



AGENDA ITEM NO.
D-20

COUNTY OF HUMBOLDT

For the meeting of: September 20, 2016

Date: August 19, 2016

To: Board of Supervisors

From: Connie Beck, Director *SBuckley*
Department of Health and Human Services – Public Health

Subject: State Standard Agreement #16-10248 for the Preharvest Shellfish Sanitation Program

RECOMMENDATION(S):
That the Board of Supervisors:

1. Approves State Standard Agreement #16-10248 with the California Department of Public Health (CDPH) – in the amount of \$29,040 in Fund 1175, Budget Unit 435, Public Health Laboratory for the period of July 1, 2016 through June 30, 2019;
2. Authorizes the Chair of the Board to sign five (5) signature pages of the agreement;
3. Authorizes the Director of Public Health, or designee to sign any subsequent amendments or budget revisions directly related to this agreement; and
4. Directs the Clerk of the Board to return all signed documents to the Department of Health and Human Services (DHHS)-Contract Unit.

SOURCE OF FUNDING:
Public Health Fund

DISCUSSION:
Humboldt Bay is one of the largest commercial oyster producing areas on the west coast. CDPH is mandated in Health and Safety Code 112170 to assure these shellfish are safe for human consumption and contracts with Humboldt County to perform shellfish meat and water testing locally at the DHHS-Public

Prepared by Lara Zintsmaster, AA I *(LZ)* CAO Approval *E. Carbone*

REVIEW: Auditor *MSM* County Counsel _____ Human Resources *Kh* Other _____

TYPE OF ITEM:

Consent

Departmental

Public Hearing

Other _____

BOARD OF SUPERVISORS, COUNTY OF HUMBOLDT

Upon motion of Supervisor *Fennell* Seconded by Supervisor *Bass*

Ayes *Sundberg, Fennell, Lovelace, Bohm, Bass*

Nays _____

Abstain _____

Absent _____

PREVIOUS ACTION/REFERRAL:

Board Order No. C-6, C-13, C-12, B-1

Meeting of: 8/24/04, 5/1/07, 11/9/10, 6/25/13

and carried by those members present, the Board hereby approves the recommended action contained in this Board report.

Dated: Sept. 20, 2016

By: *Kathy Hayes*

Kathy Hayes, Clerk of the Board

Health Laboratory. Local testing provides accurate and timely results, thus protecting public safety and local businesses. The state has been contracting with DHHS-Public Health since 2004 for the Preharvest Shellfish Sanitation Program.

This agreement comes to the Board after the start date due to late receipt from the state.

FINANCIAL IMPACT:

Approval of the three-year State Standard Agreement #16-10248 will allow DHHS-Public Health to be reimbursed up to \$29,040 over the period of July 1, 2016 through June 30, 2019 for the testing of shellfish samples in the Preharvest Shellfish Sanitation Program in Fund 1175, Budget Unit 435, Public Health Laboratory. An appropriation transfer was completed for fiscal year (FY) 2016-17 in the amount of \$9,680 to open revenue line 505040. The funding amount of \$9,680 for FY 2017-18 and FY 2018-19 will be included in the annual budget process. There will be no impact to the county's General Fund.

This agreement supports the Board's Strategic Framework by protecting vulnerable populations and creating opportunities for improved safety and health.

OTHER AGENCY INVOLVEMENT:

California Department of Public Health

ALTERNATIVES TO STAFF RECOMMENDATIONS:

The Board may decide not to approve the agreement from CDPH. However, it is not recommended, Public Health would not be reimbursed for the Preharvest Shellfish Sanitation Program if the state funds are not accepted.

ATTACHMENTS:

1. Five (5) originals of Standard Agreement 16-10248

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



REGISTRATION NUMBER	AGREEMENT NUMBER 16-10248
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1. This Agreement is entered into between the State Agency and the Contractor named below:
- STATE AGENCY'S NAME (Also referred to as CDPH or the State)
 California Department of Public Health
- CONTRACTOR'S NAME (Also referred to as Contractor)
 Humboldt County
2. The term of this Agreement is: July 1, 2016 through June 30, 2019
3. The maximum amount of this Agreement is: \$ 29,040.00
 Twenty-Nine Thousand Forty Dollars and Zero Cents
4. The parties agree to comply with the terms and conditions of the following exhibits, which are by this reference made a part of this Agreement.

Exhibit A – Scope of Work	2 pages
Exhibit B – Budget Detail and Payment Provisions	2 pages
Exhibit B, Attachment I – Budget	1 page
Exhibit C * – General Terms and Conditions	GTC - 610
Exhibit D (C) – Special Terms and Conditions	17 pages
Exhibit E – Additional Provisions	1 page
Exhibit F – Contractor's Release	1 page

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

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

CONTRACTOR		California Department of General Services Use Only
CONTRACTOR'S NAME (if other than an individual, state whether a corporation, partnership, etc.) Humboldt County		
BY (Authorized Signature) 	DATE SIGNED (Do not type) 9-20-16	
PRINTED NAME AND TITLE OF PERSON SIGNING Mark Lovelace, Chair, Board of Supervisors		
ADDRESS 529 I Street, Eureka, CA 95501		
STATE OF CALIFORNIA		
AGENCY NAME California Department of Public Health		
BY (Authorized Signature) 	DATE SIGNED (Do not type) 9/28/16	
PRINTED NAME AND TITLE OF PERSON SIGNING Christine Alire, Chief, Contracts Management Unit		
ADDRESS 1616 Capitol Avenue, Suite 74.317, MS 1802, PO Box 997377 Sacramento, CA 95899-7377		

Exempt per: SCM 4.04 A.3
CDPH #2

Exhibit A
Scope of Work

1. Service Overview

Contractor agrees to provide to the California Department of Public Health Services (CDPH) the services described herein.

Contractor agrees to continue to provide analytical services in accordance with the current edition of Laboratory Procedures for the Examination of Seawater and Shellfish, American Public Health Association. Services identified under this agreement are completed annually.

2. Service Location

The services shall be performed at applicable facilities in Humboldt County.

3. Service Hours

The services shall be provided during Normal Contractor working hours, Monday through Friday, excluding national holidays.

4. Project Representatives

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

California Department of Public Health Gregg Langlois, Chief Preharvest Shellfish Sanitation Unit Telephone: (510) 412-4635 Fax: (510) 412-4637 E-mail: gregg.langlois@cdph.ca.gov	Contractor Jeremy Corrigan, MS, PHM II Laboratory Manager Bioterrorism Coordinator County of Humboldt 529 I street Eureka, CA. 95501 (w) 707-268-2178 (c) 707-362-6751 jcorrigan@co.humboldt.ca.us
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B. Direct all inquiries to:

California Department of Public Health Preharvest Shellfish Sanitation Unit Attention: Gregg Langlois 850 Marina Bay Parkway, Room G165 Richmond, CA 94804 Telephone: (510) 412-4635 Fax: (510) 412-4637 E-mail: gregg.langlois@cdph.ca.gov	Contractor County of Humboldt Attention: Jeremy Corrigan 529 I Street Eureka, CA 95501 Telephone: (707) 268-2178 FAX: (707) 445-7640 jcorrigan@co.humboldt.ca.us
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Exhibit A
Scope of Work

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

5. Services To Be Performed

Contractor shall perform the following services on an annual basis:

- A. Analyze up to 70 water samples from shellfish growing areas, and up to 24 shellfish meat samples submitted by personnel of CDPH or their agent for the presence of total and fecal coliform organisms using methods set forth in the current edition of Laboratory Procedures for the Examination of Seawater and Shellfish, American Public Health Association.
- B. Analyze up to 24 shellfish samples for the presence of *Vibrio parahaemolyticus*.
- C. Analyze up to 20 shellfish samples for the presence of total and fecal coliform organisms and *Vibrio parahaemolyticus*.
- D. Furnish all materials necessary for collection of shellfish meat and growing water samples.
- E. Report test results within five (5) working days from submittal to Eric Trevena, 1616 Capitol Avenue, MS 7404, P.O. Box 997377, Sacramento, CA 95899-7377, telephone number (916) 449-4695 and Fax number (916) 449-5665, Eric.Trevena@cdph.ca.gov.
- F. Immediately notify CDPH when any water sample exceeds 43 MPN for fecal coliform, when any shellfish sample exceeds a fecal coliform concentration of 230 MPN, or when any shellfish sample exceeds a concentration of 10 MPN for *Vibrio parahaemolyticus* (Vp) combined with a positive virulence gene or any positive virulence result regardless of the total Vp Concentration.
- G. Maintain status of "conforming" with CDPH's Environmental Laboratory Accreditation Program for all analyses covered under this agreement.

Exhibit B
Budget Detail and Payment Provisions

1. Invoicing and Payment

- A. For services satisfactorily rendered according to the scope of work and the terms, conditions and exhibits of this agreement, and upon receipt and approval of the invoices, CDPH agrees to compensate the Contractor for actual expenditures incurred in accordance with the budget(s) attached hereto.
- B. Each monthly invoice for the month shall be submitted for payment no more than sixty (60) calendar days following the close of each month, unless an alternate deadline is agreed to, in writing, by the program contract. Invoices shall include the Agreement Number and shall be submitted in triplicate not more frequently than in arrears to:

Rachel Iniguez
California Department of Public Health
Environmental Management Branch
MS 7402
1616 Capitol Avenue, P.O. Box 997377
Sacramento, CA 95899-7377

- C. Invoices shall:
 - 1) Be prepared on Contractor letterhead. If invoices are not on produced letterhead invoices must be signed by an authorized official, employee or agent certifying that the expenditures claimed represent actual expenses for the service performed under this contract.
 - 2) Bear the Contractor's name as shown on the agreement.
 - 3) Identify the billing and/or performance period covered by the invoice.
 - 4) Itemize costs for the billing period in the same or greater level of detail as indicated in this agreement. Subject to the terms of this agreement, reimbursement may only be sought for those costs and/or cost categories expressly identified as allowable in this agreement and approved by CDPH.

2. Budget Contingency Clause

- A. It is mutually agreed that if the Budget Act of the current year and/or any subsequent years covered under this Agreement does not appropriate sufficient funds for the program, this Agreement shall be of no further force and effect. In this event, the CDPH shall have no liability to pay any funds whatsoever to the CDPH or to furnish any other considerations under this Agreement and the CDPH shall not be obligated to perform any provisions of this Agreement.
- B. If funding for any fiscal year is reduced or deleted by the Budget Act for purposes of this program, CDPH shall have the option to either cancel this Agreement with no liability occurring to CDPH, or offer an agreement amendment to the CDPH to reflect the reduced amount.

3. Prompt Payment Clause

- A. Payment will be made in accordance with, and within the time specified in, Government Code Chapter 4.5, commencing with Section 927.
- B. As negotiated by the parties to this agreement, no advance payments will be allowed under this agreement.

Exhibit B
Budget Detail and Payment Provisions

4. Amounts Payable

A. The amounts payable under this agreement shall not exceed:

- 1) \$9,680 for the budget period of 07/01/16 through 06/30/17.
- 2) \$9,680 for the budget period of 07/01/17 through 06/30/18.
- 3) \$9,680 for the budget period of 07/01/18 through 06/30/19.

B. Reimbursement shall be made for allowable expenses up to the amount annually encumbered commensurate with the state fiscal year in which services are performed and/or goods are received.

5. Recovery of Overpayments

A. Contractor agrees that claims based upon a contractual agreement or an audit finding and/or an audit finding that is appealed and upheld, will be recovered by the State and/or Federal Government by one of the following options:

- 1) Contractor's remittance to the State of the full amount of the audit exception within 30 days following the State's request for repayment;
- 2) A repayment schedule which is agreeable to both the State and the Contractor.

B. The State reserves the right to select which option will be employed and the Contractor will be notified by the State in writing of the claim procedure to be utilized.

C. Interest on the unpaid balance of the audit finding or debt will accrue at a rate equal to the monthly average of the rate received on investments in the Pooled Money Investment Fund commencing on the date that an audit or examination finding is mailed to the Contractor, beginning 30 days after Contractor's receipt of the State's demand for repayment.

D. If the Contractor has filed a valid appeal regarding the report of audit findings, recovery of the overpayments will be deferred until a final administrative decision on the appeal has been reached. If the Contractor loses the final administrative appeal, Contractor shall repay, to the State, the over-claimed or disallowed expenses, plus accrued interest. Interest accrues from the Contractor's first receipt of State's notice requesting reimbursement of questioned audit costs or disallowed expenses.

Exhibit B, Attachment I
Budget

(Year 1)
(07/01/16 through 06/30/17)

Assay	# Samples	Unit Cost	Total Cost
Water FC	70	\$40.00	\$2,800.00
Shellfish FC	24	\$75.00	\$1,800.00
Shellfish Vp	24	\$95.00	\$2,280.00
Shellfish FC + Vp	20	\$140.00	\$2,800.00
TOTAL			\$9,680.00

(Year 2)
(07/01/17 through 06/30/18)

Assay	# Samples	Unit Cost	Total Cost
Water FC	70	\$40.00	\$2,800.00
Shellfish FC	24	\$75.00	\$1,800.00
Shellfish Vp	24	\$95.00	\$2,280.00
Shellfish FC + Vp	20	\$140.00	\$2,800.00
TOTAL			\$9,680.00

(Year 3)
(07/01/18 through 06/30/19)

Assay	# Samples	Unit Cost	Total Cost
Water FC	70	\$40.00	\$2,800.00
Shellfish FC	24	\$75.00	\$1,800.00
Shellfish Vp	24	\$95.00	\$2,280.00
Shellfish FC + Vp	20	\$140.00	\$2,800.00
TOTAL			\$9,680.00

Special Terms and Conditions

(Applicable to consultant and personal service contracts)

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

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

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

Index of Special Terms and Conditions

1. Travel and Per Diem Reimbursement
2. Site Inspection
3. Intellectual Property Rights
4. Use of Disabled Veteran Business Enterprises (DVBE)
5. Confidentiality of Information
6. Documents, Publications and Written Reports
7. Subcontract Requirements
8. Dispute Resolution Process
9. Performance Evaluation
10. Progress Reports or Meetings
11. Progress Payment Withholds
12. Novation Requirements
13. Legal Services Contract Requirements
14. Four-Digit Date Compliance
15. Prohibited Use of State Funds for Software
16. Insurance Requirements
17. Procurement Rules
18. Equipment Ownership / Inventory / Disposition
19. Use of Small Business Subcontractors

1. Travel and Per Diem Reimbursement

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

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

2. Site Inspection

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

3. Intellectual Property Rights

a. Ownership

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

without the prior written permission of CDPH. **Except as otherwise set forth herein, neither the Contractor nor CDPH shall give any ownership interest in or rights to its Intellectual Property to the other Party.** If during the term of this Agreement, Contractor accesses any third-party Intellectual Property that is licensed to CDPH, Contractor agrees to abide by all license and confidentiality restrictions applicable to CDPH in the third-party's license agreement.

- (4) Contractor agrees to cooperate with CDPH in establishing or maintaining CDPH's exclusive rights in the Intellectual Property, and in assuring CDPH's sole rights against third parties with respect to the Intellectual Property. If the Contractor enters into any agreements or subcontracts with other parties in order to perform this Agreement, Contractor shall require the terms of the Agreement(s) to include all Intellectual Property provisions. Such terms must include, but are not limited to, the subcontractor assigning and agreeing to assign to CDPH all rights, title and interest in Intellectual Property made, conceived, derived from, or reduced to practice by the subcontractor, Contractor or CDPH and which result directly or indirectly from this Agreement or any subcontract.
- (5) Contractor further agrees to assist and cooperate with CDPH in all reasonable respects, and execute all documents and, subject to reasonable availability, give testimony and take all further acts reasonably necessary to acquire, transfer, maintain, and enforce CDPH's Intellectual Property rights and interests.

b. Retained Rights / License Rights

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

c. Copyright

- (1) Contractor agrees that for purposes of copyright law, all works [as defined in Section a, subparagraph (2)(a)] of authorship made by or on behalf of Contractor in connection with Contractor's performance of this Agreement shall be deemed "works made for hire". Contractor further agrees that the work of each person utilized by Contractor in connection with the performance of this Agreement will be a "work made for hire," whether that person is an employee of Contractor or that person has entered into an agreement with Contractor to perform the work. Contractor shall enter into a written agreement with any such person that: (i) all work performed for Contractor shall be deemed a "work made for hire" under the Copyright Act and (ii) that person shall assign all right, title, and interest to CDPH to any work product made, conceived, derived from, or reduced to practice by Contractor or CDPH and which result directly or indirectly from this Agreement.
- (2) All materials, including, but not limited to, visual works or text, reproduced or distributed pursuant to this Agreement that include Intellectual Property made, conceived, derived from, or reduced to practice by Contractor or CDPH and which result directly or indirectly from this Agreement, shall include CDPH's notice of copyright, which shall read in 3mm or larger typeface: "© [Enter Current Year e.g., 2007, etc.], California Department of Public Health. This material may not be reproduced

or disseminated without prior written permission from the California Department of Public Health.” This notice should be placed prominently on the materials and set apart from other matter on the page where it appears. Audio productions shall contain a similar audio notice of copyright.

d. Patent Rights

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

e. Third-Party Intellectual Property

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

f. Warranties

(1) Contractor represents and warrants that:

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

(h) It has no knowledge of any outstanding claims, licenses or other charges, liens, or encumbrances of any kind or nature whatsoever that could affect in any way Contractor's performance of this Agreement.

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

g. Intellectual Property Indemnity

(1) Contractor shall indemnify, defend and hold harmless CDPH and its licensees and assignees, and its officers, directors, employees, agents, representatives, successors, and users of its products, ("Indemnitees") from and against all claims, actions, damages, losses, liabilities (or actions or proceedings with respect to any thereof), whether or not rightful, arising from any and all actions or claims by any third party or expenses related thereto (including, but not limited to, all legal expenses, court costs, and attorney's fees incurred in investigating, preparing, serving as a witness in, or defending against, any such claim, action, or proceeding, commenced or threatened) to which any of the Indemnitees may be subject, whether or not Contractor is a party to any pending or threatened litigation, which arise out of or are related to (i) the incorrectness or breach of any of the representations, warranties, covenants or agreements of Contractor pertaining to Intellectual Property; or (ii) any Intellectual Property infringement, or any other type of actual or alleged infringement claim, arising out of CDPH's use, reproduction, manufacture, sale, offer to sell, distribution, import, export, modification, public and private performance/display, license, and disposition of the Intellectual Property made, conceived, derived from, or reduced to practice by Contractor or CDPH and which result directly or indirectly from this Agreement. This indemnity obligation shall apply irrespective of whether the infringement claim is based on a patent, trademark or copyright registration that issued after the effective date of this Agreement. CDPH reserves the right to participate in and/or control, at Contractor's expense, any such infringement action brought against CDPH.

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

(3) Contractor agrees that damages alone would be inadequate to compensate CDPH for breach of any term of this Intellectual Property Exhibit by Contractor. Contractor acknowledges CDPH would suffer irreparable harm in the event of such breach and agrees CDPH shall be entitled to obtain equitable relief, including without limitation an injunction, from a court of competent jurisdiction, without restriction or limitation of any other rights and remedies available at law or in equity.

h. Federal Funding

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

i. Survival

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

4. Use of Disabled Veteran Business Enterprises (DVBE)

(Applicable to agreements valued at \$10,000 or more in which the Agreement requires actual DVBE participation. Not applicable to agreements and amendments administratively exempted from DVBE requirements by CDPH.)

- a. The State Legislature has declared that a fair portion of the total purchases and contracts or subcontracts for property and services for the State be placed with disabled veteran business enterprises.
- b. All DVBE participation attachments, however labeled, completed as a condition of bidding, contracting, or amending a subject agreement, are incorporated herein and made a part of this Agreement by this reference.
- c. Contractor agrees to use the proposed DVBEs, as identified in previously submitted DVBE participation attachments, unless the Contractor submits a written request for substitution of a like or alternate subcontractor. All requests for substitution must be approved by CDPH, in writing, prior to using a substituted subcontractor.
- d. Requests for substitution must be approved by the program funding this Agreement and must include:
 - (1) A written explanation of the reason for the substitution.
 - (2) A written description of the business enterprise that will be substituted, including its DVBE certification status.
 - (3) If applicable, the reason a non-DVBE subcontractor is proposed for use.
 - (4) A written description of the work to be performed by the substituted subcontractor and an identification of the percentage share/dollar amount of the overall contract that the substituted subcontractor will perform.
- e. If requested by CDPH, Contractor agrees to provide verification, in a form agreed to by CDPH, that DVBE subcontractor participation under this Agreement is in compliance with the goals specified at the time of contract award or in an applicable amendment.

5. Confidentiality of Information

- a. The Contractor and its employees, agents, or subcontractors shall protect from unauthorized disclosure names and other identifying information concerning persons either receiving services pursuant to this Agreement or persons whose names or identifying information become available or are disclosed to the Contractor, its employees, agents, or subcontractors as a result of services performed under this Agreement, except for statistical information not identifying any such person.
- b. The Contractor and its employees, agents, or subcontractors shall not use such identifying information for any purpose other than carrying out the Contractor's obligations under this Agreement.
- c. The Contractor and its employees, agents, or subcontractors shall promptly transmit to the CDPH Program Contract Manager all requests for disclosure of such identifying information not emanating from the client or person.
- d. The Contractor shall not disclose, except as otherwise specifically permitted by this Agreement or authorized by the client, any such identifying information to anyone other than CDPH without prior written authorization from the CDPH Program Contract Manager, except if disclosure is required by State or Federal law.

- e. For purposes of this provision, identity shall include, but not be limited to name, identifying number, symbol, or other identifying particular assigned to the individual, such as finger or voice print or a photograph.
- f. As deemed applicable by CDPH, this provision may be supplemented by additional terms and conditions covering personal health information (PHI) or personal, sensitive, and/or confidential information (PSCI). Said terms and conditions will be outlined in one or more exhibits that will either be attached to this Agreement or incorporated into this Agreement by reference.

6. Documents, Publications and Written Reports

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

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

7. Subcontract Requirements

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

- a. Prior written authorization will be required before the Contractor enters into or is reimbursed for any subcontract for services costing \$5,000 or more. Except as indicated in paragraph a(3) herein, when securing subcontracts for services exceeding \$5,000, the Contractor shall obtain at least three bids or justify a sole source award.
 - (1) The Contractor must provide in its request for authorization, all information necessary for evaluating the necessity or desirability of incurring such cost.
 - (2) The State may identify the information needed to fulfill this requirement.
 - (3) Subcontracts performed by the entities or for the service types listed below are exempt from the bidding and sole source justification requirements:
 - (a) A local governmental entity or the federal government,
 - (b) A State college or university from any State,
 - (c) A Joint Powers Authority,
 - (d) An auxiliary organization of a California State University or a California Community college,
 - (e) A foundation organized to support the Board of Governors of the California Community Colleges,
 - (f) An auxiliary organization of the Student Aid Commission established under Education Code § 69522,
 - (g) Entities of any type that will provide subvention aid or direct services to the public,
 - (h) Entities and/or service types identified as exempt from advertising in State Contracting Manual 5.80. View this publication at the following Internet address:
<http://www.ols.dgs.ca.gov/Contract+Manual/Chapters4through6.htm>
 - (i) Entities whose name and budgeted costs have been submitted to CDPH in response to a competitive Invitation for Bid or Request for Proposal.
- b. **Agreements with governmental or public entities and their auxiliaries, or a Joint Powers Authority**
 - (1) If the total amount of all subcontracts exceeds twenty-five percent (25%) of the total agreement amount or \$50,000, whichever is less and each subcontract is not with an entity or of a service type described in paragraph a(3) herein, CDPH shall:

- (a) Obtain approval from the Department of General Services to use said subcontracts, or
 - (b) If applicable, obtain a certification from the prime Contractor indicating that each subcontractor was selected pursuant to a competitive bidding process requiring at least three bids from responsible bidders, or
 - (c) Obtain approval from the Secretary of the California Health and Human Services Agency to use said subcontracts.
- (2) When the conditions of b(1) apply, each subcontract that is not with a type of entity or of a service type described in paragraph a(3) herein, shall not commence work before CDPH has obtained applicable prior approval to use said subcontractor. CDPH shall inform the Contractor when CDPH has obtained appropriate approval to use said subcontractors.
- c. CDPH reserves the right to approve or disapprove the selection of subcontractors and with advance written notice, require the substitution of subcontractors and require the Contractor to terminate subcontracts entered into in support of this Agreement.
 - (1) Upon receipt of a written notice from CDPH requiring the substitution and/or termination of a subcontract, the Contractor shall take steps to ensure the completion of any work in progress and select a replacement, if applicable, within 30 calendar days, unless a longer period is agreed to by CDPH.
 - d. Actual subcontracts (i.e., written agreement between the Contractor and a subcontractor) of \$5,000 or more are subject to the prior review and written approval of CDPH. CDPH may, at its discretion, elect to waive this right. All such waivers shall be confirmed in writing by CDPH.
 - e. Contractor shall maintain a copy of each subcontract entered into in support of this Agreement and shall, upon request by CDPH, make copies available for approval, inspection, or audit.
 - f. CDPH assumes no responsibility for the payment of subcontractors used in the performance of the Agreement. Contractor accepts sole responsibility for the payment of subcontractors used in the performance of this Agreement.
 - g. The Contractor is responsible for all performance requirements under this Agreement even though performance may be carried out through a subcontract.
 - h. When entering into a consulting service agreement with CDPH, the Contractor may be required to supply budget detail for each subcontractor and/or each major subcontracted activity under this Agreement.
 - (1) Budget detail format and submission requirements will be determined by CDPH.
 - (2) Methods of including budget detail in this Agreement, if applicable, will be determined by CDPH.
 - (3) Any subcontractor budget detail displayed in this Agreement, or incorporated by reference, is included for information purposes only. Changes to a subcontractor's identity or budget detail shall not require the processing of a formal amendment to this Agreement.
 - i. The Contractor shall ensure that all subcontracts for services include provision(s) requiring compliance with applicable terms and conditions specified in this Agreement.
 - j. The Contractor agrees to include the following clause, relevant to record retention, in all subcontracts for services:

"(Subcontractor Name) agrees to maintain and preserve, until three years after termination of (Agreement Number) and final payment from CDPH to the Contractor, to permit CDPH or any duly authorized representative, to have access to, examine or audit any pertinent books,

documents, papers and records related to this subcontract and to allow interviews of any employees who might reasonably have information related to such records."

- k. Unless otherwise stipulated in writing by CDPH, the Contractor shall be the subcontractor's sole point of contact for all matters related to performance and payment under this Agreement.
- l. Contractor shall, as applicable, advise all subcontractors of their obligations pursuant to the following numbered provisions of this exhibit: 1, 2, 3, 4, 5, 6, 7, 11, 17, 18, 19, and/or other numbered provisions herein that are deemed applicable.

8. Dispute Resolution Process

A Contractor grievance exists whenever there is a dispute arising from CDPH's action in the administration of an agreement. If there is a dispute or grievance between the Contractor and CDPH, the Contractor must seek resolution using the procedure outlined below.

- a. The Contractor should first informally discuss the problem with the CDPH Program Contract Manager. If the problem cannot be resolved informally, the Contractor shall direct its grievance together with any evidence, in writing, to the program Branch Chief. The grievance shall state the issues in dispute, the legal authority or other basis for the Contractor's position and the remedy sought. The Branch Chief shall render a decision within ten (10) working days after receipt of the written grievance from the Contractor. The Branch Chief shall respond in writing to the Contractor indicating the decision and reasons therefore. If the Contractor disagrees with the Branch Chief's decision, the Contractor may appeal to the second level.
- b. When appealing to the second level the Contractor must prepare an appeal indicating the reasons for disagreement with the Branch Chief's decision. The Contractor shall include with the appeal a copy of the Contractor's original statement of dispute along with any supporting evidence and a copy of the Branch Chief's decision. The appeal shall be addressed to the Deputy Director of the division in which the branch is organized within ten (10) working days from receipt of the Branch Chief's decision. The Deputy Director of the division in which the branch is organized or his/her designee shall meet with the Contractor to review the issues raised. A written decision signed by the Deputy Director of the division in which the branch is organized or his/her designee shall be directed to the Contractor within twenty (20) working days of receipt of the Contractor's second level appeal. The decision rendered by the Deputy Director or his/her designee shall be the final administrative determination of the Department.
- c. Unless otherwise stipulated in writing by CDPH, all dispute, grievance and/or appeal correspondence shall be directed to the CDPH Program Contract Manager.
- d. There are organizational differences within CDPH's funding programs and the management levels identified in this dispute resolution provision may not apply in every contractual situation. When a grievance is received and organizational differences exist, the Contractor shall be notified in writing by the CDPH Program Contract Manager of the level, name, and/or title of the appropriate management official that is responsible for issuing a decision at a given level.

9. Performance Evaluation

(Applicable only to consultant service agreements.)

- a. The Contractor's performance under this Agreement shall be evaluated at the conclusion of the term of this Agreement. The evaluation shall include, but not be limited to:
 - (1) Whether the contracted work or services were completed as specified in the Agreement and reasons for and amount of any cost overruns.
 - (2) Whether the contracted work or services met the quality standards specified in the Agreement.
 - (3) Whether the Contractor fulfilled all requirements of the Agreement.
 - (4) Factors outside the control of the Contractor, which caused difficulties in contractor performance.

Factors outside the control of the Contractor shall not include a Subcontractor's poor performance.

b. The evaluation of the Contractor shall not be a public record.

10. Progress Reports or Meetings

(Applicable only to consultant service agreements.)

- a. Contractor shall submit progress reports or attend meetings with state personnel at intervals determined by CDPH to determine if the Contractor is on the right track, whether the project is on schedule, provide communication of interim findings, and afford occasions for airing difficulties or special problems encountered so that remedies can be developed quickly.
- b. At the conclusion of this Agreement and if applicable, Contractor shall hold a final meeting at which Contractor shall present any findings, conclusions, and recommendations. If required by this Agreement, Contractor shall submit a comprehensive final report.

11. Progress Payment Withholds

- a. Progress payments may not be made more frequently than monthly in arrears for work performed and costs incurred in the performance of the Agreement. In the aggregate, progress payments may not exceed 90 percent of the total agreement amount, regardless of agreement length.
- b. Ten percent (10%) may be withheld by CDPH from each invoice submitted for reimbursement, under the following conditions:
 - (1) For services and costs associated with contractor and/or subcontractor performance that is considered to be of an ongoing nature or performed continuously throughout the term of the Agreement.
 - (2) For individual services associated with a specific agreement deliverable that has not yet been received or completed in its entirety.
 - (3) For individual and/or distinct tasks, work plans, or project activities that have not yet been completed in their entirety.

c. Release of Amounts Withheld

As individual and/or distinct tasks, services, work plans, or project activities are completed in their entirety by either the Contractor or Subcontractor and any scheduled/required deliverables or reports are delivered to CDPH; then any funds so withheld may be released to the Contractor upon acceptance and/or acknowledgement that all such items have been completed to the full satisfaction of CDPH.

d. Payment Requests Excluded from the 10 Percent (10%) Withhold

Ten percent (10%) payment withholds shall not be applied to reimbursements or periodic payment requests for direct costs associated with equipment purchases, media buys, operating expense items, and other procurements not directly associated with the Contractor's personal performance.

12. Novation Requirements

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

13. Legal Services Contract Requirements

(Applicable only to agreements involving the performance of legal services.)

The Contractor shall:

- a. Adhere to legal cost and billing guidelines designated by CDPH.
- b. Adhere to litigation plans designated by CDPH.
- c. Adhere to case phasing of activities designated by CDPH.
- d. Submit and adhere to legal budgets as designated by CDPH.
- e. Maintain legal malpractice insurance in an amount not less than the amount designated by CDPH. Said amount shall be indicated in a separate letter to the Contractor.
- f. Submit to legal bill audits and law firm audits if requested by CDPH. Such audits may be conducted by State employees or its designees or by any legal cost control providers retained by CDPH for such purpose.

14. Four-Digit Date Compliance

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

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

15. Prohibited Use of State Funds for Software

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

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

16. Insurance Requirements

a. Automobile Liability Insurance

(Applicable if automobiles are purchased/reimbursed with agreement funds or furnished by CDPH under the terms of this Agreement.)

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

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

b. Commercial General Liability

[Applicable to agreements involving the performance of hazardous activities (i.e., transportation of persons or State property, handling of toxic or hazardous substances, elevator maintenance, facility repair, and other agreements when stipulated by CDPH, etc.)]

The Contractor must furnish to CDPH either a certificate of insurance stating that commercial general liability insurance of not less than \$1,000,000 per occurrence for bodily injury and property damage liability combined is presently in effect for the Contractor or proof of adequate self-insurance if the Contractor is a self-insured government and/or public entity. The commercial general liability insurance policy shall include coverage for liabilities arising out of premises, operations, independent contractors, products, completed operations, personal and advertising injury, and liability assumed under an insured agreement. The commercial general liability insurance shall apply separately to each insured against whom claim is made or suit is brought subject to the Contractor's limit of liability. The certificate of insurance shall identify the CDPH contract or agreement number for which the insurance applies. Paragraphs 16d, 16e, 16f, and 16g also apply to Commercial General Liability insurance.

c. Pollution Liability

(Applicable only when services involve the handling of toxic or hazardous substances.)

Contractor shall maintain Pollution Liability insurance covering the Contractor's liability for bodily injury, property damage and environmental damage resulting from pollution and related cleanup costs incurred, all arising out of the work or services performed under this Agreement. Coverage shall be provided for both work performed on-site, as well as during the transport of hazardous materials. Limits of not less than \$1,000,000 shall be provided. Paragraphs 16d, 16e, 16f, and 16g also apply to Pollution Liability insurance.

- d. The Contractor is hereby advised that copies of certificates of insurance and documentation of self-insurance may be subject to review and approval by the Department of General Services (DGS), Office of Risk and Insurance Management. The Contractor shall be notified by CDPH, in writing, if this provision is applicable to this Agreement. If DGS approval of the certificate of insurance is required, the Contractor agrees that no work or services shall be performed prior to obtaining said approval. Each

certificate of insurance shall identify the CDPH contract or agreement number for which the insurance applies.

- e. The certificate of insurance must include the following provisions:
 - (1) The insurer will not cancel the insured's coverage without giving 30 days prior written notice to the California Department of Public Health, and
 - (2) The State of California, its officers, agents, employees, and servants are included as additional insureds, but only with respect to work performed for the State of California under this Agreement.
- f. The Contractor agrees that the insurance required herein will remain in effect at all times during the term of this Agreement. In the event said insurance coverage expires at any time or times during the term of this Agreement, the Contractor agrees to provide, at least 30 calendar days before said expiration date, a new certificate of insurance evidencing insurance coverage as provided for herein for not less than the remainder of the term of this Agreement or for a period of not less than one year. New certificates of insurance may also be subject to the approval of DGS. The Contractor shall be notified by CDPH, in writing, if DGS approval of the certificate of insurance is required. If DGS approval of the certificate of insurance is required, the Contractor agrees that no work or services shall be performed prior to obtaining such approval. CDPH may, in addition to any other remedies it may have, terminate this Agreement for failure to comply with the insurance requirements of this Agreement.
- g. CDPH will not be responsible for any premiums, deductibles, or assessments on any insurance policy.

17. Procurement Rules

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

a. Equipment definitions

Wherever the term equipment and/or property are used, the following definitions shall apply:

- (1) **Major equipment:** A tangible or intangible item having a base unit cost of \$5,000 or more with a life expectancy of one (1) year or more and is either furnished by CDPH or the cost is reimbursed through this Agreement. Software and videos are examples of intangible items that meet this definition.
 - (2) **Minor equipment/property:** A tangible item having a base unit cost of less than \$5,000 with a life expectancy of one (1) year or more and is either furnished by CDPH or the cost is reimbursed through this Agreement.
- b. **Government and public entities** (including state colleges/universities and auxiliary organizations), whether acting as a contractor and/or subcontractor, may secure all commodities, supplies, equipment and services related to such purchases that are required in performance of this Agreement. Said procurements are subject to Paragraphs d through h of Provision 17. Paragraph c of Provision 17 shall also apply, if equipment purchases are delegated to subcontractors that are nonprofit organizations or commercial businesses.
 - c. **Nonprofit organizations and commercial businesses**, whether acting as a contractor and/or subcontractor, may secure commodities, supplies, equipment and services related to such purchases for performance under this Agreement.
 - (1) Equipment purchases shall not exceed \$50,000 annually.

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

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

- (2) All equipment purchases are subject to Paragraphs d through h of Provision 17. Paragraph b of Provision 17 shall also apply, if equipment purchases are delegated to subcontractors that are either a government or public entity.
- (3) Nonprofit organizations and commercial businesses, shall use a procurement system that meets the following standards:
 - (a) Maintain a code or standard of conduct that shall govern the performance of its officers, employees, or agents engaged in awarding procurement contracts. No employee, officer, or agent shall participate in the selection, award, or administration of a procurement contract in which, to his or her knowledge, he or she has a financial interest.
 - (b) Procurements shall be conducted in a manner that provides, to the maximum extent practical, open, and free competition.
 - (c) Procurements shall be conducted in a manner that provides for all of the following:
 - [1] Avoid purchasing unnecessary or duplicate items.
 - [2] Equipment solicitations shall be based upon a clear and accurate description of the technical requirements of the goods to be procured.
 - [3] Take positive steps to utilize small and veteran owned businesses.
- d. Unless waived or otherwise stipulated in writing by CDPH, prior written authorization from the appropriate CDPH Program Contract Manager will be required before the Contractor will be reimbursed for any purchase of \$5,000 or more for commodities, supplies, equipment, and services related to such purchases. The Contractor must provide in its request for authorization all particulars necessary, as specified by CDPH, for evaluating the necessity or desirability of incurring such costs. The term "purchase" excludes the purchase of services from a subcontractor and public utility services at rates established for uniform applicability to the general public.
- e. In special circumstances, determined by CDPH (e.g., when CDPH has a need to monitor certain purchases, etc.), CDPH may require prior written authorization and/or the submission of paid vendor receipts for any purchase, regardless of dollar amount. CDPH reserves the right to either deny claims for reimbursement or to request repayment for any Contractor and/or subcontractor purchase that CDPH determines to be unnecessary in carrying out performance under this Agreement.
- f. The Contractor and/or subcontractor must maintain a copy or narrative description of the procurement system, guidelines, rules, or regulations that will be used to make purchases under this Agreement. The State reserves the right to request a copy of these documents and to inspect the purchasing practices of the Contractor and/or subcontractor at any time.
- g. For all purchases, the Contractor and/or subcontractor must maintain copies of all paid vendor invoices, documents, bids and other information used in vendor selection, for inspection or audit. Justifications supporting the absence of bidding (i.e., sole source purchases) shall also be maintained on file by the Contractor and/or subcontractor for inspection or audit.

- h. CDPH may, with cause (e.g., with reasonable suspicion of unnecessary purchases or use of inappropriate purchase practices, etc.), withhold, cancel, modify, or retract the delegated purchase authority granted under Paragraphs b and/or c of Provision 17 by giving the Contractor no less than 30 calendar days written notice.

18. Equipment Ownership / Inventory / Disposition

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

- a. Wherever the terms equipment and/or property are used in Provision 18, the definitions in Provision 17, Paragraph a, shall apply.

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

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

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

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

- (a) Include in the inventory report, equipment and/or property in the Contractor's possession and/or in the possession of a subcontractor (including independent consultants).
- (b) Submit the inventory report to CDPH according to the instructions appearing on the inventory form or issued by the CDPH Program Contract Manager.
- (c) Contact the CDPH Program Contract Manager to learn how to remove, trade-in, sell, transfer or survey off, from the inventory report, expired equipment and/or property that is no longer wanted, usable or has passed its life expectancy. Instructions will be supplied by CDPH's Asset Management Unit.

- b. Title to state equipment and/or property shall not be affected by its incorporation or attachment to any property not owned by the State.
- c. Unless otherwise stipulated, CDPH shall be under no obligation to pay the cost of restoration, or rehabilitation of the Contractor's and/or Subcontractor's facility which may be affected by the removal of any state equipment and/or property.
- d. The Contractor and/or Subcontractor shall maintain and administer a sound business program for ensuring the proper use, maintenance, repair, protection, insurance and preservation of state equipment and/or property.

(1) In administering this provision, CDPH may require the Contractor and/or Subcontractor to repair or

replace, to CDPH's satisfaction, any damaged, lost or stolen state equipment and/or property. Contractor and/or Subcontractor shall immediately file a theft report with the appropriate police agency or the California Highway Patrol and Contractor shall promptly submit one copy of the theft report to the CDPH Program Contract Manager.

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

g. Motor Vehicles

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

- (1) If motor vehicles are purchased/reimbursed with agreement funds or furnished by CDPH under the terms of this Agreement, within thirty (30) calendar days prior to the termination or end of this Agreement, the Contractor and/or Subcontractor shall return such vehicles to CDPH and shall deliver all necessary documents of title or registration to enable the proper transfer of a marketable title to CDPH.
- (2) If motor vehicles are purchased/reimbursed with agreement funds or furnished by CDPH under the terms of this Agreement, the State of California shall be the legal owner of said motor vehicles and the Contractor shall be the registered owner. The Contractor and/or a subcontractor may only use said vehicles for performance and under the terms of this Agreement.
- (3) The Contractor and/or Subcontractor agree that all operators of motor vehicles, purchased/reimbursed with agreement funds or furnished by CDPH under the terms of this Agreement, shall hold a valid State of California driver's license. In the event that ten or more passengers are to be transported in any one vehicle, the operator shall also hold a State of California Class B driver's license.
- (4) If any motor vehicle is purchased/reimbursed with agreement funds or furnished by CDPH under the terms of this Agreement, the Contractor and/or Subcontractor, as applicable, shall provide, maintain, and certify that, at a minimum, the type and amount of automobile liability insurance as specified in the Automobile Liability Insurance requirements clause appearing in Provision 16 of this Exhibit is in effect during the term of this Agreement or any period of contract extension during which any vehicle remains in the Contractor's and/or Subcontractor's possession.

19. Use of Small Business Subcontractors

(Only applicable to agreements awarded in part due to the granting of non-small business subcontractor preference where the Contractor committed to use small business subcontractors for at least 25% of the initial contract cost or amount bid.)

- a. All Non-Small Business Subcontractor Preference Request attachments and Small Business Subcontractor/Supplier Acknowledgment attachments, however labeled, completed as a condition of bidding, are incorporated herein, and made a part of this Agreement by this reference.

- b. Contractor agrees to use each small business subcontractor/supplier, as identified in previously submitted Non-Small Business Subcontractor Preference Request attachments, unless the Contractor submits a written request for substitution of a like or alternate subcontractor. All requests for substitution must be approved by CDPH, in writing (including email or fax), prior to using a proposed substitute subcontractor.
- c. Requests for substitution must be approved by the funding program and must include, at a minimum:
 - (1) An explanation of the reason for the substitution.
 - (2) A written description of the business enterprise that will be substituted, including its small business certification status.
 - (3) If substitution of an alternate small business does not occur, include a written justification and description of the steps taken to try to acquire a new small business and how that portion of the contract will be fulfilled.
 - (4) A written description of the work to be performed by the substituted subcontractor identified by both task (if applicable) and dollar amount or percentage of the overall contract that the substituted subcontractor will perform. The substituted business, if approved, must perform a commercially useful function in the contract pursuant to Title 2, California Code of Regulations §1896.6.
- d. CDPH may consent to the substitution in any of the situations set forth in Public Contract Code Section 4107 of the Subletting and Subcontracting Fair Practices Act.
- e. Prior to the approval of the prime contractor's request for the substitution, the funding program shall give notice in writing to the listed subcontractor of the prime contractor's request to substitute and the reasons for the request to substitute. The notice shall be served by certified or registered mail to the last known address of the subcontractor. The listed subcontractor that has been so notified shall have five (5) working days after the receipt of the notice to submit written objections to the substitution to the funding program. Failure to file these written objections shall constitute the listed subcontractor's consent to the substitution. If written objections are filed, CDPH shall give notice in writing of at least five (5) working days to the listed subcontractor of a hearing by CDPH on the prime contractor's request for substitution.
- f. Failure of the contractor to subcontract with the small businesses listed in its bid or proposal to CDPH, or failure to follow applicable substitution rules and regulations may be grounds for the Department of General Services to impose sanctions pursuant to Government Code Section 14842.5 and Title 2, California Code of Regulations § 1896.16. In the event such sanction are to be imposed, the Contractor shall be notified in writing and entitled to a hearing pursuant to Title 2, California Code of Regulations §1896.18 and §1896.20.
- g. If requested by CDPH, Contractor agrees to provide documentation/verification, in a form agreed to by CDPH, that small business subcontractor usage under this Agreement complies with the commitments specified during the contractor selection process.

Exhibit E
Additional Provisions

1. Cancellation / Termination

- A. This agreement may be cancelled or terminated without cause by CDPH by giving thirty (30) calendar days advance written notice to the Contractor. Such notification shall state the effective date of termination or cancellation and include any final performance and/or payment/invoicing instructions/requirements.
- B. Upon receipt of a notice of termination or cancellation from CDPH, Contractor shall take immediate steps to stop performance and to cancel or reduce subsequent contract costs.
- C. Contractor shall be entitled to payment for all allowable costs authorized under this agreement, including authorized non-cancelable obligations incurred up to the date of termination or cancellation, provided such expenses do not exceed the stated maximum amounts payable.

2. Freeze Exemptions

- A. Contractor agrees that any hiring freeze adopted during the term of this contract shall not be applied to the positions funded, in whole or in part, by this contract.
- B. Contractor agrees not to implement any personnel policy, which may adversely affect performance or the positions funded, in whole or in part, by this contract.
- C. Contractor agrees that any travel freeze or travel limitation policy adopted during the term of this contract shall not restrict travel funded, in whole or in part, by this contract.
- D. Contractor agrees that any purchasing freeze or purchase limitation policy adopted during the term of this contract shall not restrict or limit purchases funded, in whole or in part, by this contract.

Contractor's Release

Instructions to Contractor:

With final invoice(s) submit one (1) original and one (1) copy. The original must bear the original signature of a person authorized to bind the Contractor. The additional copy may bear photocopied signatures.

Submission of Final Invoice

Pursuant to contract number 16-10248 entered into between the State of California Department of Public Health (CDPH) and the Contractor (identified below), the Contractor does acknowledge that final payment has been requested via invoice number(s) _____, in the amount(s) of \$ _____ and dated _____. If necessary, enter "See Attached" in the appropriate blocks and attach a list of invoice numbers, dollar amounts and invoice dates.

Release of all Obligations

By signing this form, and upon receipt of the amount specified in the invoice number(s) referenced above, the Contractor does hereby release and discharge the State, its officers, agents and employees of and from any and all liabilities, obligations, claims, and demands whatsoever arising from the above referenced contract.

Repayments Due to Audit Exceptions / Record Retention

By signing this form, Contractor acknowledges that expenses authorized for reimbursement does not guarantee final allowability of said expenses. Contractor agrees that the amount of any sustained audit exceptions resulting from any subsequent audit made after final payment will be refunded to the State.

All expense and accounting records related to the above referenced contract must be maintained for audit purposes for no less than three years beyond the date of final payment, unless a longer term is stated in said contract.

Recycled Product Use Certification

By signing this form, Contractor certifies under penalty of perjury that a minimum of 0% unless otherwise specified in writing of post consumer material, as defined in the Public Contract Code Section 12200, in products, materials, goods, or supplies offered or sold to the State regardless of whether it meets the requirements of Public Contract Code Section 12209. Contractor specifies that printer or duplication cartridges offered or sold to the State comply with the requirements of Section 12156(e).

Reminder to Return State Equipment/Property (If Applicable)

(Applies only if equipment was provided by CDPH or purchased with or reimbursed by contract funds)

Unless CDPH has approved the continued use and possession of State equipment (as defined in the above referenced contract) for use in connection with another CDPH agreement, Contractor agrees to promptly initiate arrangements to account for and return said equipment to CDPH, at CDPH's expense, if said equipment has not passed its useful life expectancy as defined in the above referenced contract.

Patents / Other Issues

By signing this form, Contractor further agrees, in connection with patent matters and with any claims that are not specifically released as set forth above, that it will comply with all of the provisions contained in the above referenced contract, including, but not limited to, those provisions relating to notification to the State and related to the defense or prosecution of litigation.

ONLY SIGN AND DATE THIS DOCUMENT WHEN ATTACHING TO THE FINAL INVOICE

Contractor's Legal Name (as on contract): _____

Signature of Contractor or Official Designee: _____ Date: _____

Printed Name/Title of Person Signing: _____