided under this Agreement, and to the Contractor's employees and agents, if any, who provided services under or in connection to this Agreement.

8.22.5 County's agents, as designated by Director, will consult with Contractor regarding the disposition of any action or claim hereunder. However, County reserves the right to determine the final disposition of any action or claim. In the event Contractor does not agree with County's agents in any defense, settlement, or any other disposition of such action or claim, Contractor may pursue defense, settlement, or other disposition of such action or claim independently of the County, and should Contractor take any such action, County's indemnification obligation with respect to such action or claim shall immediately terminate. In such event, County shall have no financial obligation on behalf of Contractor for liability, expenses, including legal defense fees and expenses, expert witness fees and expenses or payments of settlements, judgments, awards, or damages arising out of the action or claim.

8.22.6 County shall have no indemnification responsibility or liability for any incident, action or claim against Contractor where Contractor failed to provide County with prompt telephonic and written notice of such incident, action or claim, as specified in Paragraph 8.22.3 above, or if Contractor has failed to fully and reasonably cooperate with County and its agents in the defense, settlement, or other disposition of such incident, action or claim.

8.22.7 This indemnification provision in Paragraph 8.22 shall not cover Contractor's damages or expenses arising out of Contractor's willful or criminal misconduct, recklessness or gross negligence, nor shall it cover the award of any punitive damages.

8.22.8 The provisions of this Paragraph 8.22 shall survive the expiration or earlier termination of this Agreement for actions or claims against Contractor.

8.22.9 Contractor Indemnification: With the exception of the professional liability indemnification provided solely for apportionment consulting services, by County, as stated above, Contractor shall indemnify, defend and hold harmless County and its Special Districts, elected and appointed officers, employees, and agents from and against any and all liability, including, but not limited to, demands, claims, actions, fees, costs, and expenses (including attorney and expert witness fees), arising from or connected with Contractor's acts and/or omissions arising from and/or relating to this Agreement.

8.23 GENERAL INSURANCE REQUIREMENTS

Without limiting the Contractor's indemnification of County and during the term of this Agreement, Contractor shall provide and maintain, and shall require all of its Subcontractors to maintain, the following programs of insurance specified in this Agreement. Such insurance shall be primary to and not contributing with any other insurance or self-insurance programs maintained by County. Such coverage shall be provided and maintained at the Contractor's own expense.

8.23.1 Evidence of Insurance: Certificate(s) or other evidence of coverage satisfactory to County shall be delivered to:

Director, Contract Administration and Monitoring
Department of Health Services
313 N. Figueroa St., 6th Floor East
Los Angeles, CA 90012

prior to commencing services under this Agreement. Such certificates or other evidence shall:

- Specifically identify this Agreement;
- Clearly evidence all coverages required in this Agreement;
- Contain the express condition that County is to be given written notice by mail at least thirty (30) days in advance of cancellation for all policies evidenced on the certificate of insurance;
- Include copies of the additional insured endorsement to the commercial general liability policy, adding County, its Special Districts, its officials, officers and employees as insureds for all activities arising from this Agreement; and

- Identify any deductibles or self-insured retentions for the County's approval. County retains the right to require Contractor to reduce or eliminate such deductibles or self-insured retentions as they apply to County, or, require Contractor to provide a bond guaranteeing payment of all such retained losses and related costs, including, but not limited to, expenses or fees, or both, related to investigations, claims administrations, and legal defense. Such bond shall be executed by a corporate surety licensed to transact business in the State of California.

8.23.2 **Insurer Financial Ratings:** Insurance is to be provided by an insurance company acceptable to County with an A.M. Best rating of not less than A:VII unless otherwise approved by County.

8.23.3 **Failure to Maintain Coverage:** Failure by Contractor to maintain the required insurance, or to provide evidence of insurance coverage acceptable to County, shall constitute a material breach of the Agreement upon which County may immediately terminate or suspend this Agreement. County, at its sole option, may obtain damages from Contractor resulting from said breach. Alternatively, County may purchase such required insurance coverage, and without further notice to Contractor, County may deduct from sums due to Contractor any premium costs advanced by County for such insurance.

8.23.4 **Notification of Incidents, Claims or Suits: Contractor shall report to County:**

- Any accident or incident relating to services performed under this Agreement which involves injury or property damage which may result in the filing of a claim or lawsuit against Contractor and/or County. Such report shall be made in writing within 24 hours of occurrence.
- Any third party claim or lawsuit filed against Contractor arising from or related to services performed by Contractor under this Agreement.
- Any injury to a Contractor employee that occurs on County property. This report shall be submitted on a County "Non-employee Injury Report" to the County's Project Director.

- Any loss, disappearance, destruction, misuse, or theft of any kind whatsoever of County property, monies or securities entrusted to Contractor under the terms of this Agreement.

8.23.5 **Compensation for County Costs:** In the event that Contractor fails to comply with any of the indemnification or insurance requirements of this Agreement, and such failure to comply results in any costs to County, Contractor shall pay full compensation for all costs incurred by County.

8.23.6 **Insurance Coverage Requirements for Subcontractors:** Contractor shall ensure any and all Subcontractors performing services under this Agreement meet the insurance requirements of this Agreement by either:

- Contractor providing evidence of insurance covering the activities of Subcontractors, or
- Contractor providing evidence submitted by Subcontractors evidencing that Subcontractors maintain the required insurance coverage. County retains the right to obtain copies of evidence of Subcontractor insurance coverage at any time.

8.24 INSURANCE COVERAGE REQUIREMENTS

8.24.1 **General Liability** insurance written on ISO policy form CG 00 01 or its equivalent with limits of not less than the following:

General Aggregate:	$2 Million
Products/Completed Operations Aggregate:	$1 Million
Personal and Advertising Injury:	$1 Million
Each Occurrence:	$1 Million

8.24.2 **Automobile Liability** written on ISO policy form CA 00 01 or its equivalent with a limit of liability of not less than $1 million for each accident. Such insurance shall include coverage for all "owned", "hired" and "non-owned" vehicles, or coverage for "any auto".

8.24.3 **Workers' Compensation and Employers' Liability** insurance providing workers' compensation benefits, as required by the Labor Code of the State of California or by any other state, and for which Contractor is responsible. If the Contractor's employees will be engaged in maritime employment, coverage shall provide workers' compensation

benefits as required by the U.S. Longshore and Harbor Workers' Compensation Act, Jones Act or any other federal law for which Contractor is responsible.

In all cases, the above insurance also shall include Employers' Liability coverage with limits of not less than the following:

Each Accident:	$1 Million
Disease – policy limit:	$1 Million
Disease – each employee:	$1 Million

8.25 LIQUIDATED DAMAGES

8.25.1 If, in the judgment of the Director, or his/her designee, Contractor is deemed to be non-compliant with the terms and obligations assumed hereby, the Director or his/her designee, at his/her option, in addition to, or in lieu of, other remedies provided herein, may withhold the entire monthly payment or deduct pro rata from the Contractor's invoice for work not performed. A description of the work not performed and the amount to be withheld or deducted from payments to Contractor from County, will be forwarded to Contractor by Director or his/her designee, in a written notice describing the reasons for said action.

8.25.2 If the Director, or his/her designee, determines that there are deficiencies in the performance of this Agreement that the Director, or his/her designee, deems are correctable by Contractor over a certain time span, the Director, or his/her designee, will provide a written notice to Contractor to correct the deficiency within specified time frames. Should Contractor fail to correct deficiencies within said time frame, the Director, or his/her designee, may:

(a) Deduct from the Contractor's payment, pro rata, those applicable portions from funds due to Contractor; and/or

(b) Deduct Liquidated Damages: The parties agree that it will be impracticable or extremely difficult to fix the extent of actual damages resulting from the failure of Contractor to correct a deficiency within the specified time frame. The parties hereby agree that under the current circumstances a reasonable estimate of such damages is One Hundred Dollars ($100) per day per infraction and that Contractor shall be liable

to County for liquidated damages in said amount. Said amount shall be deducted from the County's payment to Contractor; and/or (c) Upon giving five (5) days notice to Contractor for failure to correct the deficiencies, County may correct any and all deficiencies and the total costs incurred by County for completion of the work by an alternate source, whether it be County forces or separate private contractor, will be deducted and forfeited from the payment to Contractor from County, as determined by County.

8.25.3 The action noted in Sub-paragraph 8.25.2 shall not be construed as a penalty, but as adjustment of payment to Contractor to recover County cost due to the failure of Contractor to complete or comply with the provisions of this Agreement.

8.25.4 This Sub-paragraph shall not, in any manner, restrict or limit the County's right to damages for any breach of this Agreement provided by law or as specified in Sub-paragraph 8.25.2, and shall not, in any manner, restrict or limit the County's right to terminate this Agreement as agreed to herein.

8.26 MOST FAVORED PUBLIC ENTITY– Not Applicable; Intentionally Omitted.

8.27 NONDISCRIMINATION AND AFFIRMATIVE ACTION

8.27.1 Contractor certifies and agrees that all persons employed by it, its affiliates, subsidiaries, or holding companies are and shall be treated equally without regard to or because of race, color, religion, ancestry, national origin, sex, sexual orientation, age, physical or mental disability, marital status, or political affiliation, in compliance with all applicable Federal and State anti-discrimination laws and regulations.

8.27.2 Contractor shall certify to, and comply with, the provisions of Exhibit A – Contractor's EEO Certification.

8.27.3 Contractor shall take affirmative action to ensure that applicants are employed, and that employees are treated during employment, without regard to race, color, religion, ancestry, national origin, sex, sexual orientation, age, physical or mental disability, marital status, or political affiliation, in compliance with all applicable Federal and State anti-

discrimination laws and regulations. Such action shall include, but is not limited to: employment, upgrading, demotion, transfer, recruitment or recruitment advertising, layoff or termination, rates of pay or other forms of compensation, and selection for training, including apprenticeship.

8.27.4 Contractor certifies and agrees that it will deal with its subcontractors, bidders, or vendors without regard to or because of race, color, religion, ancestry, national origin, sex, sexual orientation, age, or physical or mental disability, marital status, or political affiliation.

8.27.5 Contractor certifies and agrees that it, its affiliates, subsidiaries, or holding companies shall comply with all applicable Federal and State laws and regulations to the end that no person shall, on the grounds of race, color, religion, ancestry, national origin, sex, sexual orientation, age, physical or mental disability, marital status, or political affiliation, be excluded from participation in, be denied the benefits of, or be otherwise subjected to discrimination under this Agreement or under any project, program, or activity supported by this Agreement.

8.27.6 Contractor shall allow County representatives access to the Contractor's employment records during regular business hours to verify compliance with the provisions of this Sub-paragraph 8.27 when so requested by County.

8.27.7 If County finds that any provisions of this Sub-paragraph 8.27 have been violated, such violation shall constitute a material breach of this Agreement upon which County may terminate or suspend this Agreement. While County reserves the right to determine independently that the anti-discrimination provisions of this Agreement have been violated, in addition, a determination by the California Fair Employment Practices Commission or the Federal Equal Employment Opportunity Commission that Contractor has violated Federal or State anti-discrimination laws or regulations shall constitute a finding by County that Contractor has violated the anti-discrimination provisions of this Agreement.

8.27.8 The parties agree that in the event Contractor violates any of the anti-discrimination provisions of this Agreement, County shall, at its sole option, be entitled to the sum of Five Hundred Dollars ($500) for each

such violation pursuant to California Civil Code Section 1671 as liquidated damages in lieu of terminating or suspending this Agreement.

8.27.9 **Non-Discrimination in Services:** Contractor shall not discriminate in the provision of services hereunder because of race, color, religion, national origin, ethnic group identification, ancestry, age, sex, sexual orientation, marital status, political affiliation, or physical or mental disability in accordance with requirements of Federal and State laws. For the purpose of this paragraph, discrimination in the provision of services may include, but is not limited to, the following: Denying any person any service or benefit or the availability of a facility; providing any service or benefit to an person which is not equivalent or is provided in a non-equivalent manner or at a non-equivalent time, from that provided to others; subjecting any person to segregation or separate treatment in any manner related to the receipt of any service; restricting any person in any way in the enjoyment of any advantage or privilege enjoyed by others receiving any service or benefit; and treating any person differently from others in determining admission, enrollment quota, eligibility, membership, or any other requirements or conditions which persons must meet in order to be provided any service or benefit. Contractor shall take affirmative action to ensure that intended beneficiaries of this Agreement are provided services without regard to race, color, religion, national origin, ethnic group identification, ancestry, sex, age, marital status, political affiliation, physical or mental disability, or sexual orientation.

8.28 NON EXCLUSIVITY

Nothing herein is intended nor shall be construed as creating any exclusive arrangement with Contractor. This Agreement shall not restrict DHS from acquiring similar, equal or like goods and/or services from other entities or sources.

8.29 NOTICE OF DELAYS

Except as otherwise provided under this Agreement, when either party has knowledge that any actual or potential situation is delaying or threatens to delay the timely performance of this Agreement, that party shall, within one (1) business

day, give notice thereof, including all relevant information with respect thereto, to the other party.

8.30 NOTICE OF DISPUTES

Contractor shall bring to the attention of the County's Project Director any dispute between County and Contractor regarding the performance of services as stated in this Agreement. If the County's Project Director is not able to resolve the dispute, the Director shall resolve it.

8.31 NOTICE TO EMPLOYEES REGARDING THE FEDERAL EARNED INCOME CREDIT

Contractor shall notify its employees, and shall require each Subcontractor to notify its employees, that they may be eligible for the Federal Earned Income Credit under the federal income tax laws. Such notice shall be provided in accordance with the requirements set forth in Internal Revenue Service Notice No. 1015.

8.32 NOTICE TO EMPLOYEES REGARDING THE SAFELY SURRENDERED BABY LAW

Contractor shall notify and provide to its employees, and shall require each Subcontractor to notify and provide to its employees, a fact sheet regarding the Safely Surrendered Baby Law, its implementation in Los Angeles County, and where and how to safely surrender a baby. The fact sheet is set forth in Exhibit F of this Agreement and is also available on the Internet at www.babysafela.org for printing purposes.

8.33 NOTICES

All notices or demands required or permitted to be given or made under this Agreement shall be in writing and shall be hand delivered with signed receipt or mailed by first-class registered or certified mail, postage prepaid, addressed to the parties as identified in Exhibit B – County's Administration and Exhibit C – Contractor's Administration. Addresses may be changed by either party giving ten (10) days' prior written notice thereof to the other party. The Director or his/her

designee shall have the authority to issue all notices or demands required or permitted by County under this Agreement.

8.34 PROHIBITION AGAINST INDUCEMENT OR PERSUASION

Notwithstanding the above, Contractor and County agree that, during the term of this Agreement and for a period of one year thereafter, neither party shall in any way intentionally induce or persuade any employee of one party to become an employee or agent of the other party. No bar exists against any hiring action initiated through a public announcement.

8.35 RECORD RETENTION AND INSPECTION/AUDIT SETTLEMENT

Contractor shall maintain accurate and complete financial records of its provision of services, activities and operations relating to this Agreement in accordance with generally accepted accounting principles. Contractor shall also maintain accurate and complete employment and other records relating to its performance of this Agreement. Contractor agrees that County, or its authorized representatives, shall have access to and the right to examine, audit, excerpt, copy, or transcribe any pertinent transaction, activity, or record relating to this Agreement. All such material, including, but not limited to, all financial records, bank statements, cancelled checks or other proof of payment, timecards, sign-in/sign-out sheets and other time and employment records, and proprietary data and information, shall be kept and maintained by Contractor and shall be made available to County during the term of this Agreement and for a period of five (5) years thereafter unless the County's written permission is given to dispose of any such material prior to such time. All such material shall be maintained by Contractor at a location in Los Angeles County, provided that if any such material is located outside Los Angeles County, then, at the County's option, Contractor shall pay County for travel, per diem, and other costs incurred by County to examine, audit, excerpt, copy, or transcribe such material at such other location.

8.35.1 In the event that an audit of Contractor is conducted specifically regarding this Agreement by any Federal or State auditor, or by any auditor or accountant employed by Contractor or otherwise, then Contractor shall file a copy of such audit report with the County's Auditor-Controller within thirty (30) days of the Contractor's receipt thereof, unless otherwise

provided by applicable Federal or State law or under this Agreement. Subject to applicable law, County shall make a reasonable effort to maintain the confidentiality of such audit report(s).

8.35.2 Failure on the part of Contractor to comply with any of the provisions of this Sub-paragraph 8.35 shall constitute a material breach of this Agreement upon which County may terminate or suspend this Agreement.

8.35.3 If, at any time during the term of this Agreement or within five (5) years after the expiration or termination of this Agreement, representatives of County conduct an audit of Contractor regarding the work performed under this Agreement, and if such audit finds that the County's dollar liability for any such work is less than payments made by County to Contractor, then the difference shall be either: a) repaid by Contractor to County by cash payment upon demand or b) at the sole option of the County's Auditor-Controller, deducted from any amounts due to Contractor from County, whether under this Agreement or otherwise. If such audit finds that the County's dollar liability for such work is more than the payments made by County to Contractor, then the difference shall be paid to Contractor by County by cash payment, provided that in no event shall the County's maximum obligation for this Agreement exceed the funds appropriated by County for the purpose of this Agreement.

8.35.4 In addition to the above, Contractor agrees, should County or its authorized representatives determine, in the County's sole discretion, that it is necessary or appropriate to review a broader scope of the Contractor's records (including, certain records related to non-County contracts) to enable County to evaluate the Contractor's compliance with the County's Living Wage Program, that Contractor shall promptly and without delay provide to County, upon the written request of County or its authorized representatives, access to and the right to examine, audit, excerpt, copy, or transcribe any and all transactions, activities, or records relating to any of its employees who have provided services to County under this Agreement, including without limitation, records relating to work performed by said employees on the Contractor's non-County

contracts. Contractor further acknowledges that the foregoing requirement in this subparagraph relative to Contractor's employees who have provided services to County under this Agreement is for the purpose of enabling County in its discretion to verify the Contractor's full compliance with and adherence to California labor laws and the County's Living Wage Program. All such materials and information, including, but not limited to, all financial records, bank statements, cancelled checks or other proof of payment, timecards, sign-in/sign-out sheets and other time and employment records, and proprietary data and information, shall be kept and maintained by Contractor and shall be made available to County during the term of this Agreement and for a period of five (5) years thereafter unless the County's written permission is given to dispose of any such materials and information prior to such time. All such materials and information shall be maintained by Contractor at a location in Los Angeles County, provided that if any such materials and information is located outside Los Angeles County, then, at the County's option, Contractor shall pay County for travel, per diem, and other costs incurred by County to examine, audit, excerpt, copy, or transcribe such materials and information at such other location.

8.36 RECYCLED BOND PAPER

Consistent with the Board of Supervisors' policy to reduce the amount of solid waste deposited at County landfills, Contractor agrees to use recycled-content paper to the maximum extent possible on this Agreement.

8.37 STAFF PERFORMANCE WHILE UNDER THE INFLUENCE

Contractor shall not knowingly permit any employee to perform services under this Agreement while under the influence of any alcoholic beverage, medication, narcotic, or other substance which might impair their physical or mental performance.

8.38 SUBCONTRACTING

8.38.1 The requirements of this Agreement may not be subcontracted by Contractor **without the advance approval of County**. Any attempt by

Contractor to subcontract without the prior consent of County may be deemed a material breach of this Agreement.

8.38.2 If Contractor desires to subcontract, Contractor shall provide the following information promptly at the County's request:

- A description of the work to be performed by the Subcontractor;
- A draft copy of the proposed subcontract; and
- Other pertinent information and/or certifications requested by County.

8.38.3 Contractor shall indemnify and hold County harmless with respect to the activities of each and every Subcontractor in the same manner and to the same degree as if such Subcontractor(s) were Contractor employees.

8.38.4 Contractor shall remain fully responsible for all performances required of it under this Agreement, including those that Contractor has determined to subcontract, notwithstanding the County's approval of the Contractor's proposed subcontract.

8.38.5 The County's consent to subcontract shall not waive the County's right to prior and continuing approval of any and all personnel, including Subcontractor employees, providing services under this Agreement. Contractor is responsible to notify its Subcontractors of this County right.

8.38.6 The Director is authorized to act for and on behalf of County with respect to approval of any subcontract and Subcontractor employees.

8.38.7 Contractor shall be solely liable and responsible for all payments or other compensation to all Subcontractors and their officers, employees, agents, and successors in interest arising through services performed hereunder, notwithstanding the County's consent to subcontract.

8.38.8 Contractor shall obtain certificates of insurance, which establish that the Subcontractor maintains all the programs of insurance required by County from each approved Subcontractor. Contractor shall ensure delivery of all such documents to:

Director, Contract Administration and Monitoring
Department of Health Services
313 N. Figueroa St., 6th Floor East
Los Angeles, CA 90012

before any Subcontractor employee may perform any work hereunder.

8.39 TERMINATION FOR BREACH OF WARRANTY TO MAINTAIN COMPLIANCE WITH COUNTY'S CHILD SUPPORT COMPLIANCE PROGRAM

Failure of Contractor to maintain compliance with the requirements set forth in Sub-paragraph 8.14 – Contractor's Warranty of Adherence to County's Child Support Compliance Program, shall constitute default under this Agreement. Without limiting the rights and remedies available to County under any other provision of this Agreement, failure of Contractor to cure such default within ninety (90) calendar days of written notice shall be grounds upon which County may terminate this Agreement pursuant to Sub-paragraph 8.41 – Termination for Default and pursue debarment of Contractor, pursuant to County Code Chapter 2.202.

8.40 TERMINATION FOR CONVENIENCE

8.40.1 This Agreement may be terminated, in whole or in part, from time to time, when such action is deemed by County, in its sole discretion, to be in its best interest. Termination of work hereunder shall be effected by notice of termination to Contractor specifying the extent to which performance of work is terminated and the date upon which such termination becomes effective. The date upon which such termination becomes effective shall be no less than thirty days (30) days after the notice is sent.

8.40.2 After receipt of a notice of termination and except as otherwise directed by County, Contractor shall:

- Stop work under this Agreement on the date and to the extent specified in such notice, and
- Complete performance of such part of the work as shall not have been terminated by such notice.

8.40.3 All material including books, records, documents, or other evidence bearing on the costs and expenses of Contractor under this Agreement shall be maintained by Contractor in accordance with Sub-paragraph 8.35, Record Retention & Inspection/Audit Settlement.

8.41 TERMINATION FOR DEFAULT

8.41.1 County may, by written notice to Contractor, terminate the whole or any part of this Agreement, if, in the judgment of County's Project Director:

- Contractor has materially breached this Agreement; or
- Contractor fails to timely provide and/or satisfactorily perform any task, deliverable, service; or other work required either under this Contract; or
- Contractor fails to demonstrate a high probability of timely fulfillment of performance requirements under this Agreement, or of any obligations of this Agreement and in either case, fails to demonstrate convincing progress toward a cure within three (3) working days (or such longer period as County may authorize in writing) after receipt of written notice from County specifying such failure.

8.41.2 In the event that County terminates this Agreement in whole or in part as provided in Sub-paragraph 8.41.1, County may procure, upon such terms and in such manner as County may deem appropriate, goods and services similar to those so terminated. Contractor shall be liable to County for any and all excess costs incurred by County, as determined by County, for such similar goods and services. Contractor shall continue the performance of this Agreement to the extent not terminated under the provisions of this Sub-paragraph.

8.41.3 Except with respect to defaults of any Subcontractor, Contractor shall not be liable for any such excess costs of the type identified in Sub-paragraph 8.41.2 if its failure to perform this Agreement arises out of causes beyond the control and without the fault or negligence of Contractor. Such causes may include, but are not limited to: Acts of God or of the public enemy, acts of County in either its sovereign or contractual capacity, acts of Federal or State governments in their sovereign capacities, fires, floods, epidemics, quarantine restrictions, strikes, freight embargoes, and unusually severe weather; but in every case, the failure to perform must be beyond the control and without the fault or negligence of Contractor. If the failure to perform is caused by the default of a Subcontractor, and if such default arises out of causes beyond the control of both Contractor and Subcontractor, and without the fault or negligence of either of them, Contractor shall not be liable for any such excess costs for failure to perform, unless the goods or services to be furnished by the Subcontractor were obtainable from other sources in

sufficient time to permit Contractor to meet the required performance schedule. As used in this Sub-paragraph 8.41.3, the term "Subcontractor" and "Subcontractors" mean Subcontractor(s) at any tier.

8.41.4 If, after County has given notice of termination under provisions of this Sub-paragraph 8.41, it is determined by County that Contractor was not in default under the provisions of this Sub-paragraph 8.41, or that the default was excusable under the provisions of Sub-paragraph 8.41.3, the rights and obligations of the parties shall be the same as if the notice of termination had been issued pursuant to Sub-paragraph 8.40 – Termination for Convenience.

8.41.5 The rights and remedies of County provided in this Sub-paragraph 8.41 shall not be exclusive and are in addition to any other rights and remedies provided by law or under this Agreement.

8.42 TERMINATION FOR IMPROPER CONSIDERATION

8.42.1 County may, by written notice to Contractor, immediately terminate the right of Contractor to proceed under this Agreement if it is found that consideration, in any form, was offered or given by Contractor, either directly or through an intermediary, to any County officer, employee, or agent with the intent of securing this Agreement or securing favorable treatment with respect to the award, amendment, or extension of this Agreement or the making of any determinations with respect to the Contractor's performance pursuant to this Agreement. In the event of such termination, County shall be entitled to pursue the same remedies against Contractor as it could pursue in the event of default by Contractor.

8.42.2 Contractor shall immediately report any attempt by a County officer or employee to solicit such improper consideration. The report shall be made either to the County manager charged with the supervision of the employee or to the County Auditor-Controller's Employee Fraud Hotline at (800) 544-6861.

8.42.3 Among other items, such improper consideration may take the form of cash, discounts, and service, the provision of travel or entertainment, or tangible gifts.

8.43 TERMINATION FOR INSOLVENCY

8.43.1 County may terminate this Agreement forthwith in the event of the occurrence of any of the following:

- Insolvency of Contractor. Contractor shall be deemed to be insolvent if it has ceased to pay its debts for at least sixty (60) days in the ordinary course of business or cannot pay its debts as they become due, whether or not a petition has been filed under the Federal Bankruptcy Code and whether or not Contractor is insolvent within the meaning of the Federal Bankruptcy Code;
- The filing of a voluntary or involuntary petition regarding Contractor under the Federal Bankruptcy Code;
- The appointment of a Receiver or Trustee for Contractor; or
- The execution by Contractor of a general assignment for the benefit of creditors.

8.43.2 The rights and remedies of County provided in this Sub-paragraph 8.43 shall not be exclusive and are in addition to any other rights and remedies provided by law or under this Agreement.

8.44 TERMINATION FOR NON-ADHERENCE OF COUNTY LOBBYIST ORDINANCE

Contractor, and each County Lobbyist or County Lobbying firm as defined in County Code Section 2.160.010 retained by Contractor, shall fully comply with the County's Lobbyist Ordinance, County Code Chapter 2.160. Failure on the part of Contractor or any County Lobbyist or County Lobbying firm retained by Contractor to fully comply with the County's Lobbyist Ordinance shall constitute a material breach of this Agreement, upon which County may in its sole discretion, immediately terminate or suspend this Agreement.

8.45 TERMINATION FOR NON-APPROPRIATION OF FUNDS

Notwithstanding any other provision of this Agreement, County shall not be obligated for the Contractor's performance hereunder or by any provision of this Agreement during any of the County's future fiscal years unless and until the County's Board of Supervisors appropriates funds for this Agreement in the County's Budget for each such future fiscal year. In the event that funds are not

appropriated for this Agreement, then this Agreement shall terminate as of June 30 of the last fiscal year for which funds were appropriated. County shall notify Contractor in writing of any such non-allocation of funds at the earliest possible date.

8.46 UNLAWFUL SOLICITATION

Contractor shall inform all of its officers and employees performing services hereunder of the provisions of Article 9 of Chapter 4 of Division 3 (commencing with section 6150) of Business and Professions Code of the State of California (i.e., State Bar Act provisions regarding unlawful solicitation as a runner or capper for attorneys) and shall take positive and affirmative steps in its performance hereunder to ensure that there is no violation of said provisions by its officers and employees. Contractor agrees to utilize the attorney referral service of all those bar associations within Los Angeles County that have such a service.

8.47 VALIDITY

If any provision of this Agreement or the application thereof to any person or circumstance is held invalid, the remainder of this Agreement and the application of such provision to other persons or circumstances shall not be affected thereby.

8.48 WAIVER

No waiver by County of any breach of any provision of this Agreement shall constitute a waiver of subsequent or any other breach of the same or any other covenant, condition, term or agreement herein contained, nor shall failure on the part of County to require exact, full and complete compliance with any of the covenants, conditions, terms or agreements shall prevent County from enforcing the full provisions thereof. Failure of County to enforce at any time, or from time to time, any provision of this Agreement shall not be construed as a waiver thereof. The rights and remedies set forth in this Sub-paragraph 8.48 shall not be exclusive and are in addition to any other rights and remedies provided by law or under this Agreement.

8.49 WARRANTY AGAINST CONTINGENT FEES

8.49.1 Contractor warrants that no person or selling agency has been employed or retained to solicit or secure this Agreement upon any Agreement or understanding for a commission, percentage, brokerage, or contingent fee, excepting bona fide employees or bona fide established commercial or selling agencies maintained by Contractor for the purpose of securing business.

8.49.2 For breach of this warranty, County shall have the right to terminate this Agreement and, at its sole discretion, deduct from the Agreement price or consideration, or otherwise recover, the full amount of such commission, percentage, brokerage, or contingent fee.

9.0 UNIQUE TERMS AND CONDITIONS

9.1 CONTRACTOR'S EXCLUSION FROM PARTICIPATION IN A FEDERALLY FUNDED PROGRAM

Contractor hereby warrants that neither it nor any of its staff members is restricted or excluded from providing services under any health care program funded by the federal government, directly or indirectly, in whole or in part, and that Contractor will notify Director within ten (10) calendar days in writing of: 1) any event that would require Contractor or a staff member's mandatory exclusion from participation in a federally funded health care program; and 2) any exclusionary action taken by any agency of the federal government against Contractor or one or more staff members barring it or the staff members from participation in a federally funded health program, whether such bar is direct or indirect, or whether such bar is in whole or in part.

Contractor shall indemnify and hold County harmless against any and all loss or damage County may suffer arising from any Federal exclusion of Contractor or its staff members from such participation in a federally funded health care program.

Failure by Contractor to meet the requirements of this Sub-paragraph shall constitute a material breach of Agreement upon which County may immediately terminate or suspend this Agreement.

9.2 CONTRACTOR'S OBLIGATIONS AS A "BUSINESS ASSOCIATE" UNDER HEALTH INSURANCE PORTABILITY & ACCOUNTABILITY ACT OF 1996 (HIPAA)

County is subject to the Administrative Simplification requirements of the Health Insurance Portability and Accountability Act of 1996 (HIPAA). Under this Agreement, Contractor provides services to County and Contractor receives, has access to, and/or creates Protected Health Information as defined in Exhibit G, attached herein as reference, in order to provide those services. County and Contractor therefore agree to the terms of Exhibit G, Contractor's Obligations As a "Business Associate" Under Health Insurance Portability & Accountability Act of 1996 (HIPAA).

9.3 FORCE MAJEURE

9.3.1 Neither party shall be liable for such party's failure to perform its obligations under and in accordance with this Contract, if such failure arises out of fires, floods, epidemics, quarantine restrictions, other natural occurrences, strikes, lockouts (other than a lockout by such party or any of such party's subcontractors), freight embargoes, or other similar events to those described above, but in every such case the failure to perform must be totally beyond the control and without any fault or negligence of such party (such events are referred to in this sub-paragraph as "force majeure events").

9.3.2 Notwithstanding the foregoing, a default by a subcontractor of Contractor shall not constitute a force majeure event, unless such default arises out of causes beyond the control of both Contractor and such subcontractor, and without any fault or negligence of either of them. In such case, Contractor shall not be liable for failure to perform, unless the goods or services to be furnished by the subcontractor were obtainable from other sources in sufficient time to permit Contractor to meet the required performance schedule. As used in this sub-paragraph, the term "subcontractor" and "subcontractors" mean subcontractors at any tier.

9.3.3 In the event Contractor's failure to perform arises out of a force majeure event, Contractor agrees to use commercially reasonable best efforts to obtain goods or services from other sources, if applicable, and to otherwise mitigate the damages and reduce the delay caused by such force majeure event.

IN WITNESS WHEREOF, the Board of Supervisors of the County of Los Angeles has caused this Agreement to be subscribed by its Director of Health Services, and Contractor has caused this Agreement to be executed on its behalf by its duly authorized officer, the day, month and year first above written.

COUNTY OF LOS ANGELES

By _____
John F. Schunhoff, Ph.D.
Interim Director of Health Services

_____
Contractor

By_____
Signature

_____
Printed Name

APPROVED AS TO FORM

BY THE OFFICE OF THE COUNTY COUSNEL