

ORANGE COUNTY BOARD OF SUPERVISORS

A g e n d a R e v i s i o n s a n d S u p p l e m e n t a l s

Note: *This supplemental agenda is updated daily showing items that have been added, continued, deleted or modified.*

No new supplemental items will be added to the agenda following close of business on Friday.

July 12, 2016

DISCUSSION

14. Revised Title to read:
Health Care Agency – Approve selection of and agreement with Orange County Department of Education for School-Based Stress Management Education services, ~~7/12/16~~ 8/1/16– 6/30/19 (\$465,000); authorize Director or designee to exercise cost contingency increase of agreement not to exceed 10% under certain conditions and to execute agreement – All Districts
23. Continued to 7/26/16, 9:30 A.M.
- 27 Revised Title to read:
County Executive Office – Approve grant applications/awards submitted by Sheriff-Coroner in 7/12/16 grant report and other actions as recommended; *adopt resolution authorizing Sheriff-Coroner Or designee to execute and submit to California Office of Emergency Services the FY 2016 Emergency Management Performance Grant Application (\$777,980)* – All Districts

THE FOLLOWING AGENDA ITEMS HAVE HAD CHANGES TO THEIR RECOMMENDED ACTIONS SINCE RELEASE OF THE AGENDA TO THE PUBLIC:

Items: 14 & 27

S u p p l e m e n t a l I t e m (s)

- S29A. Revised title to read:
Supervisor Nelson - Direct Registrar of Voters to place “An Ordinance of the County of Orange, California Repealing Section 1-2-9 of the Codified Ordinances of the County of Orange and Adding ~~Article IV, Section 401~~ Article I, Section 104 to the Charter of Orange County Imposing a Lifetime Limit on the Number of Terms for Members of the Orange County Board of Supervisors” on the ballot for Statewide General Election on November 8, 2016; direct County Counsel to prepare ballot language and impartial analysis of ordinance; and request Auditor-Controller to review measure and prepare a fiscal impact statement
- S29B. **County Executive Office** - Approve employment agreement with Sharon Petrosino as Public Defender (\$337,050), effective 7/12/16 – All Districts
- SCS4. **County Counsel** - CONFERENCE WITH LEGAL COUNSEL – EXISTING LITIGATION – Pursuant to Government Code Section 54956.9(d)(1):
Name of Case: Lorena Martinez v. Carlos Bustamante and County of Orange, Orange County Superior Court Case No. 30-2013-00666624

ORANGE COUNTY BOARD OF SUPERVISORS

A g e n d a R e v i s i o n s a n d S u p p l e m e n t a l s

Note: *This supplemental agenda is updated daily showing items that have been added, continued, deleted or modified.*

No new supplemental items will be added to the agenda following close of business on Friday.

SCS5. **County Counsel** - CONFERENCE WITH LEGAL COUNSEL – EXISTING LITIGATION

Pursuant to Government Code Section 54956.9(d)(1):

Name of Case: *Jackelyne Mora v. Carlos Bustamante and County of Orange*, Orange County Superior Court Case No. 30-2013-00672190

SCS6. **County Counsel** – CONFERENCE WITH LEGAL COUNSEL – EXISTING LITIGATION

Pursuant to Government Code Section 54956.6(d)(1):

Name of Cases: *Steve Castillo v. County of Orange, Code Enforcement*, Orange County Superior Court Case No. 30-2014-00763116; *Diane Le v. County of Orange Code Enforcement*, Orange County Superior Court Case No. 30-2014-00763184; *Thanh Le v. County of Orange Code Enforcement*, Orange County Superior Court Case No. 30-2014-00763189



Revision to ASR and/or Attachments

Date: July 6, 2016
 To: Clerk of the Board of Supervisors
 CC: County Executive Office
 From: **Mark Refowitz, Agency Director, Health Care Agency**
 Re: ASR Control #: 16-000372, Meeting Date 07/12/16 Agenda Item No. # 14
 Subject: Agreement for School-Based Stress Management Education Services

RECEIVED
 2016 JUL - 7 AM 9:38
 CLERK OF THE BOARD
 ORANGE COUNTY
 BOARD OF SUPERVISORS

Explanation: The Health Care Agency would like to make the following changes.

Revised Recommended Action(s)

1. Approve the selection of and Agreement with Orange County Department of Education for provision of School-Based Stress Management Education Services for the period of ~~July 12, 2016~~ August 1, 2016, through June 30, 2019, for a total maximum obligation of \$465,000.

Make modifications to the:

Subject Background Information Summary

Revised Attachments (attach copy of revised attachment(s))

Attachment A - Agreement with Orange County Department of Education for Provision of School-Based Stress Management Education Services

TABLE OF CONTENTS

<u>PARAGRAPH</u>	<u>PAGE</u>
Title Page.....	1
Table of Contents	2
Referenced Contract Provisions	4
I. Acronyms	5
II. Alteration of Terms.....	6
III. Assignment of Debts.....	6
IV. Compliance	7
V. Confidentiality.....	9
VI. Cost Report.....	10
VII. Delegation, Assignment and Subcontracts.....	12
VIII. Employee Eligibility Verification	13
IX. Equipment	14
X. Facilities, Payments and Services.....	15
XI. Indemnification and Insurance	15
XII. Inspections and Audits.....	18
XIII. Licenses and Laws	19
XIV. Literature, Advertisements and Social Media.....	20
XV. Maximum Obligation.....	21
XVI. Minimum Wage Laws.....	21
XVII. Nondiscrimination.....	22
XVIII. Notices.....	24
XIX. Notification of Death	24
XX. Notification of Public Events and Meetings	25
XXI. Records Management and Maintenance	25
XXII. Research and Publication.....	26
XXIII. Revenue	26
XXIV. Severability.....	26
XXV. Special Provisions	27
XXVI. Status of Contractor	28
XXVII. Term	28
XXVIII. Termination	28
XXIX. Third Party Beneficiary	30
XXX. Waiver of Default or Breach.....	30
XXXI. Signature Page.....	31

//

//

REFERENCED CONTRACT PROVISIONS

Term: August 1, 2016 through June 30, 2019

Period One means the period from August 1, 2016 through June 30, 2017

Period Two means the period from July 1, 2017 through June 30, 2018

Period Three means the period from July 1, 2018 through June 30, 2019

Maximum Obligation:

Period One Maximum Obligation: \$155,000

Period Two Maximum Obligation: 155,000

Period Three Maximum Obligation: 155,000

TOTAL MAXIMUM OBLIGATION: \$465,000

Basis for Reimbursement: Actual Cost

Payment Method: Monthly in Arrears

CONTRACTOR DUNS Number: 12-114-7912

CONTRACTOR TAX ID Number: 95-6000943

Notices to COUNTY and CONTRACTOR:

COUNTY: County of Orange
Health Care Agency
Contract Services
405 West 5th Street, Suite 600
Santa Ana, CA 92701-4637

CONTRACTOR: Orange County Superintendent of Schools
dba Orange County Department of Education
200 Kalmus Drive
Costa Mesa, CA 92628-9050
Lucy Vezzuto, Ph.D; Coordinator
lvezzuto@ocde.us

//

//

I. ACRONYMS

The following standard definitions are for reference purposes only and may or may not apply in their entirety throughout this Agreement:

A.	ARRA	American Recovery and Reinvestment Act
B.	ASAM	American Society of Addiction Medicine
C.	ASRS	Alcohol and Drug Programs Reporting System
D.	CalOMS	California Outcomes Measurement System
E.	CAP	Corrective Action Plan
F.	CCC	California Civil Code
G.	CCR	California Code of Regulations
H.	CEO	County Executive Office
I.	CESI	Client Evaluation of Self at Intake
J.	CEST	Client Evaluation of Self and Treatment
K.	CFR	Code of Federal Regulations
L.	CHPP	COUNTY HIPAA Policies and Procedures
M.	CHS	Correctional Health Services
N.	COI	Certificate of Insurance
O.	DATAR	Drug Abuse Treatment Access Report
P.	D/MC	Drug/Medi-Cal
Q.	DHCS	Department of Health Care Services
R.	DMV	Department of Motor Vehicles
S.	DPFS	Drug Program Fiscal Systems
T.	DRS	Designated Record Set
U.	ePHI	Electronic Protected Health Information
V.	FTE	Full Time Equivalent
W.	GAAP	Generally Accepted Accounting Principles
X.	HCA	Health Care Agency
Y.	HHS	Health and Human Services
Z.	HIPAA	Health Insurance Portability and Accountability Act of 1996, Public Law 104-191
AA.	HSC	California Health and Safety Code
AB.	IRIS	Integrated Records and Information System
AC.	ISO	Insurance Services Office
AD.	MHP	Mental Health Plan
AE.	MHSA	Mental Health Services Act
AF.	NIATx	Network for Improvement of Addiction Treatment
AG.	OCJS	Orange County Jail System

Attachment A

AH.	OCPD	Orange County Probation Department
AI.	OCR	Office for Civil Rights
AJ.	OCSA	Orange County Sheriff's Department
AK.	OIG	Office of Inspector General
AL.	OMB	Office of Management and Budget
AM.	OPM	Federal Office of Personnel Management
AN.	P&P	Policy and Procedure
AO.	PA DSS	Payment Application Data Security Standard
AP.	PC	State of California Penal Code
AQ.	PCI DSS	Payment Card Industry Data Security Standard
AR.	PEI	Prevention and Early Intervention
AS.	PHI	Protected Health Information
AT.	PII	Personally Identifiable Information
AU.	PRA	Public Record Act
AV.	SIR	Self-Insured Retention
AW.	TB	Tuberculosis
AX.	HITECH Act	The Health Information Technology for Economic and Clinical Health Act, Public Law 111-005
AY.	USC	United States Code
AZ.	WIC	State of California Welfare and Institutions Code

II. ALTERATION OF TERMS

A. This Agreement, together with Exhibits A, B and C attached hereto and incorporated herein, fully expresses the complete understanding of COUNTY and CONTRACTOR with respect to the subject matter of this Agreement.

B. Unless otherwise expressly stated in this Agreement, no addition to, or alteration of the terms of this Agreement or any Exhibits, whether written or verbal, made by the parties, their officers, employees or agents shall be valid unless made in the form of a written amendment to this Agreement, which has been formally approved and executed by both parties.

III. ASSIGNMENT OF DEBTS

Unless this Agreement is followed without interruption by another Agreement between the parties hereto for the same services and substantially the same scope, at the termination of this Agreement, CONTRACTOR shall assign to COUNTY any debts owing to CONTRACTOR by or on behalf of persons receiving services pursuant to this Agreement. CONTRACTOR shall immediately notify by mail each of these persons, specifying the date of assignment, the County of Orange as assignee, and the
//

address to which payments are to be sent. Payments received by CONTRACTOR from or on behalf of said persons, shall be immediately given to COUNTY.

IV. COMPLIANCE

A. ADMINISTRATOR has established a Compliance Program for the purpose of ensuring adherence to all rules and regulations related to federal and state health care programs.

1. ADMINISTRATOR shall provide CONTRACTOR with a copy of the relevant HCA policies and procedures relating to HCA's Compliance Program, HCA's Code of Conduct and General Compliance Trainings.

2. CONTRACTOR has the option to adhere to HCA's Compliance Program and Code of Conduct or establish its own, provided CONTRACTOR's Compliance Program and Code of Conduct have been verified to include all required elements by ADMINISTRATOR's Compliance Officer as described in subparagraphs below.

3. If CONTRACTOR elects to adhere to HCA's Compliance Program and Code of Conduct; the CONTRACTOR shall submit to the ADMINISTRATOR within thirty (30) calendar days of award of this Agreement a signed acknowledgement that CONTRACTOR shall comply with HCA's Compliance Program and Code of Conduct.

4. If CONTRACTOR elects to have its own Compliance Program and Code of Conduct then it shall submit a copy of its Compliance Program, Code of Conduct and relevant policies and procedures to ADMINISTRATOR within thirty (30) calendar days of award of this Agreement. ADMINISTRATOR's Compliance Officer shall determine if CONTRACTOR's Compliance Program and Code of Conduct contains all required elements. CONTRACTOR shall take necessary action to meet said standards or shall be asked to acknowledge and agree to HCA's Compliance Program and Code of Conduct if the CONTRACTOR's Compliance Program and Code of Conduct does not contain all required elements.

5. Upon written confirmation from ADMINISTRATOR's Compliance Officer that the CONTRACTOR's Compliance Program and Code of Conduct contains all required elements, CONTRACTOR shall ensure that all Covered Individuals relative to this Agreement are made aware of CONTRACTOR's Compliance Program, Code of Conduct and related policies and procedures.

6. Failure of CONTRACTOR to submit its Compliance Program, Code of Conduct and relevant policies and procedures shall constitute a material breach of this Agreement. Failure to cure such breach within sixty (60) calendar days of such notice from ADMINISTRATOR shall constitute grounds for termination of this Agreement as to the non-complying party.

B. SANCTION SCREENING – CONTRACTOR shall adhere to all screening policies and procedures and screen all Covered Individuals employed or retained to provide services related to this Agreement to ensure that they are not designated as Ineligible Persons, as pursuant to this Agreement. Screening shall be conducted against the General Services Administration's Excluded Parties List System or System for Award Management, the Health and Human Services/Office of Inspector General List of

Excluded Individuals/Entities, and the California Medi-Cal Suspended and Ineligible Provider List and/or any other list or system as identified by the ADMINISTRATOR.

1. Covered Individuals includes all contractors, subcontractors, agents, and other persons who provide health care items or services or who perform billing or coding functions on behalf of ADMINISTRATOR. Notwithstanding the above, this term does not include part-time or per-diem employees, contractors, subcontractors, agents, and other persons who are not reasonably expected to work more than one hundred sixty (160) hours per year; except that any such individuals shall become Covered Individuals at the point when they work more than one hundred sixty (160) hours during the calendar year. CONTRACTOR shall ensure that all Covered Individuals relative to this Agreement are made aware of ADMINISTRATOR's Compliance Program, Code of Conduct and related policies and procedures.

2. An Ineligible Person shall be any individual or entity who:

- a. is currently excluded, suspended, debarred or otherwise ineligible to participate in federal and state health care programs; or
- b. has been convicted of a criminal offense related to the provision of health care items or services and has not been reinstated in the federal and state health care programs after a period of exclusion, suspension, debarment, or ineligibility.

3. CONTRACTOR shall screen prospective Covered Individuals prior to hire or engagement. CONTRACTOR shall not hire or engage any Ineligible Person to provide services relative to this Agreement.

4. CONTRACTOR shall screen all current Covered Individuals and subcontractors semi-annually to ensure that they have not become Ineligible Persons. CONTRACTOR shall also request that its subcontractors use their best efforts to verify that they are eligible to participate in all federal and State of California health programs and have not been excluded or debarred from participation in any federal or state health care programs, and to further represent to CONTRACTOR that they do not have any Ineligible Person in their employ or under contract.

5. Covered Individuals shall be required to disclose to CONTRACTOR immediately any debarment, exclusion or other event that makes the Covered Individual an Ineligible Person. CONTRACTOR shall notify ADMINISTRATOR immediately if a Covered Individual providing services directly relative to this Agreement becomes debarred, excluded or otherwise becomes an Ineligible Person.

6. CONTRACTOR acknowledges that Ineligible Persons are precluded from providing federal and state funded health care services by contract with COUNTY in the event that they are currently sanctioned or excluded by a federal or state law enforcement regulatory or licensing agency. If CONTRACTOR becomes aware that a Covered Individual has become an Ineligible Person, CONTRACTOR shall remove such individual from responsibility for, or involvement with, COUNTY business operations related to this Agreement.

7. CONTRACTOR shall notify ADMINISTRATOR immediately if a Covered Individual or entity is currently excluded, suspended or debarred, or is identified as such after being sanction screened. Such individual or entity shall be immediately removed from participating in any activity associated with this Agreement. ADMINISTRATOR will determine appropriate repayment from, or sanction(s) to CONTRACTOR for services provided by ineligible person or individual. CONTRACTOR shall promptly return any overpayments within forty-five (45) business days after the overpayment is verified by ADMINISTRATOR.

C. COMPLIANCE TRAINING – ADMINISTRATOR shall make General Compliance Training and Provider Compliance Training, where appropriate, available to Covered Individuals.

1. CONTRACTOR shall use its best efforts to encourage completion by Covered Individuals; provided, however, that at a minimum CONTRACTOR shall assign at least one (1) designated representative to complete all Compliance Trainings when offered.

2. Such training will be made available to Covered Individuals within thirty (30) calendar days of employment or engagement.

3. Such training will be made available to each Covered Individual annually.

4. Each Covered Individual attending training shall certify, in writing, attendance at compliance training. CONTRACTOR shall retain the certifications. Upon written request by ADMINISTRATOR, CONTRACTOR shall provide copies of the certifications.

V. CONFIDENTIALITY

A. CONTRACTOR shall maintain the confidentiality of all records, including billings and any audio and/or video recordings, in accordance with all applicable federal, state and county codes and regulations, as they now exist or may hereafter be amended or changed.

1. CONTRACTOR acknowledges and agrees that all persons served pursuant to this Agreement are Participants of the Orange County Mental Health services system, and therefore it may be necessary for authorized staff of ADMINISTRATOR to audit Participant files, or to exchange information regarding specific Participants with COUNTY or other providers of related services contracting with COUNTY.

2. CONTRACTOR acknowledges and agrees that it shall be responsible for obtaining written consents for the release of information from all persons served by CONTRACTOR pursuant to this Agreement. Such consents shall be obtained by CONTRACTOR in accordance with CCC, Division 1, Part 2.6, relating to confidentiality of medical information.

3. In the event of a collaborative service agreement between Mental Health services providers, CONTRACTOR acknowledges and agrees that it is responsible for obtaining releases of information, from the collaborative agency, for Participants receiving services through the collaborative agreement.

B. Prior to providing any services pursuant to this Agreement, all members of the Board of Directors or its designee or authorized agent, employees, consultants, subcontractors, volunteers and

interns of the CONTRACTOR shall agree, in writing, with CONTRACTOR to maintain the confidentiality of any and all information and records which may be obtained in the course of providing such services. This Agreement shall specify that it is effective irrespective of all subsequent resignations or terminations of CONTRACTOR members of the Board of Directors or its designee or authorized agent, employees, consultants, subcontractors, volunteers and interns.

C. As CONTRACTOR is a public institution, COUNTY understands and agrees that CONTRACTOR is subject to the provisions of the California Public Records Act. In the event CONTRACTOR receives a request to produce this Agreement, or identify any term, condition, or aspect of this Agreement, CONTRACTOR shall notify COUNTY no less than three (3) business days prior to releasing such information.

VI. COST REPORT

A. CONTRACTOR shall submit separate individual and/or consolidated Cost Reports to COUNTY for Period One, Period Two and Period Three, or for a portion thereof, no later than sixty (60) calendar days following the period for which they are prepared or termination of this Agreement. CONTRACTOR shall prepare the individual and/or consolidated Cost Report in accordance with all applicable federal, state and COUNTY requirements, GAAP and the Special Provisions Paragraph of this Agreement. CONTRACTOR shall allocate direct and indirect costs to and between programs, cost centers, services, and funding sources in accordance with such requirements and consistent with prudent business practice, which costs and allocations shall be supported by source documentation maintained by CONTRACTOR, and available at any time to ADMINISTRATOR upon reasonable notice. In the event CONTRACTOR has multiple Agreements for mental health services that are administered by HCA, consolidation of the individual Cost Reports into a single consolidated Cost Report may be required, as stipulated by ADMINISTRATOR. CONTRACTOR shall submit the consolidated Cost Report to COUNTY no later than five (5) business days following approval by ADMINISTRATOR of all individual Cost Reports to be incorporated into a consolidated Cost Report.

1. If CONTRACTOR fails to submit an accurate and complete an individual and/or consolidated Cost Report within the time period specified above, ADMINISTRATOR shall have sole discretion to impose one or both of the following:

a. CONTRACTOR may be assessed a late penalty of five hundred dollars (\$500) for each business day after the above specified due date that the accurate and complete an individual and/or consolidated Cost Report is not submitted. Imposition of the late penalty shall be at the sole discretion of the ADMINISTRATOR. The late penalty shall be assessed separately on each outstanding individual and/or consolidated Cost Report due COUNTY by CONTRACTOR.

b. ADMINISTRATOR may withhold or delay any or all payments due CONTRACTOR pursuant to any or all agreements between COUNTY and CONTRACTOR until such time that the

//

accurate and complete an individual and/or consolidated Cost Report is delivered to ADMINISTRATOR.

2. CONTRACTOR may request, in advance and in writing, an extension of the due date of an individual and/or consolidated Cost Report setting forth good cause for justification of the request. Approval of such requests shall be at the sole discretion of ADMINISTRATOR and shall not be unreasonably denied.

3. In the event that CONTRACTOR does not submit an accurate and complete an individual and/or consolidated Cost Report within one hundred and eighty (180) calendar days following the termination of this Agreement, and CONTRACTOR has not entered into a subsequent or new agreement for any other services with COUNTY, then all amounts paid to CONTRACTOR by COUNTY during the term of the Agreement shall be immediately reimbursed to COUNTY.

B. The individual and/or consolidated Cost Report prepared for each period shall be the final financial and statistical report submitted by CONTRACTOR to COUNTY, and shall serve as the basis for final settlement to CONTRACTOR for that period. CONTRACTOR shall document that costs are reasonable and allowable and directly or indirectly related to the services to be provided hereunder. The individual and/or consolidated Cost Report shall be the final financial record for subsequent audits, if any.

C. Final settlement shall be based upon the actual and reimbursable costs for services hereunder, less applicable revenues and any late penalty, not to exceed COUNTY's Maximum Obligation as set forth in the Referenced Contract Provisions of this Agreement. CONTRACTOR shall not claim expenditures to COUNTY which are not reimbursable pursuant to applicable federal, state and COUNTY laws, regulations and requirements. Any payment made by COUNTY to CONTRACTOR, which is subsequently determined to have been for an unreimbursable expenditure or service, shall be repaid by CONTRACTOR to COUNTY in cash, or other authorized form of payment, within thirty (30) calendar days of submission of the individual and/or consolidated Cost Report or COUNTY may elect to reduce any amount owed CONTRACTOR by an amount not to exceed the reimbursement due COUNTY.

D. If the individual and/or consolidated Cost Report indicates the actual and reimbursable costs of services provided pursuant to this Agreement, less applicable revenues and late penalty, are lower than the aggregate of interim monthly payments to CONTRACTOR, CONTRACTOR shall remit the difference to COUNTY. Such reimbursement shall be made, in cash, or other authorized form of payment, with the submission of the individual and/or consolidated Cost Report. If such reimbursement is not made by CONTRACTOR within thirty (30) calendar days after submission of the individual and/or consolidated Cost Report, COUNTY may, in addition to any other remedies, reduce any amount owed CONTRACTOR by an amount not to exceed the reimbursement due COUNTY.

E. If the individual and/or consolidated Cost Report indicates the actual and reimbursable costs of services provided pursuant to this Agreement, less applicable revenues and late penalty, are higher than

the aggregate of interim monthly payments to CONTRACTOR, COUNTY shall pay CONTRACTOR the difference, provided such payment does not exceed the Maximum Obligation of COUNTY.

F. All Cost Reports shall contain the following attestation, which may be typed directly on or attached to the Cost Report:

"I HEREBY CERTIFY that I have executed the accompanying Cost Report and supporting documentation prepared by _____ for the cost report period beginning _____ and ending _____ and that, to the best of my knowledge and belief, costs reimbursed through this Agreement are reasonable and allowable and directly or indirectly related to the services provided and that this Cost Report is a true, correct, and complete statement from the books and records of (provider name) in accordance with applicable instructions, except as noted. I also hereby certify that I have the authority to execute the accompanying Cost Report.

Signed _____
Name _____
Title _____
Date _____"

VII. DELEGATION, ASSIGNMENT, AND SUBCONTRACTS

A. CONTRACTOR may not delegate the obligations hereunder, either in whole or in part, without prior written consent of COUNTY. CONTRACTOR shall provide written notification of CONTRACTOR’s intent to delegate the obligations hereunder, either in whole or part, to ADMINISTRATOR not less than sixty (60) calendar days prior to the effective date of the delegation. Any attempted assignment or delegation in derogation of this paragraph shall be void.

B. CONTRACTOR may not assign the rights hereunder, either in whole or in part, without the prior written consent of COUNTY.

1. If CONTRACTOR is a nonprofit organization, any change from a nonprofit corporation to any other corporate structure of CONTRACTOR, including a change in more than fifty percent (50%) of the composition of the Board of Directors within a two (2) month period of time, shall be deemed an assignment for purposes of this paragraph, unless CONTRACTOR is transitioning from a community clinic/health center to a Federally Qualified Health Center and has been so designated by the Federal Government. Any attempted assignment or delegation in derogation of this subparagraph shall be void.

2. If CONTRACTOR is a for-profit organization, any change in the business structure, including but not limited to, the sale or transfer of more than ten percent (10%) of the assets or stocks of CONTRACTOR, change to another corporate structure, including a change to a sole proprietorship, or a change in fifty percent (50%) or more of Board of Directors or any governing body of CONTRACTOR at one time shall be deemed an assignment pursuant to this paragraph. Any attempted assignment or

delegation in derogation of this subparagraph shall be void.

3. If CONTRACTOR is a governmental organization, any change to another structure, including a change in more than fifty percent (50%) of the composition of its governing body (i.e. Board of Supervisors, City Council, School Board) within a two (2) month period of time, shall be deemed an assignment for purposes of this paragraph. Any attempted assignment or delegation in derogation of this subparagraph shall be void.

4. Whether CONTRACTOR is a nonprofit, for-profit, or a governmental organization, CONTRACTOR shall provide written notification of CONTRACTOR's intent to assign the obligations hereunder, either in whole or part, to ADMINISTRATOR not less than sixty (60) calendar days prior to the effective date of the assignment.

5. Whether CONTRACTOR is a nonprofit, for-profit, or a governmental organization, CONTRACTOR shall provide written notification within thirty (30) calendar days to ADMINISTRATOR when there is change of less than fifty percent (50%) of Board of Directors or any governing body of CONTRACTOR at one time.

C. CONTRACTOR's obligations undertaken pursuant to this Agreement may be carried out by means of subcontracts, provided such subcontracts are approved in advance, in writing by ADMINISTRATOR, meet the requirements of this Agreement as they relate to the service or activity under subcontract, and include any provisions that ADMINISTRATOR may require.

1. After approval of a subcontract, ADMINISTRATOR may revoke the approval of a subcontract upon five (5) calendar days' written notice to CONTRACTOR if the subcontract subsequently fails to meet the requirements of this Agreement or any provisions that ADMINISTRATOR has required.

2. No subcontract shall terminate or alter the responsibilities of CONTRACTOR to COUNTY pursuant to this Agreement.

3. ADMINISTRATOR may disallow, from payments otherwise due CONTRACTOR, amounts claimed for subcontracts not approved in accordance with this paragraph.

4. This provision shall not be applicable to service agreements usually and customarily entered into by CONTRACTOR to obtain or arrange for supplies, technical support, and professional services provided by consultants.

VIII. EMPLOYEE ELIGIBILITY VERIFICATION

CONTRACTOR warrants that it shall fully comply with all federal and state statutes and regulations regarding the employment of aliens and others and to ensure that employees, subcontractors, and consultants performing work under this Agreement meet the citizenship or alien status requirements set forth in federal statutes and regulations. CONTRACTOR shall obtain, from all employees, subcontractors, and consultants performing work hereunder, all verification and other documentation of employment eligibility status required by federal or state statutes and regulations including, but not

limited to, the Immigration Reform and Control Act of 1986, 8 USC §1324 et seq., as they currently exist and as they may be hereafter amended. CONTRACTOR shall retain all such documentation for all covered employees, subcontractors, and consultants for the period prescribed by the law.

IX. EQUIPMENT

A. Unless otherwise specified in writing by ADMINISTRATOR, Equipment is defined as all property of a Relatively Permanent nature with significant value, purchased in whole or in part by ADMINISTRATOR to assist in performing the services described in this Agreement. “Relatively Permanent” is defined as having a useful life of one year or longer. Equipment which costs \$5,000 or over, including freight charges, sales taxes, and other taxes, and installation costs are defined as Capital Assets. Equipment which costs between \$600 and \$5,000, including freight charges, sales taxes and other taxes, and installation costs, or electronic equipment that costs less than \$600 but may contained PHI or PII, are defined as Controlled Equipment. Controlled Equipment includes, but is not limited to phones, tablets, audio/visual equipment, computer equipment, and lab equipment. The cost of Equipment purchased, in whole or in part, with funds paid pursuant to this Agreement shall be depreciated according to GAAP.

B. CONTRACTOR shall obtain ADMINISTRATOR’s prior written approval to purchase any Equipment with funds paid pursuant to this Agreement. Upon delivery of Equipment, CONTRACTOR shall forward to ADMINISTRATOR, copies of the purchase order, receipt, and other supporting documentation, which includes delivery date, unit price, tax, shipping and serial numbers. CONTRACTOR shall request an applicable asset tag for said Equipment and shall include each purchased asset in an Equipment inventory.

C. Upon ADMINISTRATOR’s prior written approval, CONTRACTOR may expense to COUNTY the cost of the approved Equipment purchased by CONTRACTOR. To “expense,” in relation to Equipment, means to charge the proportionate cost of Equipment in the fiscal year in which it is purchased. Title of expensed Equipment shall be vested with COUNTY.

D. CONTRACTOR shall maintain an inventory of all Equipment purchased in whole or in part with funds paid through this Agreement, including date of purchase, purchase price, serial number, model and type of Equipment. Such inventory shall be available for review by ADMINISTRATOR, and shall include the original purchase date and price, useful life, and balance of depreciated Equipment cost, if any.

E. CONTRACTOR shall cooperate with ADMINISTRATOR in conducting periodic physical inventories of all Equipment. Upon demand by ADMINISTRATOR, CONTRACTOR shall return any or all Equipment to COUNTY.

F. CONTRACTOR must report any loss or theft of Equipment in accordance with the procedure approved by ADMINISTRATOR and the Notices Paragraph of this Agreement. In addition, CONTRACTOR must complete and submit to ADMINISTRATOR a notification form when items of

Equipment are moved from one location to another or returned to COUNTY as surplus.

G. Unless this Agreement is followed without interruption by another agreement between the parties for substantially the same type and scope of services, at the termination of this Agreement for any cause, CONTRACTOR shall return to COUNTY all Equipment purchased with funds paid through this Agreement.

H. CONTRACTOR shall maintain and administer a sound business program for ensuring the proper use, maintenance, repair, protection, insurance, and preservation of COUNTY Equipment.

X. FACILITIES, PAYMENTS AND SERVICES

CONTRACTOR agrees to provide the services, staffing, facilities, and supplies in accordance with this Agreement. COUNTY shall compensate, and authorize, when applicable, said services. CONTRACTOR shall operate continuously throughout the term of this Agreement with at least the minimum number and type of staff which meet applicable federal and state requirements, and which are necessary for the provision of the services hereunder.

XI. INDEMNIFICATION AND INSURANCE

A. CONTRACTOR agrees to indemnify, defend with counsel approved in writing by COUNTY, and hold COUNTY, its elected and appointed officials, officers, employees, agents and those special districts and agencies for which COUNTY's Board of Supervisors acts as the governing Board ("COUNTY INDEMNITEES") harmless from any claims, demands or liability of any kind or nature, including but not limited to personal injury or property damage, arising from or related to the services, products or other performance provided by CONTRACTOR pursuant to this Agreement. CONTRACTOR's indemnification of COUNTY shall not apply to damage, injury, or death caused by the sole negligence or willful misconduct of the COUNTY, its elected and appointed officials, officers, employees, agents and those special districts and agencies. If judgment is entered against CONTRACTOR and COUNTY by a court of competent jurisdiction because of the concurrent active negligence of COUNTY or COUNTY INDEMNITEES, CONTRACTOR and COUNTY agree that liability will be apportioned as determined by the court. Neither party shall request a jury apportionment.

B. Prior to the provision of services under this Agreement, CONTRACTOR agrees to purchase all required insurance at CONTRACTOR's expense and to submit to COUNTY the COI, including all endorsements required herein, necessary to satisfy COUNTY that the insurance provisions of this Agreement have been complied with and to maintain such insurance coverage with COUNTY during the entire term of this Agreement. In addition, all subcontractors performing work on behalf of CONTRACTOR pursuant to this Agreement shall obtain insurance subject to the same terms and conditions as set forth herein for CONTRACTOR.

C. CONTRACTOR shall ensure that all subcontractors performing work on behalf of CONTRACTOR pursuant to this Agreement shall be covered under CONTRACTOR's insurance as an

Additional Insured or maintain insurance subject to the same terms and conditions as set forth herein for CONTRACTOR. CONTRACTOR shall not allow subcontractors to work if subcontractors have less than the level of coverage required by COUNTY from CONTRACTOR under this Agreement. It is the obligation of CONTRACTOR to provide notice of the insurance requirements to every subcontractor and to receive proof of insurance prior to allowing any subcontractor to begin work. Such proof of insurance must be maintained by CONTRACTOR through the entirety of this Agreement for inspection by COUNTY representative(s) at any reasonable time.

D. All SIRs and deductibles shall be clearly stated on the COI. If no SIRs or deductibles apply, indicate this on the COI with a zero (0) by the appropriate line of coverage. Any SIR or deductible in an amount in excess of \$25,000 (\$5,000 for automobile liability), shall specifically be approved by the CEO/Office of Risk Management upon review of CONTRACTOR's current audited financial report.

E. If CONTRACTOR fails to maintain insurance acceptable to COUNTY for the full term of this Agreement, COUNTY may terminate this Agreement.

F. QUALIFIED INSURER

1. The policy or policies of insurance must be issued by an insurer with a minimum rating of A- (Secure A.M. Best's Rating) and VIII (Financial Size Category as determined by the most current edition of the Best's Key Rating Guide/Property-Casualty/United States or ambest.com). It is preferred, but not mandatory, that the insurer be licensed to do business in the state of California (California Admitted Carrier).

2. If the insurance carrier does not have an A.M. Best Rating of A-/VIII, the CEO/Office of Risk Management retains the right to approve or reject a carrier after a review of the company's performance and financial ratings.

G. The policy or policies of insurance maintained by CONTRACTOR shall provide the minimum limits and coverage as set forth below:

<u>Coverage</u>	<u>Minimum Limits</u>
Commercial General Liability	\$1,000,000 per occurrence \$2,000,000 aggregate
Automobile Liability including coverage for owned, non-owned and hired vehicles	\$1,000,000 per occurrence
Workers' Compensation	Statutory
Employers' Liability Insurance	\$1,000,000 per occurrence
Sexual Misconduct Liability	\$1,000,000 per occurrence

Network Security and Privacy Liability

\$1,000,000 per claims made

H. REQUIRED COVERAGE FORMS

1. The Commercial General Liability coverage shall be written on ISO form CG 00 01, or a substitute form providing liability coverage at least as broad.

2. The Business Automobile Liability coverage shall be written on ISO form CA 00 01, CA 00 05, CA 00 12, CA 00 20, or a substitute form providing coverage at least as broad.

I. REQUIRED ENDORSEMENTS

1. The Commercial General Liability policy shall contain the following endorsements, which shall accompany the COI:

a. An Additional Insured endorsement using ISO form CG 2010 or CG 2033 or a form at least as broad naming the County of Orange, its elected and appointed officials, officers, employees, and agents as Additional Insureds.

b. A primary non-contributing endorsement evidencing that the CONTRACTOR's insurance is primary and any insurance or self-insurance maintained by the County of Orange shall be excess and non-contributing.

2. The Network Security and Privacy Liability policy shall contain the following endorsements which shall accompany the Certificate of Insurance:

a. An Additional Insured endorsement naming the County of Orange, its elected and appointed officials, officers, agents and employees as Additional Insureds for its vicarious liability.

b. A primary and non-contributing endorsement evidencing that the Contractor's insurance is primary and any insurance or self-insurance maintained by the County of Orange shall be excess and non-contributing.

J. The Workers' Compensation policy shall contain a waiver of subrogation endorsement waiving all rights of subrogation against the County of Orange, and members of the Board of Supervisors, its elected and appointed officials, officers, agents and employees.

K. CONTRACTOR shall notify COUNTY in writing within thirty (30) days of any policy cancellation and ten (10) days for non-payment of premium and provide a copy of the cancellation notice to COUNTY. Failure to provide written notice of cancellation may constitute a material breach of the Agreement, upon which the COUNTY may suspend or terminate this Agreement.

L. The Commercial General Liability policy shall contain a "severability of interests" clause also known as a "separation of insureds" clause (standard in the ISO CG 0001 policy).

M. COUNTY expressly retains the right to require CONTRACTOR to increase or decrease insurance of any of the above insurance types throughout the term of this Agreement. Any increase or decrease in insurance will be as deemed by County of Orange Risk Manager as appropriate to adequately protect COUNTY.

N. COUNTY shall notify CONTRACTOR in writing of changes in the insurance requirements. If

CONTRACTOR does not deposit copies of acceptable COIs and endorsements with COUNTY incorporating such changes within thirty (30) calendar days of receipt of such notice, this Agreement may be in breach without further notice to CONTRACTOR, and COUNTY shall be entitled to all legal remedies.

O. The procuring of such required policy or policies of insurance shall not be construed to limit CONTRACTOR's liability hereunder nor to fulfill the indemnification provisions and requirements of this Agreement, nor act in any way to reduce the policy coverage and limits available from the insurer.

P. **SUBMISSION OF INSURANCE DOCUMENTS**

1. The COI and endorsements shall be provided to COUNTY as follows:

- a. Prior to the start date of this Agreement.
- b. No later than the expiration date for each policy.
- c. Within thirty (30) calendar days upon receipt of written notice by COUNTY regarding changes to any of the insurance types as set forth in Subparagraph G. of this Agreement.

2. The COI and endorsements shall be provided to the COUNTY at the address as specified in the Referenced Contract Provisions of this Agreement.

3. If CONTRACTOR fails to submit the COI and endorsements that meet the insurance provisions stipulated in this Agreement by the above specified due dates, ADMINISTRATOR shall have sole discretion to impose one or both of the following:

- a. ADMINISTRATOR may withhold or delay any or all payments due CONTRACTOR pursuant to any and all Agreements between COUNTY and CONTRACTOR until such time that the required COI and endorsements that meet the insurance provisions stipulated in this Agreement are submitted to ADMINISTRATOR.

- b. CONTRACTOR may be assessed a penalty of one hundred dollars (\$100) for each late COI or endorsement for each business day, pursuant to any and all Agreements between COUNTY and CONTRACTOR, until such time that the required COI and endorsements that meet the insurance provisions stipulated in this Agreement are submitted to ADMINISTRATOR.

- c. If CONTRACTOR is assessed a late penalty, the amount shall be deducted from CONTRACTOR's monthly invoice.

4. In no cases shall assurances by CONTRACTOR, its employees, agents, including any insurance agent, be construed as adequate evidence of insurance. COUNTY will only accept valid COIs and endorsements, or in the interim, an insurance binder as adequate evidence of insurance coverage.

XII. INSPECTIONS AND AUDITS

A. ADMINISTRATOR, any authorized representative of COUNTY, any authorized representative of the State of California, the Secretary of the United States Department of Health and Human Services, the Comptroller General of the United States, or any other of their authorized representatives, shall have access to any books, documents, and records, including but not limited to, financial statements, general

ledgers, relevant accounting systems, medical and Participant records, of CONTRACTOR that are directly pertinent to this Agreement, for the purpose of responding to a beneficiary complaint or conducting an audit, review, evaluation, or examination, or making transcripts during the periods of retention set forth in the Records Management and Maintenance Paragraph of this Agreement. Such persons may at all reasonable times inspect or otherwise evaluate the services provided pursuant to this Agreement, and the premises in which they are provided.

B. CONTRACTOR shall actively participate and cooperate with any person specified in Subparagraph A. above in any evaluation or monitoring of the services provided pursuant to this Agreement, and shall provide the above-mentioned persons adequate office space to conduct such evaluation or monitoring.

C. AUDIT RESPONSE

1. Following an audit report, in the event of non-compliance with applicable laws and regulations governing funds provided through this Agreement, COUNTY may terminate this Agreement as provided for in the Termination Paragraph or direct CONTRACTOR to immediately implement appropriate corrective action. A plan of corrective action shall be submitted to ADMINISTRATOR in writing within thirty (30) calendar days after receiving notice from ADMINISTRATOR.

2. If the audit reveals that money is payable from one party to the other, that is, reimbursement by CONTRACTOR to COUNTY, or payment of sums due from COUNTY to CONTRACTOR, said funds shall be due and payable from one party to the other within sixty (60) calendar days of receipt of the audit results. If reimbursement is due from CONTRACTOR to COUNTY, and such reimbursement is not received within said sixty (60) calendar days, COUNTY may, in addition to any other remedies provided by law, reduce any amount owed CONTRACTOR by an amount not to exceed the reimbursement due COUNTY.

D. CONTRACTOR shall retain a licensed certified public accountant, who will prepare and file with ADMINISTRATOR, an annual, independent, organization-wide audit of related expenditures as may be required during the term of this Agreement.

E. CONTRACTOR shall forward to ADMINISTRATOR a copy of any audit report within fourteen (14) calendar days of receipt. Such audit shall include, but not be limited to, management, financial, programmatic or any other type of audit of CONTRACTOR's operations, whether or not the cost of such operation or audit is reimbursed in whole or in part through this Agreement.

XIII. LICENSES AND LAWS

A. CONTRACTOR, its officers, agents, employees, affiliates, and subcontractors shall, throughout the term of this Agreement, maintain all necessary licenses, permits, approvals, certificates, accreditations, waivers, and exemptions necessary for the provision of the services hereunder and required by the laws, regulations and requirements of the United States, the State of California, COUNTY, and all other applicable governmental agencies.

B. ENFORCEMENT OF CHILD SUPPORT OBLIGATIONS

1. CONTRACTOR agrees to furnish to ADMINISTRATOR within thirty (30) calendar days of the award of this Agreement:

a. In the case of an individual contractor, his/her name, date of birth, social security number, and residence address;

b. In the case of a contractor doing business in a form other than as an individual, the name, date of birth, social security number, and residence address of each individual who owns an interest of ten percent (10%) or more in the contracting entity;

c. A certification that CONTRACTOR has fully complied with all applicable federal and state reporting requirements regarding its employees;

d. A certification that CONTRACTOR has fully complied with all lawfully served Wage and Earnings Assignment Orders and Notices of Assignment, and will continue to so comply.

2. Failure of CONTRACTOR to timely submit the data and/or certifications required by Subparagraphs 1.a., 1.b., 1.c., or 1.d. above, or to comply with all federal and state employee reporting requirements for child support enforcement, or to comply with all lawfully served Wage and Earnings Assignment Orders and Notices of Assignment, shall constitute a material breach of this Agreement; and failure to cure such breach within sixty (60) calendar days of notice from COUNTY shall constitute grounds for termination of this Agreement.

3. It is expressly understood that this data will be transmitted to governmental agencies charged with the establishment and enforcement of child support orders, or as permitted by federal and/or state statute.

XIV. LITERATURE, ADVERTISEMENTS, AND SOCIAL MEDIA

A. Any written information or literature, including educational or promotional materials, distributed by CONTRACTOR to any person or organization for purposes directly or indirectly related to this Agreement must be approved at least thirty (30) days in advance and in writing by ADMINISTRATOR before distribution. For the purposes of this Agreement, distribution of written materials shall include, but not be limited to, pamphlets, brochures, flyers, newspaper or magazine ads, and electronic media such as the Internet.

B. Any advertisement through radio, television broadcast, or the Internet, for educational or promotional purposes, made by CONTRACTOR for purposes directly or indirectly related to this Agreement must be approved in advance at least thirty (30) days and in writing by ADMINISTRATOR.

C. If CONTRACTOR uses social media (such as Facebook, Twitter, YouTube or other publicly available social media sites) in support of the services described within this Agreement, CONTRACTOR shall develop social media policies and procedures and have them available to ADMINISTRATOR upon reasonable notice. CONTRACTOR shall inform ADMINISTRATOR of all forms of social media used to either directly or indirectly support the services described within this Agreement. CONTRACTOR

shall comply with COUNTY Social Media Use Policy and Procedures as they pertain to any social media developed in support of the services described within this Agreement. CONTRACTOR shall also include any required funding statement information on social media when required by ADMINISTRATOR.

D. Any information as described in Subparagraphs A. and B. above shall not imply endorsement by COUNTY, unless ADMINISTRATOR consents thereto in writing.

XV. MAXIMUM OBLIGATION

A. The Total Maximum Obligation of COUNTY for services provided in accordance with this Agreement, and the separate Maximum Obligations for each period under this Agreement, are as specified in the Referenced Contract Provisions of this Agreement, except as allowed for in Subparagraphs B. and C. below.

B. Upon written request by CONTRACTOR, and at sole discretion of ADMINISTRATOR, ADMINISTRATOR may increase or decrease the Period One, Period Two and/or Period Three Maximum Obligations, provided the total of these Maximum Obligations does not exceed the Total Maximum Obligation of COUNTY as specified in the Referenced Contract Provisions of this Agreement.

C. ADMINISTRATOR may amend the Maximum Obligation by an amount not to exceed ten percent (10%) of Period One funding for this Agreement.

XVI. MINIMUM WAGE LAWS

A. Pursuant to the United States of America Fair Labor Standards Act of 1938, as amended, and State of California Labor Code, §1178.5, CONTRACTOR shall pay no less than the greater of the federal or California Minimum Wage to all its employees that directly or indirectly provide services pursuant to this Agreement, in any manner whatsoever. CONTRACTOR shall require and verify that all its contractors or other persons providing services pursuant to this Agreement on behalf of CONTRACTOR also pay their employees no less than the greater of the federal or California Minimum Wage.

B. CONTRACTOR shall comply and verify that its contractors comply with all other federal and State of California laws for minimum wage, overtime pay, record keeping, and child labor standards pursuant to providing services pursuant to this Agreement Notwithstanding the minimum wage requirements provided for in this clause, CONTRACTOR, where applicable, shall comply with the prevailing wage and related requirements, as provided for in accordance with the provisions of Article 2 of Chapter 1, Part 7, Division 2 of the Labor Code of the State of California (§§1770, et seq.), as it now exists or may hereafter be amended.

//

//

XVII. NONDISCRIMINATION

A. EMPLOYMENT

1. During the term of this Agreement, CONTRACTOR and its Covered Individuals shall not unlawfully discriminate against any employee or applicant for employment because of his/her race, religious creed, color, national origin, ancestry, physical disability, mental disability, medical condition, genetic information, marital status, sex, gender, gender identity, gender expression, age, sexual orientation, or military and veteran status. Additionally, during the term of this Agreement, CONTRACTOR and its Covered Individuals shall require in its subcontracts that subcontractors shall not unlawfully discriminate against any employee or applicant for employment because of his/her race, religious creed, color, national origin, ancestry, physical disability, mental disability, medical condition, genetic information, marital status, sex, gender, gender identity, gender expression, age, sexual orientation, or military and veteran status.

2. CONTRACTOR and its Covered Individuals shall not discriminate against employees or applicants for employment in the areas of employment, promotion, demotion or transfer; recruitment or recruitment advertising; layoff or termination; rate of pay or other forms of compensation; and selection for training, including apprenticeship.

3. CONTRACTOR shall not discriminate between employees with spouses and employees with domestic partners, or discriminate between domestic partners and spouses of those employees, in the provision of benefits.

4. CONTRACTOR shall post in conspicuous places, available to employees and applicants for employment, notices from ADMINISTRATOR and/or the United States Equal Employment Opportunity Commission setting forth the provisions of the Equal Opportunity clause.

5. All solicitations or advertisements for employees placed by or on behalf of CONTRACTOR and/or subcontractor shall state that all qualified applicants will receive consideration for employment without regard to race, religious creed, color, national origin, ancestry, physical disability, mental disability, medical condition, genetic information, marital status, sex, gender, gender identity, gender expression, age, sexual orientation, or military and veteran status. Such requirements shall be deemed fulfilled by use of the term EOE.

6. Each labor union or representative of workers with which CONTRACTOR and/or subcontractor has a collective bargaining agreement or other contract or understanding must post a notice advising the labor union or workers' representative of the commitments under this Nondiscrimination Paragraph and shall post copies of the notice in conspicuous places available to employees and applicants for employment.

B. SERVICES, BENEFITS AND FACILITIES – CONTRACTOR and/or subcontractor shall not discriminate in the provision of services, the allocation of benefits, or in the accommodation in facilities on the basis of race, religious creed, color, national origin, ancestry, physical disability, mental disability, medical condition, genetic information, marital status, sex, gender, gender identity, gender

expression, age, sexual orientation, or military and veteran status in accordance with Title IX of the Education Amendments of 1972 as they relate to 20 USC §1681 - §1688; Title VI of the Civil Rights Act of 1964 (42 USC §2000d); the Age Discrimination Act of 1975 (42 USC §6101); Title 9, Division 4, Chapter 6, Article 1 (§10800, et seq.) of the California Code of Regulations; and Title II of the Genetic Information Nondiscrimination Act of 2008, 42 USC 2000ff, et seq., as applicable, and all other pertinent rules and regulations promulgated pursuant thereto, and as otherwise provided by state law and regulations, as all may now exist or be hereafter amended or changed. For the purpose of this Nondiscrimination paragraph, Discrimination includes, but is not limited to the following based on one or more of the factors identified above:

1. Denying a Participant or potential Participant any service, benefit, or accommodation.
2. Providing any service or benefit to a Participant which is different or is provided in a different manner or at a different time from that provided to other Participants.
3. Restricting a Participant in any way in the enjoyment of any advantage or privilege enjoyed by others receiving any service or benefit.
4. Treating a Participant differently from others in satisfying any admission requirement or condition, or eligibility requirement or condition, which individuals must meet in order to be provided any service or benefit.
5. Assignment of times or places for the provision of services.

C. COMPLAINT PROCESS – CONTRACTOR shall establish procedures for advising all Participants through a written statement that CONTRACTOR’s and/or subcontractor’s Participants may file all complaints alleging discrimination in the delivery of services with CONTRACTOR, subcontractor, and ADMINISTRATOR.

1. Whenever possible, problems shall be resolved informally and at the point of service. CONTRACTOR shall establish an internal informal problem resolution process for Participants not able to resolve such problems at the point of service. Participants may initiate a grievance or complaint directly with CONTRACTOR either orally or in writing.

2. Within the time limits procedurally imposed, the complainant shall be notified in writing as to the findings regarding the alleged complaint and, if not satisfied with the decision, may file an appeal.

D. PERSONS WITH DISABILITIES – CONTRACTOR and/or subcontractor agree to comply with the provisions of §504 of the Rehabilitation Act of 1973, as amended, (29 USC 794 et seq., as implemented in 45 CFR 84.1 et seq.), and the Americans with Disabilities Act of 1990 as amended (42 USC 12101 et seq.; as implemented in 29 CFR 1630), as applicable, pertaining to the prohibition of discrimination against qualified persons with disabilities in all programs or activities; and if applicable, as implemented in Title 45, CFR, §84.1 et seq., as they exist now or may be hereafter amended together with succeeding legislation.

E. RETALIATION – Neither CONTRACTOR nor subcontractor, nor its employees or agents shall intimidate, coerce or take adverse action against any person for the purpose of interfering with rights

secured by federal or state laws, or because such person has filed a complaint, certified, assisted or otherwise participated in an investigation, proceeding, hearing or any other activity undertaken to enforce rights secured by federal or state law.

F. In the event of non-compliance with this paragraph or as otherwise provided by federal and state law, this Agreement may be canceled, terminated or suspended in whole or in part and CONTRACTOR or subcontractor may be declared ineligible for further contracts involving federal, state or county funds.

XVIII. NOTICES

A. Unless otherwise specified, all notices, claims, correspondence, reports and/or statements authorized or required by this Agreement shall be effective:

1. When written and deposited in the United States mail, first class postage prepaid and addressed as specified in the Referenced Contract Provisions of this Agreement or as otherwise directed by ADMINISTRATOR;

2. When faxed, transmission confirmed;

3. When sent by Email; or

4. When accepted by U.S. Postal Service Express Mail, Federal Express, United Parcel Service, or any other expedited delivery service.

B. Termination Notices shall be addressed as specified in the Referenced Contract Provisions of this Agreement or as otherwise directed by ADMINISTRATOR and shall be effective when faxed, transmission confirmed, or when accepted by U.S. Postal Service Express Mail, Federal Express, United Parcel Service, or any other expedited delivery service.

C. CONTRACTOR shall notify ADMINISTRATOR, in writing, within twenty-four (24) hours of becoming aware of any occurrence of a serious nature, which may expose COUNTY to liability. Such occurrences shall include, but not be limited to, accidents, injuries, or acts of negligence, or loss or damage to any COUNTY property in possession of CONTRACTOR.

D. For purposes of this Agreement, any notice to be provided by COUNTY may be given by ADMINISTRATOR.

XIX. NOTIFICATION OF DEATH

A. Upon becoming aware of the death of any person served pursuant to this Agreement, CONTRACTOR shall immediately notify ADMINISTRATOR.

B. All Notifications of Death provided to ADMINISTRATOR by CONTRACTOR shall contain the name of the deceased, the date and time of death, the nature and circumstances of the death, and the name(s) of CONTRACTOR's officers or employees with knowledge of the incident.

1. TELEPHONE NOTIFICATION – CONTRACTOR shall notify ADMINISTRATOR by telephone immediately upon becoming aware of the death due to non-terminal illness of any person served pursuant to this Agreement; provided, however, weekends and holidays shall not be included for

purposes of computing the time within which to give telephone notice and, notwithstanding the time limit herein specified, notice need only be given during normal business hours.

2. WRITTEN NOTIFICATION

a. NON-TERMINAL ILLNESS – CONTRACTOR shall hand deliver, fax, and/or send via encrypted email to ADMINISTRATOR a written report within sixteen (16) hours after becoming aware of the death due to non-terminal illness of any person served pursuant to this Agreement.

b. TERMINAL ILLNESS – CONTRACTOR shall notify ADMINISTRATOR by written report hand delivered, faxed, sent via encrypted email, and/or postmarked and sent via U.S. Mail within forty-eight (48) hours of becoming aware of the death due to terminal illness of any person served pursuant to this Agreement.

C. If there are any questions regarding the cause of death of any person served pursuant to this Agreement who was diagnosed with a terminal illness, or if there are any unusual circumstances related to the death, CONTRACTOR shall immediately notify ADMINISTRATOR in accordance with this Notification of Death Paragraph.

XX. NOTIFICATION OF PUBLIC EVENTS AND MEETINGS

A. CONTRACTOR shall notify ADMINISTRATOR of any public event or meeting funded in whole or in part by the COUNTY, except for those events or meetings that are intended solely to serve Participants or occur in the normal course of business.

B. CONTRACTOR shall notify ADMINISTRATOR at least thirty (30) business days in advance of any applicable public event or meeting. The notification must include the date, time, duration, location and purpose of the public event or meeting. Any promotional materials or event related flyers must be approved by ADMINISTRATOR prior to distribution.

XXI. RECORDS MANAGEMENT AND MAINTENANCE

A. CONTRACTOR, its officers, agents, employees and subcontractors shall, throughout the term of this Agreement, prepare, maintain and manage records appropriate to the services provided and in accordance with this Agreement and all applicable requirements.

B. CONTRACTOR shall ensure appropriate financial records related to cost reporting, expenditure, revenue, billings, etc., are prepared and maintained accurately and appropriately.

C. CONTRACTOR shall ensure all appropriate state and federal standards of documentation, preparation, and confidentiality of records related to participant, client and/or patient records are met at all times.

D. CONTRACTOR shall retain all financial records for a minimum of seven (7) years from the commencement of the contract, unless a longer period is required due to legal proceedings such as litigations and/or settlement of claims.

//

E. CONTRACTOR shall make records pertaining to the costs of services, participant fees, charges, billings, and revenues available at one (1) location within the limits of the County of Orange.

F. If CONTRACTOR is unable to meet the record location criteria above, ADMINISTRATOR may provide written approval to CONTRACTOR to maintain records in a single location, identified by CONTRACTOR.

G. CONTRACTOR may be required to retain all records involving litigation proceedings and settlement of claims for a longer term as directed by ADMINISTRATOR.

H. CONTRACTOR shall notify ADMINISTRATOR of any PRA requests related to, or arising out of, this Agreement, within forty-eight (48) hours. CONTRACTOR shall provide ADMINISTRATOR all information that is requested by the PRA request.

XXII. RESEARCH AND PUBLICATION

CONTRACTOR shall not utilize information and/or data received from COUNTY, or arising out of, or developed, as a result of this Agreement for the purpose of personal or professional research, or for publication.

XXIII. REVENUE

A. PARTICIPANT FEES – CONTRACTOR shall charge a fee to Participants to whom services are provided pursuant to this Agreement, their estates and responsible relatives, in accordance with the fee system designated by ADMINISTRATOR. This fee shall be based upon the person's ability to pay for services, but it shall not exceed the actual cost of services provided. No person shall be denied services because of an inability to pay.

B. THIRD-PARTY REVENUE – CONTRACTOR shall make every reasonable effort to obtain all available third-party reimbursement for which persons served pursuant to this Agreement may be eligible. Charges to insurance carriers shall be on the basis of CONTRACTOR's usual and customary charges.

C. PROCEDURES – CONTRACTOR shall maintain internal financial controls which adequately ensure proper billing and collection procedures. CONTRACTOR's procedures shall specifically provide for the identification of delinquent accounts and methods for pursuing such accounts. CONTRACTOR shall provide ADMINISTRATOR, monthly, a written report specifying the current status of fees which are billed, collected, transferred to a collection agency, or deemed by CONTRACTOR to be uncollectible.

XXIV. SEVERABILITY

If a court of competent jurisdiction declares any provision of this Agreement or application thereof to any person or circumstances to be invalid or if any provision of this Agreement contravenes any federal, state or county statute, ordinance, or regulation, the remaining provisions of this Agreement or

the application thereof shall remain valid, and the remaining provisions of this Agreement shall remain in full force and effect, and to that extent the provisions of this Agreement are severable.

XXV. SPECIAL PROVISIONS

A. CONTRACTOR shall not use the funds provided by means of this Agreement for the following purposes:

1. Making cash payments to intended recipients of services through this Agreement.
2. Lobbying any governmental agency or official. CONTRACTOR shall file all certifications and reports in compliance with this requirement pursuant to Title 31, USC, §1352 (e.g., limitation on use of appropriated funds to influence certain federal contracting and financial transactions).
3. Fundraising.
4. Purchase of gifts, meals, entertainment, awards, or other personal expenses for CONTRACTOR's staff, volunteers, or members of the Board of Directors or governing body.
5. Reimbursement of CONTRACTOR's members of the Board of Directors or governing body for expenses or services.
6. Making personal loans to CONTRACTOR's staff, volunteers, interns, consultants, subcontractors, and members of the Board of Directors or governing body, or its designee or authorized agent, or making salary advances or giving bonuses to CONTRACTOR's staff.
7. Paying an individual salary or compensation for services at a rate in excess of the current Level I of the Executive Salary Schedule as published by the OPM. The OPM Executive Salary Schedule may be found at www.opm.gov.
8. Severance pay for separating employees.
9. Paying rent and/or lease costs for a facility prior to the facility meeting all required building codes and obtaining all necessary building permits for any associated construction.
10. Supplanting current funding for existing services.

B. Unless otherwise specified in advance and in writing by ADMINISTRATOR, CONTRACTOR shall not use the funds provided by means of this Agreement for the following purposes:

1. Funding travel or training (excluding mileage or parking).
2. Making phone calls outside of the local area unless documented to be directly for the purpose of Participant care.
3. Payment for grant writing, consultants, certified public accounting, or legal services.
4. Purchase of artwork or other items that are for decorative purposes and do not directly contribute to the quality of services to be provided pursuant to this Agreement.
5. Purchasing or improving land, including constructing or permanently improving any building or facility, except for tenant improvements.
6. Providing inpatient hospital services or purchasing major medical equipment.

//

7. Satisfying any expenditure of non-federal funds as a condition for the receipt of federal funds (matching).

XXVI. STATUS OF CONTRACTOR

CONTRACTOR is, and shall at all times be deemed to be, an independent contractor and shall be wholly responsible for the manner in which it performs the services required of it by the terms of this Agreement. CONTRACTOR is entirely responsible for compensating staff, subcontractors, and consultants employed by CONTRACTOR. This Agreement shall not be construed as creating the relationship of employer and employee, or principal and agent, between COUNTY and CONTRACTOR or any of CONTRACTOR's employees, agents, consultants, or subcontractors. CONTRACTOR assumes exclusively the responsibility for the acts of its employees, agents, consultants, or subcontractors as they relate to the services to be provided during the course and scope of their employment. CONTRACTOR, its agents, employees, consultants, or subcontractors, shall not be entitled to any rights or privileges of COUNTY's employees and shall not be considered in any manner to be COUNTY's employees.

XXVII. TERM

A. The term of this Agreement shall commence as specified in the Referenced Contract Provisions of this Agreement or the execution date, whichever is later. This Agreement shall terminate as specified in the Referenced Contract Provisions of this Agreement unless otherwise sooner terminated as provided in this Agreement; provided, however, CONTRACTOR shall be obligated to perform such duties as would normally extend beyond this term, including but not limited to, obligations with respect to confidentiality, indemnification, audits, reporting and accounting.

B. Any administrative duty or obligation to be performed pursuant to this Agreement on a weekend or holiday may be performed on the next regular business day.

XXVIII. TERMINATION

A. Either party may terminate this Agreement, without cause, upon thirty (30) calendar days' written notice given the other party.

B. Unless otherwise specified in this Agreement, COUNTY may terminate this Agreement upon five (5) calendar days' written notice if CONTRACTOR fails to perform any of the terms of this Agreement. At ADMINISTRATOR's sole discretion, CONTRACTOR may be allowed up to thirty (30) calendar days for corrective action.

C. COUNTY may terminate this Agreement immediately, upon written notice, on the occurrence of any of the following events:

1. The loss by CONTRACTOR of legal capacity.
2. Cessation of services.

3. The delegation or assignment of CONTRACTOR's services, operation or administration to another entity without the prior written consent of COUNTY.

4. The neglect by any physician or licensed person employed by CONTRACTOR of any duty required pursuant to this Agreement.

5. The loss of accreditation or any license required by the Licenses and Laws Paragraph of this Agreement.

6. The continued incapacity of any physician or licensed person to perform duties required pursuant to this Agreement.

7. Unethical conduct or malpractice by any physician or licensed person providing services pursuant to this Agreement; provided, however, COUNTY may waive this option if CONTRACTOR removes such physician or licensed person from serving persons treated or assisted pursuant to this Agreement.

D. CONTINGENT FUNDING

1. Any obligation of COUNTY under this Agreement is contingent upon the following:

a. The continued availability of federal, state and county funds for reimbursement of COUNTY's expenditures, and

b. Inclusion of sufficient funding for the services hereunder in the applicable budget(s) approved by the Board of Supervisors.

2. In the event such funding is subsequently reduced or terminated, COUNTY may suspend, terminate or renegotiate this Agreement upon thirty (30) calendar days' written notice given CONTRACTOR. If COUNTY elects to renegotiate this Agreement due to reduced or terminated funding, CONTRACTOR shall not be obligated to accept the renegotiated terms.

E. In the event this Agreement is suspended or terminated prior to the completion of the term as specified in the Referenced Contract Provisions of this Agreement, ADMINISTRATOR may, at its sole discretion, reduce the Maximum Obligation of this Agreement in an amount consistent with the reduced term of the Agreement.

F. In the event this Agreement is terminated by either party pursuant to Subparagraphs B., C. or D. above, CONTRACTOR shall do the following:

1. Comply with termination instructions provided by ADMINISTRATOR in a manner which is consistent with recognized standards of quality care and prudent business practice.

2. Obtain immediate clarification from ADMINISTRATOR of any unsettled issues of contract performance during the remaining contract term.

3. Until the date of termination, continue to provide the same level of service required by this Agreement.

4. If Participants are to be transferred to another facility for services, furnish ADMINISTRATOR, upon request, all Participant information and records deemed necessary by ADMINISTRATOR to effect an orderly transfer.

5. Assist ADMINISTRATOR in effecting the transfer of Participants in a manner consistent with Participant's best interests.

6. If records are to be transferred to COUNTY, pack and label such records in accordance with directions provided by ADMINISTRATOR.

7. Return to COUNTY, in the manner indicated by ADMINISTRATOR, any equipment and supplies purchased with funds provided by COUNTY.

8. To the extent services are terminated, cancel outstanding commitments covering the procurement of materials, supplies, equipment, and miscellaneous items, as well as outstanding commitments which relate to personal services. With respect to these canceled commitments, CONTRACTOR shall submit a written plan for settlement of all outstanding liabilities and all claims arising out of such cancellation of commitment which shall be subject to written approval of ADMINISTRATOR.

G. The rights and remedies of COUNTY provided in this Termination Paragraph shall not be exclusive, and are in addition to any other rights and remedies provided by law or under this Agreement.

XXIX. THIRD PARTY BENEFICIARY

Neither party hereto intends that this Agreement shall create rights hereunder in third parties including, but not limited to, any subcontractors or any Participants provided services pursuant to this Agreement.

XXX. WAIVER OF DEFAULT OR BREACH

Waiver by COUNTY of any default by CONTRACTOR shall not be considered a waiver of any subsequent default. Waiver by COUNTY of any breach by CONTRACTOR of any provision of this Agreement shall not be considered a waiver of any subsequent breach. Waiver by COUNTY of any default or any breach by CONTRACTOR shall not be considered a modification of the terms of this Agreement.

//
//
//
//
//
//
//
//
//
//
//
//

1 IN WITNESS WHEREOF, the parties have executed this Agreement, in the County of Orange, State
2 of California.

3
4 ORANGE COUNTY SUPERINTENDENT OF SCHOOLS
5 DBA ORANGE COUNTY DEPARTMENT OF EDUCATION

6 BY: *Patricia McLaughlin* DATED: 7/5/2014

7
8 TITLE: ADMINISTRATOR

9
10 BY: _____ DATED: _____

11
12 TITLE: _____

13
14
15
16
17 COUNTY OF ORANGE

18
19
20 BY: _____ DATED: _____

21 HEALTH CARE AGENCY

22
23
24
25 APPROVED AS TO FORM
26 OFFICE OF THE COUNTY COUNSEL
27 ORANGE COUNTY, CALIFORNIA

28
29 BY: *[Signature]* DATED: 06/13/14

30 DEPUTY

31
32
33
34
35
36 If the contracting party is a corporation, two (2) signatures are required: one (1) signature by the Chairman of the Board, the President or any Vice President,
37 and one (1) signature by the Secretary, any Assistant Secretary, the Chief Financial Officer or any Assistant Treasurer. If the contract is signed by one (1) authorized individual only, a copy of the corporate resolution or by-laws whereby the Board of Directors has empowered said authorized individual to act on its behalf by his or her signature alone is required by ADMINISTRATOR.

EXHIBIT A
AGREEMENT FOR PROVISION OF
SCHOOL BASED STRESS MANAGEMENT EDUCATION SERVICES
BETWEEN
COUNTY OF ORANGE
AND
ORANGE COUNTY SUPERINTENDENT OF SCHOOLS
DBA ORANGE COUNTY DEPARTMENT OF EDUCATION
AUGUST 1, 2016 THROUGH JUNE 30, 2019

I. COMMON TERMS AND DEFINITIONS

A. The parties agree to the following terms and definitions, and to those terms and definitions which, for convenience, are set forth elsewhere in the Agreement.

1. Assessment means a professional review and evaluation of an individual's behavioral health needs and conditions in order to determine the most appropriate course of services.

2. Behavioral Health Condition means diminished cognitive, emotional, or social abilities, but not to the extent that the criteria for a mental disorder are met.

3. Cohort means a group of individuals that are receiving training education at the same period of time.

4. Evidence-Based Practice means the range of services of well-documented effectiveness. An Evidence-Based Practice has quantitative and qualitative data showing positive outcomes and has been subject to expert/peer review that has determined that a particular approach or strategy has a significant level of evidence of effectiveness.

5. Evaluation means the systematic investigation of the value and impact of an intervention or program.

6. Follow-up means ensuring that the Participant has linked to the referred service and/or successfully transitioned from one service to another.

7. Group Practicum means a group of individuals with an opportunity for supervised practical application in a specialized field and/or theory.

8. Infusing means to introduce, penetrate, instill, and inspire concepts and strategies.

9. MHSA means the law that provides funding for expanded community mental health services, also known as Proposition 63.

10. Mindfulness means the practice of maintaining a nonjudgmental state of heightened awareness of one's thoughts, emotions and/or experiences focusing on a moment-to-moment basis.

11. Mindfulness Attention Awareness Scale means a scale to assess the receptive awareness of, and attention to, what is taking place in the present.

//

12. Participant means an individual enrolled in a program or receiving services and who engages in activities aimed at preventing and/or eliminating the development of Behavioral Health Condition.

13. Perceived Stress Scale means a psychological instrument for measuring the perception of stress.

14. Prevention means the group or individual interventions that occur before the initial onset of a Behavioral Health Condition. Prevention promotes positive cognitive, social, and emotional development and encourages a state of well-being that allows the individuals to function well in the face of changing and sometimes challenging circumstances.

15. PROMIS Global Health means a scale used to assess overall health and perceptions with five primary domains including, physical function, fatigue, pain, emotional distress, and social health.

16. PEI means the most recent County of Orange MHSAs Prevention and Early Intervention Plan approved by the Orange County MHSAs Steering Committee and Board of Supervisors.

17. Resilience means an individual's ability to properly adapt to stress and adversity.

18. Self-Regulation means a child's ability to gain control of bodily functions, manage powerful emotions, and maintain focus and attention.

19. Self-Regulatory Inventory means a scale used to measure the short-term self-regulation abilities in middle and high school aged youth.

20. Stress means mental, emotional, and/or physical strain or tension on an individual's body and well-being.

21. Stress Management means the techniques intended to equip a person with effective coping mechanisms for dealing with stress.

22. Tool Box means a variety of defined techniques and strategies implemented in the classroom to teach children/youth management.

23. Units of Service means the number and/or type of activities the CONTRACTOR will fulfill during a contractual agreement period.

B. CONTRACTOR and ADMINISTRATOR may mutually agree, in writing, to modify the Common Terms and Definitions Paragraph of this Exhibit A to the Agreement.

II. BUDGET

A. COUNTY shall pay CONTRACTOR in accordance with the Payments Paragraph in this Exhibit A to the Agreement and the following budget, which is set forth for informational purposes only and may be adjusted by mutual agreement, in advance and in writing, by ADMINISTRATOR and CONTRACTOR.

//

//

//

Attachment A

	<u>PERIOD</u> <u>ONE</u>	<u>PERIOD</u> <u>TWO</u>	<u>PERIOD</u> <u>THREE</u>	<u>TOTAL</u>
ADMINISTRATIVE COST				
Indirect Costs	<u>\$ 13,163</u>	<u>\$ 13,163</u>	<u>\$ 13,163</u>	<u>\$ 39,489</u>
SUBTOTAL	\$ 13,163	\$ 13,163	\$ 13,163	\$ 39,489
ADMINISTRATIVE COST				
PROGRAM COST				
Salaries	\$ 40,445	\$ 40,445	\$ 40,445	\$121,335
Benefits	15,654	15,654	15,654	46,962
Services and Supplies	64,138	64,138	64,138	192,414
Subcontractor Costs	<u>21,600</u>	<u>21,600</u>	<u>21,600</u>	<u>64,800</u>
SUBTOTAL PROGRAM COST	\$141,837	\$141,837	\$141,837	\$425,511
TOTAL GROSS COST	\$155,000	\$155,000	\$155,000	\$465,000
REVENUE				
MHSA	<u>\$155,000</u>	<u>\$155,000</u>	<u>\$155,000</u>	<u>\$465,000</u>
TOTAL REVENUE	\$155,000	\$155,000	\$155,000	\$465,000
TOTAL	\$155,000	\$155,000	\$155,000	\$465,000
MAXIMUM OBLIGATION				

B. BUDGET/STAFFING MODIFICATIONS – CONTRACTOR may request to shift funds between budgeted line items, for the purpose of meeting specific program needs or for providing continuity of care to its Participants, by utilizing a Budget/Staffing Modification Request form provided by ADMINISTRATOR. CONTRACTOR shall submit a properly completed Budget/Staffing Modification Request to ADMINISTRATOR for consideration, in advance, which shall include a justification narrative specifying the purpose of the request, the amount of said funds to be shifted, and the sustaining annual impact of the shift as may be applicable to the current contract period and/or future contract periods. CONTRACTOR shall obtain written approval of any Budget/Staffing Modification Request(s) from ADMINISTRATOR prior to implementation by CONTRACTOR. Failure of CONTRACTOR to obtain written approval from ADMINISTRATOR for any proposed Budget/Staffing Modification Request(s) may result in disallowance of those costs.

C. FINANCIAL RECORDS – CONTRACTOR shall prepare and maintain accurate and complete financial records of its cost and operating expenses. Such records will reflect the actual cost of the type

of service for which payment is claimed. Any apportionment of or distribution of costs, including indirect costs, to or between programs or cost centers of CONTRACTOR shall be documented, and will be made in accordance with GAAP.

D. CONTRACTOR and ADMINISTRATOR may mutually agree, in advance and in writing, to modify the Budget Paragraph of this Exhibit A to the Agreement.

III. PAYMENTS

A. BASIS FOR REIMBURSEMENT – COUNTY shall pay CONTRACTOR for the actual costs of providing the services described hereunder, less revenues which are actually received by CONTRACTOR; provided, however, that CONTRACTOR's costs are allowable pursuant to county, state, and federal regulations. Non-compliance will require the completion of CAPs by CONTRACTOR. If CAPs are not completed within timeframes as determined by ADMINISTRATOR, payments may be reduced accordingly. Furthermore, if CONTRACTOR is ineligible to provide services due to non-compliance with licensure and/or certification standards of the State, County or Probation, ADMINISTRATOR may elect to reduce COUNTY's maximum obligation proportionate to the length of time that CONTRACTOR is ineligible to provide services.

B. PAYMENT METHOD – COUNTY shall pay CONTRACTOR monthly in arrears the actual cost of the services, less revenues that are actually received by CONTRACTOR provided, however, that the total of such payments shall not exceed the COUNTY's Maximum Obligation. CONTRACTOR's invoices shall be on a form approved or provided by ADMINISTRATOR and shall provide such information as is required by ADMINISTRATOR. Invoices are due by the twentieth (20th) calendar day of each month, and payments to CONTRACTOR should be released by COUNTY no later than twenty-one (21) calendar days after receipt of the correctly completed invoice.

C. Monthly payments are interim payments only, and subject to Final Settlement in accordance with the Cost Report Paragraph of the Agreement. Invoices received after the due date may not be paid in accordance with Subparagraph III.B.

D. All invoices to COUNTY shall be supported, at CONTRACTOR's facility, by source documentation including, but not limited to, ledgers, books, vouchers, journals, time sheets, payrolls, appointment schedules, schedules for allocating costs, invoices, bank statements, canceled checks, receipts, receiving records, and records of services provided.

E. In support of the monthly invoice, CONTRACTOR shall submit an Expenditure and Revenue Report as specified in the Reports Paragraph of this Exhibit A to the Agreement. ADMINISTRATOR may use the Expenditure and Revenue Report to determine payment to CONTRACTOR.

F. ADMINISTRATOR may withhold or delay any payment if CONTRACTOR fails to comply with any provision of the Agreement.

G. COUNTY shall not reimburse CONTRACTOR for services provided beyond the expiration and/or termination of the Agreement.

IV. REPORTS

A. FISCAL

1. CONTRACTOR shall submit monthly Expenditure and Revenue Reports to ADMINISTRATOR. These reports shall be on a form acceptable to, or provided by, ADMINISTRATOR and shall report actual costs and revenues for CONTRACTOR's program described in the Services Paragraph of this Exhibit A to the Agreement. Any changes, modifications, or deviations to any approved budget line item must be approved in advance and in writing by ADMINISTRATOR and annotated on the monthly Expenditure and Revenue Report, or said cost deviations may be subject to disallowance. Such reports shall be received by ADMINISTRATOR no later than twenty (20) calendar days following the end of the month being reported.

2. CONTRACTOR shall submit Year-End Projection Reports to ADMINISTRATOR. These reports shall be on a form acceptable to, or provided by, ADMINISTRATOR and shall report anticipated year-end actual costs and revenues for CONTRACTOR's program described in the Services Paragraph of this Exhibit A to the Agreement. Such reports shall include actual monthly costs and revenue to date and anticipated monthly costs and revenue to the end of the fiscal year, and shall include a projection narrative justifying the year-end projections. Year-End Projection Reports shall be submitted in conjunction with the Monthly Expenditure and Revenue Reports.

B. STAFFING REPORT – CONTRACTOR shall submit monthly Staffing Reports to ADMINISTRATOR. CONTRACTOR's reports shall contain required information, and be on a form acceptable to, or provided by ADMINISTRATOR. CONTRACTOR shall submit these reports no later than twenty (20) calendar days following the end of the month being reported.

C. PROGRAMMATIC – CONTRACTOR shall submit Quarterly Programmatic reports and a Three-year end cumulative report to ADMINISTRATOR. These reports shall be in a format approved by ADMINISTRATOR and shall include but not limited to, descriptions of any performance objectives, outcomes, and or interim findings as directed by ADMINISTRATOR. CONTRACTOR shall be prepared to present and discuss the programmatic reports at the monthly meetings with ADMINISTRATOR, to include whether or not CONTRACTOR is progressing satisfactorily and if not, specify what steps are being taken to achieve satisfactory progress. Such reports shall be received by ADMINISTRATOR no later than twentieth (20th) calendar day following the end of the month being reported.

D. ADDITIONAL REPORTS – Upon ADMINISTRATOR's request, CONTRACTOR shall make such additional reports as required by ADMINISTRATOR concerning CONTRACTOR's activities as they affect the services hereunder. ADMINISTRATOR shall be specific as to the nature of information requested and allow thirty (30) calendar days for CONTRACTOR to respond.

E. CONTRACTOR and ADMINISTRATOR may mutually agree, in writing, to modify the Reports Paragraph of this Exhibit A to the Agreement.

//

V. SERVICES

A. FACILITY – CONTRACTOR shall arrange, coordinate and secure Cohort trainings for the provision of services described herein at the following location(s), or any other location approved, in advance, in writing, by ADMINISTRATOR. The facility shall include space to support the services identified within the Agreement.

Orange County Department of Education
200 Kalmus Drive
Costa Mesa, California 92628

B. CONTRACTOR shall make available School-based Stress Management Education services to all COUNTY schools. The services shall include, but are not limited to the following:

1. CONTRACTOR shall provide training and on-going support for Kindergarten through 12th grade teachers to teach and integrate Stress-Management, self-management, and self-awareness strategies in their classrooms to support students' well-being, academic performance and social-emotional growth. The Stress Management Education Services shall be culturally and linguistically appropriate and consistent with the PEI Plan.

2. The training program shall be offered in two Cohorts within each fiscal year. The first training Cohort will be offered in the fall and the second Cohort will be offered in the spring. Each Cohort shall cover an eleven (11) week period of training and implementation. Each Cohort shall train a minimum of thirty-five (35) approved teacher attendees, with a minimum of two (2) teacher attendees, up to a maximum of six (6) teacher attendees per each school enrolled.

3. CONTRACTOR shall identify interested teachers and schools with the intent to teach students the Stress Management strategies on a regular basis. The teachers shall agree upon the intended criteria of the Stress Management education services training program. This shall include, but is not limited to the following:

- a. Attend a seven (7) hour all day training event;
- b. Attend five (5) after school training presentations for two and a half (2.5) hours each;
- c. Attend two (2) Group Practicum sessions for one and a half (1.5) hours each;
- d. Open classroom for a one (1) hour classroom observation with Stress Management strategies to students;
- e. Participate in a post classroom observation debrief with the consultant for up to one (1) hour;
- f. Implementation of Stress Management strategies in the classroom for a minimum of ten (10) minutes a day, at a minimum of three (3) days a week;
- g. Maintain an implementation log that includes number of days, minutes, and type of Stress Management practices that were implemented through the eleventh (11th) week;

- h. Administer pre/post Assessments to students;
- i. Complete teacher pre/post Assessments;
- j. Participation in the implementation Follow-Up surveys at six (6) academic months post training; and
- k. Serve as a demonstration coach to interested teachers at Participants’ home school with the intent of integration in other classroom with students.
- l. CONTRACTOR will provide a stipend of five hundred dollars (\$500) to teachers that satisfactorily complete all of the above mentioned training requirements.

4. The training program content shall focus on, but not be limited to: Resilience and how to promote it within adults and youth; adult and youth Stress, physiology, neuroscience of Stress, including the impacts on physical, social, emotional health, behavior, and performance; cognitive, behavioral and emotional signs and symptoms of Stress in adults and youth; long-term impacts of toxic Stress on brain development and health, including the traumatized youth and adult; role of emotions in learning; Stress student performance and learning; accessing students Stress levels and coping skills; variety of Stress reduction practices called the “Tool Box”; types of youth Stress and the role of adult supports; Infusing practices for a calm and supportive learning environment; school practices to reduce Stress; and creating and monitoring an implementation plan.

5. The trainings shall adopt a “Tool Box” approach, where the teachers would learn to practice a variety of evidence-based Stress reduction strategies and integrate them within their daily classroom routines. These strategies include, but are not limited to: diaphragmatic breathing techniques, progressive muscle relaxation, imagery, exercise, gratitude, calm space creation, compassion, music, and Mindfulness. The “Tool Box” approach will be implemented in the classrooms, for a minimum of three (3) times a week.

C. CONTRACTOR shall at a minimum achieve the following Units of Service:

Units of Service	Period One	Period Two	Period Three
Training of the Trainer	70	70	70
Elementary Students Trained	1,260	1,260	1,260
Secondary Students Trained	2,240	2,240	2,240

D. CONTRACTOR shall track and implement the following Outcome Measures.

1. CONTRACTOR shall complete all surveys, tools and pre/post tests for measurement of outcomes of services, as requested by the ADMINISTRATOR. Outcome tools shall include, but are not limited to, the PROMIS Global Health, Perceived Stress Scale, Mindfulness Attention Awareness Scale, Self-Regulatory Inventory Scale.

//
//

2. CONTRACTOR shall utilize a data collection system for tracking Participants' Enrollment, including school and school district, demographics, attendance, implementation log, classroom observation, and follow-up contacts and level of satisfaction.

3. CONTRACTOR shall strive to meet the following outcome goals of the training program to create an environment that will positively impact the teachers and the students' with, but not limited to:

a. On average, student and teacher Participants will report a significant increase in global health

b. On average, student and teacher Participants will report a significant reduction in experience of Stress.

c. On average, teacher Participants will report a significant increase in Mindfulness.

d. On average, student Participants will report a significant increase in emotional Self-Regulation.

4. CONTRACTOR shall provide the COUNTY with quarterly data reports, or as needed upon request of ADMINISTRATOR.

E. CONTRACTOR shall, on an ongoing basis and in partnership with ADMINISTRATOR, develop, modify, and incorporate different and/or additional outcome measurements, as approved by ADMINISTRATOR.

F. CONTRACTOR shall submit a current copy of the database as requested and in a format approved by ADMINISTRATOR.

G. CONTRACTOR and ADMINISTRATOR may mutually agree, in advance and in writing, to modify the Services Paragraph of this Exhibit A to the Agreement.

VI. STAFFING

A. CONTRACTOR shall, at a minimum, provide the following staffing pattern expressed in FTEs continuously throughout the term of the Agreement. One (1) FTE shall be equal to an average of forty (40) hours work per week.

PROGRAM	FTEs
Coordinator	.25
Administrative Assistant II	.20
Retreat Trainer	.01
Retreat Trainer	.01
Retreat Trainer	.02
Consultant	<u>.13</u>
TOTAL FTEs	.62

//

//

B. CONTRACTOR shall make best effort to include bilingual/bicultural services to meet the diverse needs of the community threshold languages as determined by COUNTY. Whenever possible, bilingual/bicultural staff should be recruited and retained. Any staffing vacancies occurring at a time when bilingual and bicultural composition of the staffing does not meet the above requirement must be filled with bilingual and bicultural staff unless ADMINISTRATOR consents, in writing, to the filling of those positions with non-bilingual staff. Salary savings resulting from such vacant positions may not be used to cover costs other than salaries and employees benefits unless otherwise authorized in writing, in advance, by ADMINISTRATOR.

C. CONTRACTOR shall make its best effort to provide services pursuant to the Agreement in a manner that is culturally and linguistically appropriate for the population(s) served. CONTRACTOR shall maintain documents of such efforts which may include; but not be limited to: records of participation in COUNTY-sponsored or other applicable training; recruitment and hiring P&Ps; copies of literature in multiple languages and formats, as appropriate; and descriptions of measures taken to enhance accessibility for, and sensitivity to, individuals who are physically challenged.

D. CONTRACTOR is highly encouraged to augment the above paid staff with qualified and trained volunteers and/or interns upon written approval of ADMINISTRATOR.

E. CONTRACTOR shall maintain personnel files for each staff member, both administrative and programmatic, both direct and indirect, which shall include, but not be limited to, an application for employment, qualifications for the position, documentation of bicultural/bilingual capabilities (if applicable), pay rate and Evaluations justifying pay increases.

F. CONTRACTOR shall establish clear P&Ps pertaining to staff's work location options (i.e. office vs. field/home) and equipment usage (e.g., cell phones, texting devices, and computers). The P&Ps shall address at the minimum the following:

1. Eligibility and selection criteria;
2. Staff's field/home on-duty conduct and responsibilities;
3. Supervision plan of staff and equipment including emergency procedure; and
4. Confidentiality and records keeping.

G. CONTRACTOR shall notify ADMINISTRATOR, in writing, within seventy-two (72) hours, of any staffing vacancies that occur during the term of the Agreement.

H. CONTRACTOR shall notify ADMINISTRATOR, in writing, at least seven (7) days in advance, of any new staffing changes; including promotions, temporary FTE changes and internal or external temporary staffing assignment requests that occur during the term of the Agreement.

I. CONTRACTOR shall ensure that all staff, albeit paid or unpaid, complete necessary training prior to discharging duties associated with their titles and any other training necessary to assist the CONTRACTOR and COUNTY to be in compliance with prevailing standards of practice as well as State and Federal regulatory requirements.

//

EXHIBIT B
TO AGREEMENT FOR PROVISION OF
STRESS MANAGEMENT EDUCATION SERVICES
BETWEEN
COUNTY OF ORANGE
AND
ORANGE COUNTY SUPERINTENDENT OF SCHOOLS
DBA ORANGE COUNTY DEPARTMENT OF EDUCATION
AUGUST 1, 2016 THROUGH JUNE 30, 2019

I. BUSINESS ASSOCIATE CONTRACT

A. GENERAL PROVISIONS AND RECITALS

1. The parties agree that the terms used, but not otherwise defined in the Common Terms and Definitions Paragraph of Exhibit A to the Agreement or in Subparagraph B. below, shall have the same meaning given to such terms under HIPAA, the HITECH Act, and their implementing regulations at 45 CFR Parts 160 and 164 (“the HIPAA regulations”) as they may exist now or be hereafter amended.

2. The parties agree that a business associate relationship under HIPAA, the HITECH Act, and the HIPAA regulations between the CONTRACTOR and COUNTY arises to the extent that CONTRACTOR performs, or delegates to subcontractors to perform, functions or activities on behalf of COUNTY pursuant to, and as set forth in, the Agreement that are described in the definition of “Business Associate” in 45 CFR § 160.103.

3. The COUNTY wishes to disclose to CONTRACTOR certain information pursuant to the terms of the Agreement, some of which may constitute PHI, as defined below in Subparagraph B.10, to be used or disclosed in the course of providing services and activities pursuant to, and as set forth, in the Agreement.

4. The parties intend to protect the privacy and provide for the security of PHI that may be created, received, maintained, transmitted, used, or disclosed pursuant to the Agreement in compliance with the applicable standards, implementation specifications, and requirements of HIPAA, the HITECH Act, and the HIPAA regulations as they may exist now or be hereafter amended.

5. The parties understand and acknowledge that HIPAA, the HITECH Act, and the HIPAA regulations do not pre-empt any state statutes, rules, or regulations that are not otherwise pre-empted by other Federal law(s) and impose more stringent requirements with respect to privacy of PHI.

6. The parties understand that the HIPAA Privacy and Security rules, as defined below in Subparagraphs B.9 and B.14, apply to the CONTRACTOR in the same manner as they apply to the covered entity (COUNTY). CONTRACTOR agrees therefore to be in compliance at all times with the terms of this Business Associate Contract and the applicable standards, implementation specifications, and requirements of the Privacy and the Security rules, as they may exist now or be hereafter amended,

with respect to PHI and electronic PHI created, received, maintained, transmitted, used, or disclosed pursuant to the Agreement.

B. DEFINITIONS

1. “Administrative Safeguards” are administrative actions, and policies and procedures, to manage the selection, development, implementation, and maintenance of security measures to protect electronic PHI and to manage the conduct of CONTRACTOR’s workforce in relation to the protection of that information.

2. “Breach” means the acquisition, access, use, or disclosure of PHI in a manner not permitted under the HIPAA Privacy Rule which compromises the security or privacy of the PHI.

a. Breach excludes:

1) Any unintentional acquisition, access, or use of PHI by a workforce member or person acting under the authority of CONTRACTOR or COUNTY , if such acquisition, access, or use was made in good faith and within the scope of authority and does not result in further use or disclosure in a manner not permitted under the Privacy Rule.

2) Any inadvertent disclosure by a person who is authorized to access PHI at CONTRACTOR to another person authorized to access PHI at the CONTRACTOR, or organized health care arrangement in which COUNTY participates, and the information received as a result of such disclosure is not further used or disclosed in a manner not permitted under the HIPAA Privacy Rule.

3) A disclosure of PHI where CONTRACTOR or COUNTY has a good faith belief that an unauthorized person to whom the disclosure was made would not reasonably have been able to retain such information.

b. Except as provided in Subparagraph a. of this definition, an acquisition, access, use, or disclosure of PHI in a manner not permitted under the HIPAA Privacy Rule is presumed to be a breach unless CONTRACTOR demonstrates that there is a low probability that the PHI has been compromised based on a risk assessment of at least the following factors:

1) The nature and extent of the PHI involved, including the types of identifiers and the likelihood of re-identification;

2) The unauthorized person who used the PHI or to whom the disclosure was made;

3) Whether the PHI was actually acquired or viewed; and

4) The extent to which the risk to the PHI has been mitigated.

3. “Data Aggregation” shall have the meaning given to such term under the HIPAA Privacy Rule in 45 CFR § 164.501.

4. “DRS” shall have the meaning given to such term under the HIPAA Privacy Rule in 45 CFR § 164.501.

5. “Disclosure” shall have the meaning given to such term under the HIPAA regulations in 45 CFR § 160.103.

//

6. “Health Care Operations” shall have the meaning given to such term under the HIPAA Privacy Rule in 45 CFR § 164.501.

7. “Individual” shall have the meaning given to such term under the HIPAA Privacy Rule in 45 CFR § 160.103 and shall include a person who qualifies as a personal representative in accordance with 45 CFR § 164.502(g).

8. “Physical Safeguards” are physical measures, policies, and procedures to protect CONTRACTOR’s electronic information systems and related buildings and equipment, from natural and environmental hazards, and unauthorized intrusion.

9. “The HIPAA Privacy Rule” shall mean the Standards for Privacy of Individually Identifiable Health Information at 45 CFR Part 160 and Part 164, Subparts A and E.

10. “PHI” shall have the meaning given to such term under the HIPAA regulations in 45 CFR § 160.103.

11. “Required by Law” shall have the meaning given to such term under the HIPAA Privacy Rule in 45 CFR § 164.103.

12. “Secretary” shall mean the Secretary of the Department of Health and Human Services or his or her designee.

13. “Security Incident” means attempted or successful unauthorized access, use, disclosure, modification, or destruction of information or interference with system operations in an information system. “Security incident” does not include trivial incidents that occur on a daily basis, such as scans, “pings”, or unsuccessful attempts to penetrate computer networks or servers maintained by CONTRACTOR.

14. “The HIPAA Security Rule” shall mean the Security Standards for the Protection of electronic PHI at 45 CFR Part 160, Part 162, and Part 164, Subparts A and C.

15. “Subcontractor” shall have the meaning given to such term under the HIPAA regulations in 45 CFR § 160.103.

16. “Technical safeguards” means the technology and the policy and procedures for its use that protect electronic PHI and control access to it.

17. “Unsecured PHI” or “PHI that is unsecured” means PHI that is not rendered unusable, unreadable, or indecipherable to unauthorized individuals through the use of a technology or methodology specified by the Secretary of Health and Human Services in the guidance issued on the HHS Web site.

18. “Use” shall have the meaning given to such term under the HIPAA regulations in 45 CFR § 160.103.

C. OBLIGATIONS AND ACTIVITIES OF CONTRACTOR AS BUSINESS ASSOCIATE:

1. CONTRACTOR agrees not to use or further disclose PHI COUNTY discloses to CONTRACTOR other than as permitted or required by this Business Associate Contract or as required by law.

2. CONTRACTOR agrees to use appropriate safeguards, as provided for in this Business Associate Contract and the Agreement, to prevent use or disclosure of PHI COUNTY discloses to CONTRACTOR or CONTRACTOR creates, receives, maintains, or transmits on behalf of COUNTY other than as provided for by this Business Associate Contract.

3. CONTRACTOR agrees to comply with the HIPAA Security Rule at Subpart C of 45 CFR Part 164 with respect to ePHI COUNTY discloses to CONTRACTOR or CONTRACTOR creates, receives, maintains, or transmits on behalf of COUNTY.

4. CONTRACTOR agrees to mitigate, to the extent practicable, any harmful effect that is known to CONTRACTOR of a Use or Disclosure of PHI by CONTRACTOR in violation of the requirements of this Business Associate Contract.

5. CONTRACTOR agrees to report to COUNTY immediately any Use or Disclosure of PHI not provided for by this Business Associate Contract of which CONTRACTOR becomes aware. CONTRACTOR must report Breaches of Unsecured PHI in accordance with Subparagraph E. below and as required by 45 CFR § 164.410.

6. CONTRACTOR agrees to ensure that any Subcontractors that create, receive, maintain, or transmit PHI on behalf of CONTRACTOR agree to the same restrictions and conditions that apply through this Business Associate Contract to CONTRACTOR with respect to such information.

7. CONTRACTOR agrees to provide access, within fifteen (15) calendar days of receipt of a written request by COUNTY, to PHI in a DRS, to COUNTY or, as directed by COUNTY, to an Individual in order to meet the requirements under 45 CFR § 164.524. If CONTRACTOR maintains an EHR with PHI, and an individual requests a copy of such information in an electronic format, CONTRACTOR shall provide such information in an electronic format.

8. CONTRACTOR agrees to make any amendment(s) to PHI in a DRS that COUNTY directs or agrees to pursuant to 45 CFR § 164.526 at the request of COUNTY or an Individual, within thirty (30) calendar days of receipt of said request by COUNTY. CONTRACTOR agrees to notify COUNTY in writing no later than ten (10) calendar days after said amendment is completed.

9. CONTRACTOR agrees to make internal practices, books, and records, including P&Ps, relating to the use and disclosure of PHI received from, or created or received by CONTRACTOR on behalf of, COUNTY available to COUNTY and the Secretary in a time and manner as determined by COUNTY or as designated by the Secretary for purposes of the Secretary determining COUNTY's compliance with the HIPAA Privacy Rule.

10. CONTRACTOR agrees to document any Disclosures of PHI COUNTY discloses to CONTRACTOR or CONTRACTOR creates, receives, maintains, or transmits on behalf of COUNTY, and to make information related to such Disclosures available as would be required for COUNTY to respond to a request by an Individual for an accounting of Disclosures of PHI in accordance with 45 CFR § 164.528.

//

11. CONTRACTOR agrees to provide COUNTY or an Individual, as directed by COUNTY, in a time and manner to be determined by COUNTY, that information collected in accordance with the Agreement, in order to permit COUNTY to respond to a request by an Individual for an accounting of Disclosures of PHI in accordance with 45 CFR § 164.528.

12. CONTRACTOR agrees that to the extent CONTRACTOR carries out COUNTY's obligation under the HIPAA Privacy and/or Security rules CONTRACTOR will comply with the requirements of 45 CFR Part 164 that apply to COUNTY in the performance of such obligation.

13. If CONTRACTOR receives Social Security data from COUNTY provided to COUNTY by a state agency, upon request by COUNTY, CONTRACTOR shall provide COUNTY with a list of all employees, subcontractors, and agents who have access to the Social Security data, including employees, agents, subcontractors, and agents of its subcontractors.

14. CONTRACTOR will notify COUNTY if CONTRACTOR is named as a defendant in a criminal proceeding for a violation of HIPAA. COUNTY may terminate the Agreement, if CONTRACTOR is found guilty of a criminal violation in connection with HIPAA. COUNTY may terminate the Agreement, if a finding or stipulation that CONTRACTOR has violated any standard or requirement of the privacy or security provisions of HIPAA, or other security or privacy laws are made in any administrative or civil proceeding in which CONTRACTOR is a party or has been joined. COUNTY will consider the nature and seriousness of the violation in deciding whether or not to terminate the Agreement.

15. CONTRACTOR shall make itself and any subcontractors, employees or agents assisting CONTRACTOR in the performance of its obligations under the Agreement, available to COUNTY at no cost to COUNTY to testify as witnesses, or otherwise, in the event of litigation or administrative proceedings being commenced against COUNTY, its directors, officers or employees based upon claimed violation of HIPAA, the HIPAA regulations or other laws relating to security and privacy, which involves inactions or actions by CONTRACTOR, except where CONTRACTOR or its subcontractor, employee, or agent is a named adverse party.

16. The Parties acknowledge that federal and state laws relating to electronic data security and privacy are rapidly evolving and that amendment of this Business Associate Contract may be required to provide for procedures to ensure compliance with such developments. The Parties specifically agree to take such action as is necessary to implement the standards and requirements of HIPAA, the HITECH Act, the HIPAA regulations and other applicable laws relating to the security or privacy of PHI. Upon COUNTY's request, CONTRACTOR agrees to promptly enter into negotiations with COUNTY concerning an amendment to this Business Associate Contract embodying written assurances consistent with the standards and requirements of HIPAA, the HITECH Act, the HIPAA regulations or other applicable laws. COUNTY may terminate the Agreement upon thirty (30) days written notice in the event:

//

a. CONTRACTOR does not promptly enter into negotiations to amend this Business Associate Contract when requested by COUNTY pursuant to this Subparagraph C.; or

b. CONTRACTOR does not enter into an amendment providing assurances regarding the safeguarding of PHI that COUNTY deems are necessary to satisfy the standards and requirements of HIPAA, the HITECH Act, and the HIPAA regulations.

17. CONTRACTOR shall work with COUNTY upon notification by CONTRACTOR to COUNTY of a Breach to properly determine if any Breach exclusions exist as defined in Subparagraph B.2.a. above.

D. SECURITY RULE

1. CONTRACTOR shall comply with the requirements of 45 CFR § 164.306 and establish and maintain appropriate Administrative, Physical and Technical Safeguards in accordance with 45 CFR § 164.308, § 164.310, and § 164.312, with respect to electronic PHI COUNTY discloses to CONTRACTOR or CONTRACTOR creates, receives, maintains, or transmits on behalf of COUNTY. CONTRACTOR shall develop and maintain a written information privacy and security program that includes Administrative, Physical, and Technical Safeguards appropriate to the size and complexity of CONTRACTOR's operations and the nature and scope of its activities.

2. CONTRACTOR shall implement reasonable and appropriate policies and procedures to comply with the standards, implementation specifications and other requirements of 45 CFR Part 164, Subpart C, in compliance with 45 CFR § 164.316. CONTRACTOR will provide COUNTY with its current and updated policies upon request.

3. CONTRACTOR shall ensure the continuous security of all computerized data systems containing electronic PHI COUNTY discloses to CONTRACTOR or CONTRACTOR creates, receives, maintains, or transmits on behalf of COUNTY. CONTRACTOR shall protect paper documents containing PHI COUNTY discloses to CONTRACTOR or CONTRACTOR creates, receives, maintains, or transmits on behalf of COUNTY. These steps shall include, at a minimum:

a. Complying with all of the data system security precautions listed under Subparagraph E., below;

b. Achieving and maintaining compliance with the HIPAA Security Rule, as necessary in conducting operations on behalf of COUNTY;

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

4. CONTRACTOR shall ensure that any subcontractors that create, receive, maintain, or transmit ePHI on behalf of CONTRACTOR agree through a contract with CONTRACTOR to the same restrictions and requirements contained in this Subparagraph D. of this Business Associate Contract.

//

5. CONTRACTOR shall report to COUNTY immediately any Security Incident of which it becomes aware. CONTRACTOR shall report Breaches of Unsecured PHI in accordance with Subparagraph E. below and as required by 45 CFR § 164.410.

6. CONTRACTOR shall designate a Security Officer to oversee its data security program who shall be responsible for carrying out the requirements of this paragraph and for communicating on security matters with COUNTY.

E. DATA SECURITY REQUIREMENTS

1. Personal Controls

a. Employee Training. All workforce members who assist in the performance of functions or activities on behalf of COUNTY in connection with Agreement, or access or disclose PHI COUNTY discloses to CONTRACTOR or CONTRACTOR creates, receives, maintains, or transmits on behalf of COUNTY, must complete information privacy and security training, at least annually, at CONTRACTOR's expense. Each workforce member who receives information privacy and security training must sign a certification, indicating the member's name and the date on which the training was completed. These certifications must be retained for a period of six (6) years following the termination of Agreement.

b. Employee Discipline. Appropriate sanctions must be applied against workforce members who fail to comply with any provisions of CONTRACTOR's privacy P&Ps, including termination of employment where appropriate.

c. Confidentiality Statement. All persons that will be working with PHI COUNTY discloses to CONTRACTOR or CONTRACTOR creates, receives, maintains, or transmits on behalf of COUNTY must sign a confidentiality statement that includes, at a minimum, General Use, Security and Privacy Safeguards, Unacceptable Use, and Enforcement Policies. The statement must be signed by the workforce member prior to access to such PHI. The statement must be renewed annually. The CONTRACTOR shall retain each person's written confidentiality statement for COUNTY inspection for a period of six (6) years following the termination of the Agreement.

d. Background Check. Before a member of the workforce may access PHI COUNTY discloses to CONTRACTOR or CONTRACTOR creates, receives, maintains, or transmits on behalf of COUNTY, a background screening of that worker must be conducted. The screening should be commensurate with the risk and magnitude of harm the employee could cause, with more thorough screening being done for those employees who are authorized to bypass significant technical and operational security controls. The CONTRACTOR shall retain each workforce member's background check documentation for a period of three (3) years.

2. Technical Security Controls

a. Workstation/Laptop encryption. All workstations and laptops that store PHI COUNTY discloses to CONTRACTOR or CONTRACTOR creates, receives, maintains, or transmits on behalf of COUNTY either directly or temporarily must be encrypted using a FIPS 140-2 certified algorithm which

is 128bit or higher, such as AES. The encryption solution must be full disk unless approved by the COUNTY.

b. Server Security. Servers containing unencrypted PHI COUNTY discloses to CONTRACTOR or CONTRACTOR creates, receives, maintains, or transmits on behalf of COUNTY must have sufficient administrative, physical, and technical controls in place to protect that data, based upon a risk assessment/system security review.

c. Minimum Necessary. Only the minimum necessary amount of PHI COUNTY discloses to CONTRACTOR or CONTRACTOR creates, receives, maintains, or transmits on behalf of COUNTY required to perform necessary business functions may be copied, downloaded, or exported.

d. Removable media devices. All electronic files that contain PHI COUNTY discloses to CONTRACTOR or CONTRACTOR creates, receives, maintains, or transmits on behalf of COUNTY must be encrypted when stored on any removable media or portable device (i.e. USB thumb drives, floppies, CD/DVD, Blackberry, backup tapes etc.). Encryption must be a FIPS 140-2 certified algorithm which is 128bit or higher, such as AES. Such PHI shall not be considered "removed from the premises" if it is only being transported from one of CONTRACTOR's locations to another of CONTRACTOR's locations.

e. Antivirus software. All workstations, laptops and other systems that process and/or store PHI COUNTY discloses to CONTRACTOR or CONTRACTOR creates, receives, maintains, or transmits on behalf of COUNTY must have installed and actively use comprehensive anti-virus software solution with automatic updates scheduled at least daily.

f. Patch Management. All workstations, laptops and other systems that process and/or store PHI COUNTY discloses to CONTRACTOR or CONTRACTOR creates, receives, maintains, or transmits on behalf of COUNTY must have critical security patches applied, with system reboot if necessary. There must be a documented patch management process which determines installation timeframe based on risk assessment and vendor recommendations. At a maximum, all applicable patches must be installed within thirty (30) calendar or business days of vendor release. Applications and systems that cannot be patched due to operational reasons must have compensatory controls implemented to minimize risk, where possible.

g. User IDs and Password Controls. All users must be issued a unique user name for accessing PHI COUNTY discloses to CONTRACTOR or CONTRACTOR creates, receives, maintains, or transmits on behalf of COUNTY. Username must be promptly disabled, deleted, or the password changed upon the transfer or termination of an employee with knowledge of the password, at maximum within twenty-four (24) hours. Passwords are not to be shared. Passwords must be at least eight characters and must be a non-dictionary word. Passwords must not be stored in readable format on the computer. Passwords must be changed every ninety (90) calendar or business days, preferably every sixty (60) calendar or business days. Passwords must be changed if revealed or compromised.

//

Passwords must be composed of characters from at least three (3) of the following four (4) groups from the standard keyboard:

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

h. Data Destruction. When no longer needed, all PHI COUNTY discloses to CONTRACTOR or CONTRACTOR creates, receives, maintains, or transmits on behalf of COUNTY must be wiped using the Gutmann or US DoD 5220.22-M (7 Pass) standard, or by degaussing. Media may also be physically destroyed in accordance with NIST Special Publication 800-88. Other methods require prior written permission by COUNTY.

i. System Timeout. The system providing access to PHI COUNTY discloses to CONTRACTOR or CONTRACTOR creates, receives, maintains, or transmits on behalf of COUNTY must provide an automatic timeout, requiring re-authentication of the user session after no more than twenty (20) minutes of inactivity.

j. Warning Banners. All systems providing access to PHI COUNTY discloses to CONTRACTOR or CONTRACTOR creates, receives, maintains, or transmits on behalf of COUNTY must display a warning banner stating that data is confidential, systems are logged, and system use is for business purposes only by authorized users. User must be directed to log off the system if they do not agree with these requirements.

k. System Logging. The system must maintain an automated audit trail which can identify the user or system process which initiates a request for PHI COUNTY discloses to CONTRACTOR or CONTRACTOR creates, receives, maintains, or transmits on behalf of COUNTY, or which alters such PHI. The audit trail must be date and time stamped, must log both successful and failed accesses, must be read only, and must be restricted to authorized users. If such PHI is stored in a database, database logging functionality must be enabled. Audit trail data must be archived for at least three (3) years after occurrence.

l. Access Controls. The system providing access to PHI COUNTY discloses to CONTRACTOR or CONTRACTOR creates, receives, maintains, or transmits on behalf of COUNTY must use role based access controls for all user authentications, enforcing the principle of least privilege.

m. Transmission encryption. All data transmissions of PHI COUNTY discloses to CONTRACTOR or CONTRACTOR creates, receives, maintains, or transmits on behalf of COUNTY outside the secure internal network must be encrypted using a FIPS 140-2 certified algorithm which is 128bit or higher, such as AES. Encryption can be end to end at the network level, or the data files containing PHI can be encrypted. This requirement pertains to any type of PHI in motion such as website access, file transfer, and E-Mail.

//

n. Intrusion Detection. All systems involved in accessing, holding, transporting, and protecting PHI COUNTY discloses to CONTRACTOR or CONTRACTOR creates, receives, maintains, or transmits on behalf of COUNTY that are accessible via the Internet must be protected by a comprehensive intrusion detection and prevention solution.

3. Audit Controls

a. System Security Review. CONTRACTOR must ensure audit control mechanisms that record and examine system activity are in place. All systems processing and/or storing PHI COUNTY discloses to CONTRACTOR or CONTRACTOR creates, receives, maintains, or transmits on behalf of COUNTY must have at least an annual system risk assessment/security review which provides assurance that administrative, physical, and technical controls are functioning effectively and providing adequate levels of protection. Reviews should include vulnerability scanning tools.

b. Log Reviews. All systems processing and/or storing PHI COUNTY discloses to CONTRACTOR or CONTRACTOR creates, receives, maintains, or transmits on behalf of COUNTY must have a routine procedure in place to review system logs for unauthorized access.

c. Change Control. All systems processing and/or storing PHI COUNTY discloses to CONTRACTOR or CONTRACTOR creates, receives, maintains, or transmits on behalf of COUNTY must have a documented change control procedure that ensures separation of duties and protects the confidentiality, integrity and availability of data.

4. Business Continuity/Disaster Recovery Control

a. Emergency Mode Operation Plan. CONTRACTOR must establish a documented plan to enable continuation of critical business processes and protection of the security of PHI COUNTY discloses to CONTRACTOR or CONTRACTOR creates, receives, maintains, or transmits on behalf of COUNTY kept in an electronic format in the event of an emergency. Emergency means any circumstance or situation that causes normal computer operations to become unavailable for use in performing the work required under this Agreement for more than twenty four (24) hours.

b. Data Backup Plan. CONTRACTOR must have established documented procedures to backup such PHI to maintain retrievable exact copies of the PHI. The plan must include a regular schedule for making backups, storing backup offsite, an inventory of backup media, and an estimate of the amount of time needed to restore DHCS PHI or PI should it be lost. At a minimum, the schedule must be a weekly full backup and monthly offsite storage of DHCS data. BCP for CONTRACTOR and COUNTY (e.g. the application owner) must merge with the DRP.

5. Paper Document Controls

a. Supervision of Data. PHI COUNTY discloses to CONTRACTOR or CONTRACTOR creates, receives, maintains, or transmits on behalf of COUNTY in paper form shall not be left unattended at any time, unless it is locked in a file cabinet, file room, desk or office. Unattended means that information is not being observed by an employee authorized to access the information. Such PHI

//

in paper form shall not be left unattended at any time in vehicles or planes and shall not be checked in baggage on commercial airplanes.

b. Escorting Visitors. Visitors to areas where PHI COUNTY discloses to CONTRACTOR or CONTRACTOR creates, receives, maintains, or transmits on behalf of COUNTY is contained shall be escorted and such PHI shall be kept out of sight while visitors are in the area.

c. Confidential Destruction. PHI COUNTY discloses to CONTRACTOR or CONTRACTOR creates, receives, maintains, or transmits on behalf of COUNTY must be disposed of through confidential means, such as cross cut shredding and pulverizing.

d. Removal of Data. PHI COUNTY discloses to CONTRACTOR or CONTRACTOR creates, receives, maintains, or transmits on behalf of COUNTY must not be removed from the premises of the CONTRACTOR except with express written permission of COUNTY.

e. Faxing. Faxes containing PHI COUNTY discloses to CONTRACTOR or CONTRACTOR creates, receives, maintains, or transmits on behalf of COUNTY shall not be left unattended and fax machines shall be in secure areas. Faxes shall contain a confidentiality statement notifying persons receiving faxes in error to destroy them. Fax numbers shall be verified with the intended recipient before sending the fax.

f. Mailing. Mailings containing PHI COUNTY discloses to CONTRACTOR or CONTRACTOR creates, receives, maintains, or transmits on behalf of COUNTY shall be sealed and secured from damage or inappropriate viewing of PHI to the extent possible. Mailings which include five hundred (500) or more individually identifiable records containing PHI COUNTY discloses to CONTRACTOR or CONTRACTOR creates, receives, maintains, or transmits on behalf of COUNTY in a single package shall be sent using a tracked mailing method which includes verification of delivery and receipt, unless the prior written permission of COUNTY to use another method is obtained.

F. BREACH DISCOVERY AND NOTIFICATION

1. Following the discovery of a Breach of Unsecured PHI, CONTRACTOR shall notify COUNTY of such Breach, however both parties agree to a delay in the notification if so advised by a law enforcement official pursuant to 45 CFR § 164.412.

a. A Breach shall be treated as discovered by CONTRACTOR as of the first day on which such Breach is known to CONTRACTOR or, by exercising reasonable diligence, would have been known to CONTRACTOR.

b. CONTRACTOR shall be deemed to have knowledge of a Breach, if the Breach is known, or by exercising reasonable diligence would have known, to any person who is an employee, officer, or other agent of CONTRACTOR, as determined by federal common law of agency.

2. CONTRACTOR shall provide the notification of the Breach immediately to the COUNTY Privacy Officer. CONTRACTOR's notification may be oral, but shall be followed by written notification within twenty four (24) hours of the oral notification.

3. CONTRACTOR's notification shall include, to the extent possible:

Attachment A

a. The identification of each Individual whose Unsecured PHI has been, or is reasonably believed by CONTRACTOR to have been, accessed, acquired, used, or disclosed during the Breach;

b. Any other information that COUNTY is required to include in the notification to Individual under 45 CFR §164.404 (c) at the time CONTRACTOR is required to notify COUNTY or promptly thereafter as this information becomes available, even after the regulatory sixty (60) day period set forth in 45 CFR § 164.410 (b) has elapsed, including:

1) A brief description of what happened, including the date of the Breach and the date of the discovery of the Breach, if known;

2) A description of the types of Unsecured PHI that were involved in the Breach (such as whether full name, social security number, date of birth, home address, account number, diagnosis, disability code, or other types of information were involved);

3) Any steps Individuals should take to protect themselves from potential harm resulting from the Breach;

4) A brief description of what CONTRACTOR is doing to investigate the Breach, to mitigate harm to Individuals, and to protect against any future Breaches; and

5) Contact procedures for Individuals to ask questions or learn additional information, which shall include a toll-free telephone number, an e-mail address, Web site, or postal address.

4. COUNTY may require CONTRACTOR to provide notice to the Individual as required in 45 CFR § 164.404, if it is reasonable to do so under the circumstances, at the sole discretion of the COUNTY.

5. In the event that CONTRACTOR is responsible for a Breach of Unsecured PHI in violation of the HIPAA Privacy Rule, CONTRACTOR shall have the burden of demonstrating that CONTRACTOR made all notifications to COUNTY consistent with this Subparagraph F. and as required by the Breach notification regulations, or, in the alternative, that the acquisition, access, use, or disclosure of PHI did not constitute a Breach.

6. CONTRACTOR shall maintain documentation of all required notifications of a Breach or its risk assessment under 45 CFR § 164.402 to demonstrate that a Breach did not occur.

7. CONTRACTOR shall provide to COUNTY all specific and pertinent information about the Breach, including the information listed in Section E.3.b.(1)-(5) above, if not yet provided, to permit COUNTY to meet its notification obligations under Subpart D of 45 CFR Part 164 as soon as practicable, but in no event later than fifteen (15) calendar days after CONTRACTOR's initial report of the Breach to COUNTY pursuant to Subparagraph F.2. above.

8. CONTRACTOR shall continue to provide all additional pertinent information about the Breach to COUNTY as it may become available, in reporting increments of five (5) business days after the last report to COUNTY. CONTRACTOR shall also respond in good faith to any reasonable requests for further information, or follow-up information after report to COUNTY, when such request is made by COUNTY.

9. If the Breach is the fault of CONTRACTOR, CONTRACTOR shall bear all expense or other costs associated with the Breach and shall reimburse COUNTY for all expenses COUNTY incurs in addressing the Breach and consequences thereof, including costs of investigation, notification, remediation, documentation or other costs associated with addressing the Breach.

G. PERMITTED USES AND DISCLOSURES BY CONTRACTOR

1. CONTRACTOR may use or further disclose PHI COUNTY discloses to CONTRACTOR as necessary to perform functions, activities, or services for, or on behalf of, COUNTY as specified in the Agreement, provided that such use or Disclosure would not violate the HIPAA Privacy Rule if done by COUNTY except for the specific Uses and Disclosures set forth below.

a. CONTRACTOR may use PHI COUNTY discloses to CONTRACTOR, if necessary, for the proper management and administration of CONTRACTOR.

b. CONTRACTOR may disclose PHI COUNTY discloses to CONTRACTOR for the proper management and administration of CONTRACTOR or to carry out the legal responsibilities of CONTRACTOR, if:

1) The Disclosure is required by law; or

2) CONTRACTOR obtains reasonable assurances from the person to whom the PHI is disclosed that it will be held confidentially and used or further disclosed only as required by law or for the purposes for which it was disclosed to the person and the person immediately notifies CONTRACTOR of any instance of which it is aware in which the confidentiality of the information has been breached.

c. CONTRACTOR may use or further disclose PHI COUNTY discloses to CONTRACTOR to provide Data Aggregation services relating to the Health Care Operations of CONTRACTOR.

2. CONTRACTOR may use PHI COUNTY discloses to CONTRACTOR, if necessary, to carry out legal responsibilities of CONTRACTOR.

3. CONTRACTOR may use and disclose PHI COUNTY discloses to CONTRACTOR consistent with the minimum necessary policies and procedures of COUNTY.

4. CONTRACTOR may use or disclose PHI COUNTY discloses to CONTRACTOR as required by law.

H. PROHIBITED USES AND DISCLOSURES

1. CONTRACTOR shall not disclose PHI COUNTY discloses to CONTRACTOR or CONTRACTOR creates, receives, maintains, or transmits on behalf of COUNTY about an individual to a health plan for payment or health care operations purposes if the PHI pertains solely to a health care item or service for which the health care provider involved has been paid out of pocket in full and the individual requests such restriction, in accordance with 42 USC § 17935(a) and 45 CFR § 164.522(a).

2. CONTRACTOR shall not directly or indirectly receive remuneration in exchange for PHI COUNTY discloses to CONTRACTOR or CONTRACTOR creates, receives, maintains, or transmits on

behalf of COUNTY, except with the prior written consent of COUNTY and as permitted by 42 USC § 17935(d)(2).

I. OBLIGATIONS OF COUNTY

1. COUNTY shall notify CONTRACTOR of any limitation(s) in COUNTY's notice of privacy practices in accordance with 45 CFR § 164.520, to the extent that such limitation may affect CONTRACTOR's Use or Disclosure of PHI.

2. COUNTY shall notify CONTRACTOR of any changes in, or revocation of, the permission by an Individual to use or disclose his or her PHI, to the extent that such changes may affect CONTRACTOR's Use or Disclosure of PHI.

3. COUNTY shall notify CONTRACTOR of any restriction to the Use or Disclosure of PHI that COUNTY has agreed to in accordance with 45 CFR § 164.522, to the extent that such restriction may affect CONTRACTOR's Use or Disclosure of PHI.

4. COUNTY shall not request CONTRACTOR to use or disclose PHI in any manner that would not be permissible under the HIPAA Privacy Rule if done by COUNTY.

J. BUSINESS ASSOCIATE TERMINATION

1. Upon COUNTY's knowledge of a material Breach or violation by CONTRACTOR of the requirements of this Business Associate Contract, COUNTY shall:

a. Provide an opportunity for CONTRACTOR to cure the material Breach or end the violation within thirty (30) business days; or

b. Immediately terminate the Agreement, if CONTRACTOR is unwilling or unable to cure the material Breach or end the violation within thirty (30) days, provided termination of the Agreement is feasible.

2. Upon termination of the Agreement, CONTRACTOR shall either destroy or return to COUNTY all PHI CONTRACTOR received from COUNTY or CONTRACTOR created, maintained, or received on behalf of COUNTY in conformity with the HIPAA Privacy Rule.

a. This provision shall apply to all PHI that is in the possession of Subcontractors or agents of CONTRACTOR.

b. CONTRACTOR shall retain no copies of the PHI.

c. In the event that CONTRACTOR determines that returning or destroying the PHI is not feasible, CONTRACTOR shall provide to COUNTY notification of the conditions that make return or destruction infeasible. Upon determination by COUNTY that return or destruction of PHI is infeasible, CONTRACTOR shall extend the protections of this Business Associate Contract to such PHI and limit further Uses and Disclosures of such PHI to those purposes that make the return or destruction infeasible, for as long as CONTRACTOR maintains such PHI.

3. The obligations of this Business Associate Contract shall survive the termination of the Agreement.

//

EXHIBIT C
TO AGREEMENT FOR PROVISION OF
STRESS MANAGEMENT EDUCATION SERVICES
BETWEEN
COUNTY OF ORANGE
AND
ORANGE COUNTY SUPERINTENDENT OF SCHOOLS
DBA ORANGE COUNTY DEPARTMENT OF EDUCATION
AUGUST 1, 2016 THROUGH JUNE 30, 2019

I. PERSONAL INFORMATION AND SECURITY CONTRACT

Any reference to statutory, regulatory, or contractual language herein shall be to such language as in effect or as amended.

A. DEFINITIONS

1. "Breach" shall have the meaning given to such term under the IEA and CMPPA. It shall include a "PII loss" as that term is defined in the CMPPA.

2. "Breach of the security of the system" shall have the meaning given to such term under the CIPA, CCC § 1798.29(d).

3. "CMPPA Agreement" means the CMPPA Agreement between SSA and CHHS.

4. "DHCS PI" shall mean PI, as defined below, accessed in a database maintained by the COUNTY or DHCS, received by CONTRACTOR from the COUNTY or DHCS or acquired or created by CONTRACTOR in connection with performing the functions, activities and services specified in the Agreement on behalf of the COUNTY.

5. "IEA" shall mean the IEA currently in effect between SSA and DHCS.

6. "Notice-triggering PI" shall mean the PI identified in CCC § 1798.29(e) whose unauthorized access may trigger notification requirements under CCC § 1709.29. 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 a finger or voice print, a photograph or a biometric identifier. Notice-triggering PI includes PI in electronic, paper or any other medium.

7. "PII" shall have the meaning given to such term in the IEA and CMPPA.

8. "PI" shall have the meaning given to such term in CCC § 1798.3(a).

9. "Required by law" means a mandate contained in law that compels an entity to make a use or disclosure of PI or PII that is enforceable in a court of law. This includes, but is not limited to, court orders and court-ordered warrants, subpoenas or summons issued by a court, grand jury, a governmental or tribal inspector general, or an administrative body authorized to require the production of information, and a civil or an authorized investigative demand. It also includes Medicare conditions of participation with respect to health care providers participating in the program,

and statutes or regulations that require the production of information, including statutes or regulations that require such information if payment is sought under a government program providing public benefits.

10. "Security Incident" means the attempted or successful unauthorized access, use, disclosure, modification, or destruction of PI, or confidential data utilized in complying with this Agreement; or interference with system operations in an information system that processes, maintains or stores PI.

B. TERMS OF AGREEMENT

1. Permitted Uses and Disclosures of DHCS PI and PII by CONTRACTOR. Except as otherwise indicated in this Exhibit, CONTRACTOR may use or disclose DHCS PI only to perform functions, activities, or services for or on behalf of the COUNTY pursuant to the terms of the Agreement provided that such use or disclosure would not violate the CIPA if done by the COUNTY.

2. Responsibilities of CONTRACTOR

CONTRACTOR agrees:

a. Nondisclosure. Not to use or disclose DHCS PI or PII other than as permitted or required by this Personal Information Privacy and Security Contract or as required by applicable state and federal law.

b. Safeguards. To implement appropriate and reasonable administrative, technical, and physical safeguards to protect the security, confidentiality and integrity of DHCS PI and PII, to protect against anticipated threats or hazards to the security or integrity of DHCS PI and PII, and to prevent use or disclosure of DHCS PI or PII other than as provided for by this Personal Information Privacy and Security Contract. CONTRACTOR shall develop and maintain a written information privacy and security program that include administrative, technical and physical safeguards appropriate to the size and complexity of CONTRACTOR's operations and the nature and scope of its activities, which incorporate the requirements of Subparagraph c., below. CONTRACTOR will provide COUNTY with its current policies upon request.

c. Security. CONTRACTOR shall ensure the continuous security of all computerized data systems containing DHCS PI and PII. CONTRACTOR shall protect paper documents containing DHCS PI and PII. These steps shall include, at a minimum:

1) Complying with all of the data system security precautions listed in Subparagraph E. of the Business Associate Contract, Exhibit B to the Agreement; and

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

3) If the data obtained by CONTRACTOR from COUNTY includes PII, CONTRACTOR shall also comply with the substantive privacy and security requirements in the

CMPPA Agreement between SSA and CHHS and in the Agreement between SSA and DHCS, known as the IEA. The specific sections of the IEA with substantive privacy and security requirements to be complied with are sections E, F, and G, and in Attachment 4 to the IEA, Electronic Information Exchange Security Requirements, Guidelines and Procedures for Federal, State and Local Agencies Exchanging Electronic Information with SSA. CONTRACTOR also agrees to ensure that any of CONTRACTOR's agents or subcontractors, to whom CONTRACTOR provides DHCS PII agree to the same requirements for privacy and security safeguards for confidential data that apply to CONTRACTOR with respect to such information.

d. Mitigation of Harmful Effects. To mitigate, to the extent practicable, any harmful effect that is known to CONTRACTOR of a use or disclosure of DHCS PI or PII by CONTRACTOR or its subcontractors in violation of this Personal Information Privacy and Security Contract.

e. CONTRACTOR's Agents and Subcontractors. To impose the same restrictions and conditions set forth in this Personal Information and Security Contract on any subcontractors or other agents with whom CONTRACTOR subcontracts any activities under the Agreement that involve the disclosure of DHCS PI or PII to such subcontractors or other agents.

f. Availability of Information. To make DHCS PI and PII available to the DHCS and/or COUNTY for purposes of oversight, inspection, amendment, and response to requests for records, injunctions, judgments, and orders for production of DHCS PI and PII. If CONTRACTOR receives DHCS PII, upon request by COUNTY and/or DHCS, CONTRACTOR shall provide COUNTY and/or DHCS with a list of all employees, contractors and agents who have access to DHCS PII, including employees, contractors and agents of its subcontractors and agents.

g. Cooperation with COUNTY. With respect to DHCS PI, to cooperate with and assist the COUNTY to the extent necessary to ensure the DHCS's compliance with the applicable terms of the CIPA including, but not limited to, accounting of disclosures of DHCS PI, correction of errors in DHCS PI, production of DHCS PI, disclosure of a security Breach involving DHCS PI and notice of such Breach to the affected individual(s).

h. Breaches and Security Incidents. During the term of the Agreement, CONTRACTOR agrees to implement reasonable systems for the discovery of any Breach of unsecured DHCS PI and PII or security incident. CONTRACTOR agrees to give notification of any Breach of unsecured DHCS PI and PII or security incident in accordance with Subparagraph F. of the Business Associate Contract, Exhibit B to the Agreement.

i. Designation of Individual Responsible for Security. CONTRACTOR shall designate an individual, (e.g., Security Officer), to oversee its data security program who shall be responsible for carrying out the requirements of this Personal Information Privacy and Security Contract and for communicating on security matters with the COUNTY.

//

//



Continuation or Deletion Request

Date: July 7, 2016
To: Clerk of the Board of Supervisors
From: Scott D. Mayer, Chief Real Estate Officer *Scott D. Mayer*
Re: ASR Control #: 16-000078, Meeting Date 7/12/16 Agenda Item No. # 23
Subject: **RV Storage Depot Lease Option Agreement**

Request to continue Agenda Item No. # 23 to the 7/26/16 Board Meeting.

Comments: Upon Board direction this item needs to be continued.

Request deletion of Agenda Item No. # _____

Comments:

RECEIVED
2016 JUL -7 PM 3:38
CLERK OF THE BOARD
ORANGE COUNTY
BOARD OF SUPERVISORS



AGENDA STAFF REPORT

Agenda Item

27

ASR Control 16-000149

23 F4

RECEIVED
2016 JUL - 7 PM 4: 07
CLERK OF THE BOARD
ORANGE COUNTY
BOARD OF SUPERVISORS

MEETING DATE: 07/12/16

LEGAL ENTITY TAKING ACTION: Board of Supervisors

BOARD OF SUPERVISORS DISTRICT(S): All Districts

SUBMITTING AGENCY/DEPARTMENT: County Executive Office (Approved)

DEPARTMENT CONTACT PERSON(S): Peter DeMarco (714) 834-5777
Cynthia Shintaku (714) 834-7086

SUBJECT: Grant Applications/Awards Report

CEO CONCUR Concur	COUNTY COUNSEL REVIEW Approved Resolution to Form	CLERK OF THE BOARD Discussion 3 Votes Board Majority
-----------------------------	---	---

Budgeted: N/A **Current Year Cost:** N/A **Annual Cost:** N/A

Staffing Impact: No **# of Positions:** **Sole Source:** N/A

Current Fiscal Year Revenue: N/A

Funding Source: N/A **County Audit in last 3 years:** No

Prior Board Action: N/A

RECOMMENDED ACTION(S):

Approve grant applications/awards as proposed and other actions as recommended.

1. Approve Grant Application and Adopt Resolution – Sheriff-Coroner – Emergency Management Performance Grant-\$777,980.
2. Receive and File Grant Report.

SUMMARY:

See the attached Grants Report.

BACKGROUND INFORMATION:

See the attached Grants Report.

FINANCIAL IMPACT:

N/A

STAFFING IMPACT:

N/A

ATTACHMENT(S):

Attachment A - Grants Report
Attachment B - EMPG Resolution



Grants Report

DRAFT

County Executive Office/Legislative Affairs

July 12, 2016
 Item No. 27
 Vol. XXVIII, No. 12

County of Orange Report on Grant Applications/Awards

The Grants Report is a condensed list of grant requests by County Agencies/Departments that allows the Board of Supervisors to discuss and approve grant submittals in one motion at a Board meeting. County policy dictates that the Board of Supervisors must approve all grant applications prior to submittal to the grantor. This applies to grants of all amounts, as well as to new grants and those that have been received by the County for many years as part of an ongoing grant. Receipt of grants \$50,000 or less is delegated to the County Executive Officer. Grant awards greater than \$50,000 must be presented to the Board of Supervisors for receipt of funds. This report allows for better tracking of county grant requests, the success rate of our grants, and monitoring of County's grants activities. It also serves to inform Orange County's Sacramento and Washington, D.C. advocates of County grant activities involving the State or Federal Governments.

On July 12, 2016, the Board of Supervisors will consider the following actions:

RECOMMENDED ACTIONS

Approve grant applications/awards as proposed and other actions as recommended.

ACTION ITEMS

1. Approve Grant Application and Adopt Resolution – Sheriff-Coroner – Emergency Management Performance Grant-\$777,980.
2. Receive and File Grant Report.

If you or your staff have any questions or require additional information on any of the items in this report, please contact Cynthia Shintaku at 714-834-7086

GRANT APPLICATION / AWARD AUTHORIZATION FORM

Today's Date:	June 22, 2016
Requesting Agency/Department:	Sheriff-Coroner Department
Grant Name and Project Title:	Emergency Management Performance Grant, CDFA 97.042
Sponsoring Organization/Grant Source:	Department of Homeland Security; California Office of Emergency Services
Amount Requested/ Awarded:	\$777,980
Application Due Date:	July 22, 2016
Board Date when Board Approved this Application:*	Not applicable
Awarded Funding Amount:*	
Notification Date of Funding Award:*	
Is this an Authorized Retroactive Grant Application/Award? (If yes, attach memo to CEO) No	
Does this grant require CEQA findings?	No
What Type of Grant is this?	Competitive <input type="checkbox"/> Other Type <input checked="" type="checkbox"/> Explain: Offered by federal government to previous recipients
County Match?	Yes <input checked="" type="checkbox"/> No <input type="checkbox"/> Amount: 100 % Budgeted? yes Emergency Management 100-060-032-1032
Recurrence of Grant	New <input type="checkbox"/> Recurrent <input checked="" type="checkbox"/>
Explain: Annual Basis	
Purpose of Grant Funds:	Provide a summary and brief background of why Board of Supervisors why should accept this grant application/award, and how the grant will be implemented.
<p>On December 18, 2015, the President signed Public Law 114-113, authorizing the 2016 Emergency Management Performance Grant (EMPG) under the U.S. Department of Homeland Security (DHS).</p> <p>On February 16, 2016, the DHS issued guidance and budget allocations to the States. In California, the administering agency is the California Office of Emergency Services (CalOES).</p> <p>On May 27, 2016, CalOES issued guidance to eligible applicants (Operational Areas). The grant application is due by July 22, 2016. The Orange County Sheriff's Department is responsible for administering and distributing the grant funds on behalf of the Orange County Operational Area. The notice of award is anticipated by September 2, 2016. The anticipated award amount is \$777,980.</p> <p>The purpose of the EMPG Program is to provide federal funds to states to assist state, local, and tribal governments in preparing for all hazards. Funds provided under the EMPG must be used to support activities that contribute to the Operational Area's capability to prevent, prepare for, mitigate against, respond to, and recover from emergencies and disasters, whether natural or man-made. The grant-funded activities are a continuation of services funded by previous grant cycles. The goals described within the grant application relate to emergency management organizational and enterprise enhancement, managing risk and vulnerabilities, and enhancing customer and stakeholder services.</p>	

The grant includes a pass-through of \$369,541 to local cities. These funds are distributed on a population basis to those cities who wish to apply and complete the required activities. The Operational Area Executive Board will review the proposed application budget and required activities at their quarterly meeting on August 10, 2016.

The performance period of the award is July 1, 2016 through June 30, 2017.

This grant has not been reviewed under the County Audit in the last 3 years.

ATTACHMENT(S): Resolution

Board Resolution/Special Instructions

Include requirement for a Board Resolution or authorization to accept the grant award without further Board action. Provide language for Resolution, and the name of County Counsel staff who reviewed the language/ *or County Counsel who have reviewed other documents. Please specify.

1. Authorize Sheriff-Coroner, or her designee, to sign all necessary application documents required for the submission of the application and supporting documentation to CalOES.
2. Adopt a governing body resolution authorizing the Sheriff, or specified designee, to execute any actions necessary for the purposes of obtaining federal financial assistance provided by DHS and sub-granted through CalOES, if those actions do not materially change the terms or amount of the County's commitment as it is reflected in the above-referenced grant application and assurances.

A Board of Supervisors Resolution is required to appoint an agent authorized to execute any actions necessary for the submission of the application and supporting documentation. Wendy Phillips, Senior Deputy County Counsel, has reviewed and approved the attached draft Board Resolution.

Will the grant/program create new part or full-time positions?

No

Contact:

List the name and contact information (telephone, e-mail) of the staff person to be contacted for further information.

Donna Boston 714-628-7059; dboston@ocsd.org

RESOLUTION OF THE BOARD OF SUPERVISORS OF
ORANGE COUNTY, CALIFORNIA

July 12, 2015

WHEREAS, the U.S. Department of Homeland Security, through the California Office of Emergency Services, is providing Fiscal Year 2016 Emergency Management Performance Grant funding to local Operational Areas to provide resources to sustain and enhance all-hazards emergency management capabilities;

NOW, THEREFORE, BE IT RESOLVED this Board authorizes the following positions to execute and submit to the California Office of Emergency Services, on behalf of the County of Orange, the Fiscal Year 2016 Emergency Management Performance Grant Application for assistance in the amount of \$777,980 and grant assurances:

- Sheriff-Coroner
- Undersheriff
- Assistant Sheriff
- Executive Director

BE IT FURTHER RESOLVED this Board authorizes the above-listed positions to execute, on behalf of the County of Orange, a public entity established under the laws of the State of California, any actions necessary for the purpose of obtaining federal financial assistance provided by the U.S. Department of Homeland Security and sub-granted through the State of California, if those actions do not materially change the terms or amounts of the County's commitment as it is reflected in the above-referenced grant application and assurances.

BE IT FURTHER RESOLVED that this Board will provide the required specific matching funds if the grant application is approved.



Revision to ASR and/or Attachments

Date: July 6, 2016
To: Clerk of the Board of Supervisors
CC: County Executive Office
From: Supervisor Shawn Nelson, Fourth District
Re: ASR Control #: N/A, Meeting Date July 12, 2016 Agenda Item No. # S29A
Subject: Ballot Measure – Lifetime Limit on Number of Terms for Members of the Orange County Board of Supervisors

2016 JUL -6 PM 4:55
CLERK OF THE BOARD
ORANGE COUNTY
BOARD OF SUPERVISOR

Explanation: Supervisor Shawn Nelson would like to make the following changes:

Revised Recommended Action(s)

1. Direct the Registrar of Voters to place "AN ORDINANCE OF THE COUNTY OF ORANGE, CALIFORNIA REPEALING SECTION 1-2-9 OF THE CODIFIED ORDINANCES OF THE COUNTY OF ORANGE AND ADDING ARTICLE IV, SECTIONS 401 ARTICLE I, SECTION 104 TO THE CHARTER OF ORANGE COUNTY IMPOSING A LIFETIME LIMIT ON THE NUMBER OF TERMS FOR MEMBERS OF THE ORANGE COUNTY BOARD OF SUPERVISORS," on the ballot and to consolidate that election with the Statewide general election to be held on November 8, 2016.

Make modifications to the:

Subject Background Information Summary

Revised Attachments (attach copy of revised attachment(s))

Attachment A – Draft Proposed Charter Amendment

ORDINANCE NO. ____

AN ORDINANCE OF THE COUNTY OF ORANGE, CALIFORNIA REPEALING SECTION 1-2-9 OF THE CODIFIED ORDINANCES OF THE COUNTY OF ORANGE AND ADDING ARTICLE I, SECTION 104 TO THE CHARTER OF ORANGE COUNTY IMPOSING A LIFETIME LIMIT ON THE NUMBER OF TERMS FOR MEMBERS OF THE ORANGE COUNTY BOARD OF SUPERVISORS.

The People of the County of Orange, California ordain as follows:

SECTION 1: Section 1-2-9 of Article 1 of Division 2 of Title 1 of the Codified Ordinances of the County of Orange is hereby repealed.

SECTION 2: Article I, Section 104 is hereby added to the Charter of Orange County to read as follows:

ARTICLE I. LIFETIME LIMIT ON NUMBER OF TERMS FOR MEMBERS OF THE BOARD OF SUPERVISORS.

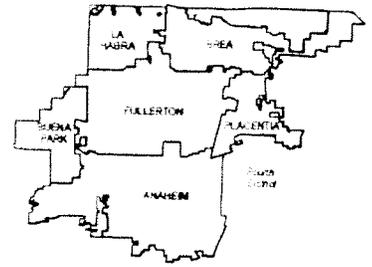
Sec. 104. Term Limits

During his or her lifetime, a person shall serve no more than three (3) full four-year terms as a member of the Board of Supervisors regardless of Supervisorial District represented. The limitation on terms shall not apply to any term to which a person is elected or appointed if the actual time served is one-half or less of the full term of office.



SHAWN NELSON
ORANGE COUNTY BOARD OF SUPERVISORS
SUPERVISOR, FOURTH DISTRICT

ORANGE COUNTY HALL OF ADMINISTRATION
333 W. SANTA ANA BLVD.
SANTA ANA, CALIFORNIA 92701
PHONE (714) 834-3440 FAX (714) 834-2045
shawn.nelson@ocgov.com
bos.ocgov.com/fourth



S29A

Memorandum

Date: July 5, 2016
To: Lisa Bartlett, Chairwoman *OF JB*
From: Shawn Nelson, Supervisor *DB for SN*
Subject: Supplemental Item, July 12th board meeting

RECEIVED
2016 JUL -6 AM 10:23
CLERK OF THE BOARD
ORANGE COUNTY
BOARD OF SUPERVISORS

Please add the following item on the July 12th, 2016 meeting agenda. The title should read:

Supervisor Nelson – Ballot Measure – Lifetime limit on number of terms for members of the Orange County Board of Supervisors



AGENDA STAFF REPORT

ASR Control

MEETING DATE: 07/12/16
TO: Orange County Clerk of the Board
LEGAL ENTITY TAKING ACTION: Board of Supervisors
SUBMITTING AGENCY/DEPARTMENT: Supervisor Nelson (714) 834-3440
DEPARTMENT CONTACT PERSON(S): Denis Bilodeau (714) 834-3440

CATEGORY: Discussion

SUBJECT: Ballot Measure--Lifetime Limit on Number of Terms for Members of the Orange County Board of Supervisors

RECOMMENDED ACTION:

1. Direct the Registrar of Voters to place "AN ORDINANCE OF THE COUNTY OF ORANGE, CALIFORNIA REPEALING SECTION 1-2-9 OF THE CODIFIED ORDINANCES OF THE COUNTY OF ORANGE AND ADDING ARTICLE IV, SECTIONS 401 TO THE CHARTER OF ORANGE COUNTY IMPOSING A LIFETIME LIMIT ON THE NUMBER OF TERMS FOR MEMBERS OF THE ORANGE COUNTY BOARD OF SUPERVISORS," on the ballot and to consolidate that election with the Statewide general election to be held on November 8, 2016.
2. Direct County Counsel to prepare the ballot language and the impartial analysis of the ordinance, and to forward them to the Registrar of Voters.
3. Request the County Auditor-Controller review the measure and prepare a fiscal impact statement.

SUMMARY/BACKGROUND:

On February 28, 2012, then Supervisor now Senator John Moorlach brought forward a proposal that would place a lifetime maximum of 12 years of service on the Orange County Board of Supervisors. This proposal at the time failed to garner enough support for placement on ballot. Senator Moorlach has contacted the Board of Supervisors to re-evaluate the proposal and place it before the voters on the November 2016 ballot.

Section 1-2-9 of the Codified Ordinances of Orange County places a limit on the number of consecutive terms that an individual can serve as a member of the Board of Supervisors. There is, however, no lifetime limitation on the number of terms an individual can serve. Accordingly, an individual can serve one or two terms on the County Board of Supervisors, leave office for a term, and then be re-elected to serve two more consecutive terms. This proposed charter amendment would place a lifetime maximum of

three full terms on an individual for serving as a County Supervisor, thereby closing the aforementioned loophole.

This proposed charter amendment also seeks to balance the need for term limits with the concern for taxpayer return on investment. Understanding the complex systems, laws, and policies that govern an organization as large as the County of Orange (18,012 employees, 22 departments) requires years of service. Forcing an individual out of office after eight years of service (as is current practice) only diminishes a Supervisor's and his/her staff's ability to capitalize on the years of education and experience to achieve significant and sustained reforms on behalf of Orange County taxpayers. County Supervisors serve on regional boards in which tenure plays a significant effect on their ability implement good public policy. In addition, of those few counties in California that impose any term limits at all, several (Los Angeles, Santa Clara, San Mateo, Ventura, San Bernardino) utilize a three, four-year term maximum, as proposed in this charter amendment. As such, this change better positions the County to achieve favorable outcomes in protracted situations that are decided at the state level.

In June of 2012, a similar measure entitled Proposition 28 was presented to the voters of the State of California. It enacted a similar 12 year term limit with a life time limit of 12 years of total service in either the Assembly or the Senate. That proposition passed statewide and in Orange County.

In summary, the intent of the voters of Orange County and the proponents of term limits was to bring fresh ideas and perspectives to government. This proposed charter amendment removes an existing loophole for skirting that intent, while also ensuring that policy reforms have sufficient time to be nurtured and implemented.

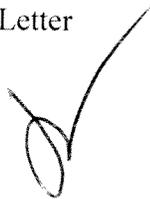
EXHIBIT(S):

Attachment A - Draft Proposed Charter Amendment

Attachment B – Redline repeal

Attachment C – Senator Moorlach Letter

COUNTY COUNSEL REVIEW:

A handwritten signature in black ink, consisting of a large, stylized 'C' followed by a checkmark-like flourish.

ORDINANCE NO. ____

AN ORDINANCE OF THE COUNTY OF ORANGE, CALIFORNIA REPEALING SECTION 1-2-9 OF THE CODIFIED ORDINANCES OF THE COUNTY OF ORANGE AND ADDING ARTICLE IV, SECTION 401 TO THE CHARTER OF ORANGE COUNTY IMPOSING A LIFETIME LIMIT ON THE NUMBER OF TERMS FOR MEMBERS OF THE ORANGE COUNTY BOARD OF SUPERVISORS.

The People of the County of Orange, California ordain as follows:

SECTION 1: Section 1-2-9 of Article 1 of Division 2 of Title 1 of the Codified Ordinances of the County of Orange is hereby repealed.

SECTION 2: Article IV, Section 401 and is hereby added to the Charter of Orange County to read as follows:

ARTICLE IV. LIFETIME LIMIT ON NUMBER OF TERMS FOR MEMBERS OF THE BOARD OF SUPERVISORS.

Sec. 401. Term Limits

During his or her lifetime, a person shall serve no more than three (3) full four-year terms as a member of the Board of Supervisors regardless of Supervisorial District represented. The limitation on terms shall not apply to any term to which a person is elected or appointed if the actual time served is one-half or less of the full term of office.

Attachment B

~~Sec. 1-2-9. Term limits.~~

- ~~(a) No person shall serve more than two (2) consecutive four-year terms as a member of the Board of Supervisors regardless of Supervisorial District represented.~~
- ~~(b) The limitation contained in subsection (a) shall only apply to service for consecutive terms. No other limitation on the number of terms a person may serve is intended.~~
- ~~(c) As required by Government Code section 25000(b), this term limit provision shall apply prospectively only, to terms commencing on or after January 1, 1997.~~

CAPITOL OFFICE
STATE CAPITOL
SACRAMENTO, CA 95814
(916) 651-4037

DISTRICT OFFICE
940 SOUTH COAST DR
SUITE 185
COSTA MESA, CA 92626
(714) 662-6050

California State Senate



SENATOR
JOHN M. W. MOORLACH
THIRTY-SEVENTH SENATE DISTRICT

COMMITTEES
JUDICIARY
VICE CHAIR
BUDGET & FISCAL REVIEW
GOVERNANCE & FINANCE
PUBLIC EMPLOYMENT AND
RETIREMENT

June 24, 2016

Hon. Lisa Bartlett
Chair, Orange County Board of Supervisors
333 W. Santa Ana Blvd, Fifth Floor
Santa Ana, CA 92701

Dear Chairwoman Bartlett,

I am writing to urge the Orange County Board of Supervisors to re-evaluate a proposal I previously brought forward while I was a County Supervisor. As you may know, during my service on the Board of Supervisors I asked my colleagues to consider a change from the current two consecutive term soft limit to a three term lifetime term limit. I did not gain the requisite votes to place this proposal on the ballot.

The fact remains that there is still no limit to the number of terms someone may serve on the Board of Supervisors, only a limit on the amount of terms someone may serve consecutively. I believe it is time to ask the voters to consider implementing a hard limit of three life time terms. The current ordinance that is in place contains a massive loophole and I still feel it is important to allow the voters of Orange County to decide this issue.

Term limits clearly serve a purpose, they keep our elected officials accountable to the laws they pass. However, as with any well intended policy, unintended consequences arise. When term limit policies are brought forward, many times public officials must learn on the job and are forced from office before attaining the knowledge and skill set required before they can make substantive positive changes. I believe a hard term limit of three terms for any person elected to the Board of Supervisors would allow members to gain institutional knowledge, govern more effectively and stop the future revolving door of termed out politicians going on and off and on again to the Board of Supervisors. For these reasons I urge the Board of Supervisors to consider putting this issue before the voters.

Please do not hesitate to contact me should you have any questions regarding this issue.

Very truly yours,

A handwritten signature in black ink that reads "John Moorlach".

John M. W. Moorlach

Cc: Orange County Board of Supervisors



County Executive Office

S29B

Memorandum

July 6, 2016

To: Clerk of the Board of Supervisors

From: Frank Kim, County Executive Officer 

Subject: Exception to Rule 21

RECEIVED
2016 JUL -6 PM 4:16
CLERK OF THE BOARD
ORANGE COUNTY
BOARD OF SUPERVISORS

The County Executive Office is requesting a supplemental for the July 12, 2016, Board Hearing Meeting.

Agency: County Executive Office
Subject: Public Defender Employment Agreement
Districts: All Districts

Reason for supplemental: Upon direction from Board of Supervisors, this Agenda Staff Report needs to be scheduled for the July 12, 2016, Board meeting.

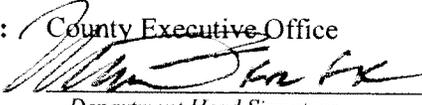
Concur:


Chairwoman Lisa Bartlett, Supervisor, Fifth District

cc: Board of Supervisors
County Executive Office
County Counsel

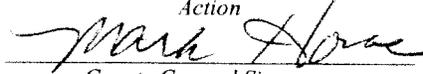


**SUPPLEMENTAL AGENDA ITEM
AGENDA STAFF REPORT**

MEETING DATE: 07/12/2016
LEGAL ENTITY TAKING ACTION: Board of Supervisors
BOARD OF SUPERVISORS DISTRICT(S): All Districts
SUBMITTING AGENCY/DEPARTMENT: County Executive Office
DEPARTMENT HEAD REVIEW: 
Department Head Signature
DEPARTMENT CONTACT PERSON(S): Mark Denny (714) 834-3028
Lilly Simmering (714) 834-6748

RECEIVED
2016 JUL -6 PM 4:16
CLERK OF THE BOARD
ORANGE COUNTY
BOARD OF SUPERVISORS

SUBJECT: Public Defender Employment Agreement

CEO CONCUR	COUNTY COUNSEL REVIEW	CLERK OF THE BOARD
 <i>CEO Signature</i>	<u>APPROVE AS TO FORM</u> <i>Action</i>  <i>County Counsel Signature</i>	Discussion
		3 Votes Board Majority

Budgeted: Yes	Current Year Cost: \$337,050	Annual Cost: See Financial Impact Section
Staffing Impact: No	# of Positions: N/A	Sole Source: N/A
Current Fiscal Year Revenue: N/A		
Funding Source: General Fund: 100%		County Audit in last 3 years: No

Prior Board Action: 06/28/2016 #SCS7

RECOMMENDED ACTION(S):
Approve employment agreement with Sharon Petrosino as the Orange County Public Defender, effective July 12, 2016, at an hourly rate of \$104.02 and total compensation of \$337,050 including benefits.

SUMMARY:
Appointment of Sharon Petrosino as the Orange County Public Defender, effective July 12, 2016, will fill the position with a permanent appointment subject to the terms of the employment agreement.

BACKGROUND INFORMATION:
On March 15, 2016, the County of Orange initiated a national recruitment in conjunction with Executive Search Firm, Bob Murray and Associates, to fill the vacant Public Defender position. The recruitment

closed on April 15, 2016. The candidate pool consisted of 36 individuals from the Offices of the Public Defender and law firms throughout the country. Eight candidates were selected to interview with an external panel of subject matter experts and an internal subcommittee consisting of Supervisors Andrew Do and Todd Spitzer of the Orange County Board of Supervisors. Following the initial round of interviews, on June 28, 2016, the Board of Supervisors unanimously appointed Sharon Petrosino as Orange County Public Defender, subject to approval of the attached employment contract.

Sharon Petrosino possesses an excellent background for this position. Ms. Petrosino has been with the Office of the Orange County Public Defender for over 30 years representing indigent clients in cases ranging from homicides and capital cases to appellate work throughout the Orange County Courts and Court of Appeal. Following former Orange County Public Defender Frank Ospino's departure in December 2015, Ms. Petrosino was appointed by the Board of Supervisors as the Interim Public Defender overseeing the management of the Offices of Public Defender.

Ms. Petrosino received her juris doctor degree from the Southwestern University School of Law and a Bachelor of Arts degree from Rutgers University. She is a member of the Orange County Bar Association, the California Public Defender's Association and California Attorneys for Criminal Justice.

FINANCIAL IMPACT:

In accordance with the Salary Schedule, the hourly rate for the Orange County Public Defender is \$104.02. The total annual compensation including benefits is \$337,050.

STAFFING IMPACT:

N/A

ATTACHMENT(S):

Attachment A - Sharon Petrosino Resume
Attachment B - Employee Contract

Sharon Petrosino

14 Civic Center Plaza
Santa Ana, CA 92701
Home: (562) 439-5106
Work: (714) 834-5322
sharon.petrosino@pubdef.ocgov.com

PROFESSIONAL EXPERIENCE

Interim Public Defender

Orange County Public Defender, Santa Ana 92701

December 2015 –Present

Perform all the responsibilities of the Public Defender including but not limited to:

- Work collaboratively with the County Board of Supervisors and CEO's Office
- Preparing and administering the Department's budget
- Responsible for the operations of the Offices of the Public Defender
- Coordinating and providing general direction to all three Offices of the Public Defender
- Evaluating, enhancing and creating innovate service performance
- Conferring regularly with Judges, the District Attorney, law enforcement agencies and other community representatives

Chief Deputy Public Defender

Orange County Public Defender, Santa Ana 92701

April 2014 – December 2015

- Direct, organize and supervise multiple branch offices or a major functional unit which includes supervision over a large staff of attorneys and support staff
- Developed a thorough knowledge of operations, training, discipline, labor law and effective management practice and theory
- Assist in the administration of the office by developing organizational plans, policies and procedures and assist in implementation
- Oversees training and training curriculum

- Confer and collaborate regularly with Judges, Probation Officers, Police Chiefs, Prosecuting attorneys and other County Departments regarding policy matters of the Public Defender's Office
- Directly supervises the Senior Assistant Public Defenders
- Assess transfer and rotation needs as brought forth by Senior Assistants and Assistant Public Defenders
- Oversees staff selection and promotions as well as all office recruitments
- Oversees and coordinates peer review process
- Coordinates the preparation of the department Policies and Procedures Manual
- Work with the Administrative Team, the Senior Assistant Public Defenders and Assistant Public Defenders to ensure effective evaluations and compliance with time requirements
- Proficient in the use of technology and able to assist in the development of the department's technology system including but not limited to development of a new office intranet Portal
- Attended Oversight meetings with Collaborative Partners and Stakeholders in Drug Court Oversight, SACPA Oversight and Collaborative Court Oversight
- Stays current on criminal law practice and procedure through training, the Daily Journal and other legal publications
- Participate in professional organizations and associations and attend functions that are work related
- Knowledge of and responsibility for actions pertaining to employment law, office policy and procedures, County policies and procedures and discipline procedures
- Participated in disciplinary internal investigations and interactive/accommodation meetings with department human resources
- Authorize expert and travel expenditures

Senior Assistant Public Defender

Felony Panel Attorney Supervisor, Superior Court

August 2011 – April 2014

- Managed staff of 6 Assistant Public Defenders, 55 attorneys, 5 Senior investigators, clerical, investigative assistants and paralegals
- Attended Oversight meetings with Collaborative Partners and Stakeholders in Drug Court Oversight, SACPA Oversight

- Prepared monthly reports on all issues concerning my court
- Developed and maintain positive working relationships with members of the criminal justice system
- Participate in professional organizations and associations and attend functions that are work related
- Knowledge of and responsibility for actions pertaining to employment, law, office policy and procedures, County policies and procedures and discipline procedures
- Participated in disciplinary internal investigations and interactive/accommodation meetings with department human resources
- Weekly meetings with staff to discuss matters of concern and make assignments

Assistant Public Defender

Head of Court, North Justice Center

September 2008 – August 2011

Head of Court, West Justice Center

January 2007 – September 2008

- Responsible for operations of branch court
- Managed staff - 17 attorneys, 1 lead clerical, 5 staff clerical, 1 Senior Investigator, 6 staff investigators
- Directly supervised the Senior Investigator of the branch court
- Supervise and trained newly assigned attorney staff
- Counsel and discipline staff as needed
- Participate in peer/management review and recommend staff for promotions as well as other recruitments
- Respond to the needs of the staff at their assigned branch office
- Observe performance of attorney staff in court and in the office, review files and prepare honest, objective detailed evaluations
- Interacted daily with: law enforcement, court staff, Judges and the District Attorney's Office
- Prepared comprehensive monthly reports on all issues affecting the court

- Weekly meetings with staff to discuss matters of concern

Trial Work

January 1985 – January 2007

I have worked every assignment available in this office:

- Calendar Court: Superior Court arraignments and probation violations
- Juvenile Court: 602 and 300 caseload
- Felony and Misdemeanor Trials
- Homicide Trials/Special Circumstance/Capital Trials
- Appellate Work included writing and litigating my own motions and writs. I have argued several cases in the Court of Appeal. I also have 4 published cases in the Court of Appeal that I personally wrote and argued.

Law Clerk

1983-1984

Law Clerk

Federal Public Defender, Los Angeles

1982-1983

WRITTEN WORKS/COMPILATIONS

- Transcript Library: developed and implemented office library consisting of transcripts of prosecution experts prior testimony
- Expert Witness Database: developed and implemented.
- Sex Case Checklist: a general outline of how to handle sex cases. The Orange County Public Defender's Office and CPDA has adopted it in their training manuals.
- Dog Sniff Discovery Checklist: a general outline on how to handle dog tracking discovery.

EDUCATION

Juris Doctor 1984

Southwestern School of Law, Los Angeles, CA

Bachelor of Arts, Political Science and History 1981

Minor, English

Rutgers University, New Brunswick, NJ

ADDITIONAL EDUCATION

Seminars Taught and Attended:

- Attended numerous State, County and In-house management and leadership seminars.
- Instruct several times a year: in-house training covering all topics of trial work including but not limited to: ethics, gender equality, substance abuse, mental health issues, handling difficult clients, sexual assault issues, all areas of forensic work, handling high profile cases, open/closing statements, cross examinations, voir dire and capital work
- Instruct yearly for CPDA: topics have included voir dire, opening statement, sexual assault cases, and cross examination.

PROFESSIONAL AFFILIATIONS

California Public Defender Association- Member and Lecturer

California Attorney for Criminal Justice

Orange County Bar Association

INTERESTS

Sports (including running, yoga, diving, sky diving, snowboarding and water sports)

Animal Rescue

**COUNTY OF ORANGE
EMPLOYMENT AGREEMENT
FOR
PUBLIC DEFENDER**

This Employment Agreement for the Public Defender ("AGREEMENT") is made by and between the County of Orange ("COUNTY") and Sharon L. Petrosino (hereinafter "PETROSINO").

IT IS MUTUALLY AGREED:

1. APPOINTMENT

In accordance with the June 28, 2016, minute order of the Orange County Board of Supervisors ("BOARD") conditionally appointing PETROSINO to the Office of Public Defender, the COUNTY hereby agrees to employ PETROSINO as the Public Defender on the terms and conditions specified herein. PETROSINO hereby agrees to accept her appointment to the Office of Public Defender and agrees to serve as an employee of the COUNTY.

2. TERM

This AGREEMENT is for a four-year term commencing on July 12, 2016, and ending on Saturday, June 11, 2020 (hereinafter "EXPIRATION DATE"), unless extended by the parties in accordance with Section 9, below.

3. DUTIES, RESPONSIBILITIES, AND AUTHORITY

Acting under the administrative supervision of the COUNTY Chief Operating Officer, PETROSINO shall be responsible for the overall operation of the Office of the Public Defender. PETROSINO shall perform the duties and responsibilities of the Public Defender, including those duties and responsibilities set forth in Chapter 13 of Part 3 of Division 2 of Title 3 of the California Government Code, and in the Codified Ordinances of the County of Orange, as well as any other such duties that may be prescribed by law, and shall at all times competently perform such duties in a manner that is both (1) satisfactory to the Board, and (2) consistent with the California Rules of Professional Conduct.

4. COMPLIANCE WITH THE LAW AND COUNTY CODE OF ETHICS

PETROSINO shall, during the term of this AGREEMENT, comply with all laws and regulations, all Codified Ordinances of the County of Orange, and shall also comply with the County Code of Ethics (Board Resolution No. 16-055). By signing this AGREEMENT, PETROSINO acknowledges that, as the Public Defender, she shall be a "designated employee" required to file a Statement of Economic Interests (FPPC Form 700) and agrees that she will comply with the Orange County Gift Ban Ordinance (commencing at section 1-3-21 of the Codified Ordinances of the County of Orange).

5. **PERFORMANCE EVALUATION**

The COUNTY Chief Operating Officer will evaluate the performance of PETROSINO both formally and informally on an ongoing basis. At least annually, however, PETROSINO shall receive a formal evaluation based on her performance as Public Defender. However, a failure to complete this formal evaluation will not affect any other provision of this AGREEMENT.

6. **COMPENSATION, BENEFITS, AND ANNUAL LEAVE**

For services rendered to the COUNTY as Public Defender, PETROSINO shall be compensated at an hourly rate of \$104.02. PETROSINO shall receive compensation in the same manner, and at the same times, and shall be entitled to receive the same adjustments in compensation, as other COUNTY Executive Management (Group II) employees generally. As the position of Public Defender is an overtime-exempt executive position, PETROSINO shall not be entitled to overtime pay under either the Fair Labor Standards Act or California law.

PETROSINO shall accrue Vacation and Sick Leave at the same rate as other COUNTY Executive Management (Group II) employees, and shall be entitled to a payoff for all accrued, unused Vacation Time, Comp Time, and Annual Leave (but not Sick Leave) at the time of separation of employment, in accordance with the requirements of California law. PETROSINO shall receive the same benefits generally provided to other Executive Management (Group II) employees, except as otherwise provided herein or in other acts of the BOARD. PETROSINO shall be a member of the Orange County Employees Retirement System, and shall be required to pay the employee's share of the normal cost of her pension benefit plus the complete reverse pick-up.

7. **RESIGNATION/TERMINATION**

PETROSINO shall serve as Public Defender at the sole pleasure of the Board. This AGREEMENT may be terminated "at will" by either PETROSINO or the Board at any time, and without notice. Upon termination of this AGREEMENT, the authority of PETROSINO to serve as the Public Defender shall immediately terminate and the Office of Public Defender shall be deemed vacant under Government Code section 24105.

PETROSINO is advised and, with her signature below, hereby acknowledges and agrees that she shall have none of the due process rights of a regular, full-time COUNTY employee. As a condition of her appointment, PETROSINO knowingly, willingly, and voluntarily gives up, waives, and disclaims any and all rights she may have, express or implied, to any notice and/or hearing either before or after termination of this AGREEMENT, and to any continued employment with the COUNTY after termination of this AGREEMENT.

In the event the BOARD decides to terminate this AGREEMENT, PETROSINO shall receive from the COUNTY a lump sum severance payment, equal to three (3) months of salary, payable as wages, less any applicable taxes and deductions. However, this AGREEMENT shall

terminate automatically, without further action of the BOARD, and PETROSINO shall not be entitled to this or any other severance package from the COUNTY, if (1) PETROSINO voluntarily resigns her employment; (2) PETROSINO elects to apply for a pension or similar defined-benefit retirement from any public pension system; or (3) the COUNTY terminates this AGREEMENT for "good cause" under the legal standard set forth in *Cotran v. Rollins Hudig Hall International, Inc.*, 17 Cal. 4th 93 (1998).

PETROSINO may voluntarily terminate her employment at any time, and for any reason, except she shall give the COUNTY thirty (30) days' written notice prior to the effective date of the voluntary termination of her employment.

8. MERGER

This AGREEMENT is intended as the final expression of the agreement between the COUNTY and PETROSINO. The COUNTY and PETROSINO acknowledge and agree that no representations, inducements, promises and/or agreements, oral or written, have been made by any party or any person acting on behalf of any party, which are not embodied herein. The COUNTY and PETROSINO also agree that no other agreement, statement, or promise beyond the terms and conditions expressly stated in this AGREEMENT are binding.

9. MODIFICATION

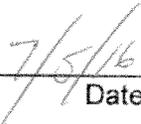
This AGREEMENT, including its term, may be modified by mutual agreement between the County Executive Officer, acting on behalf of the COUNTY, and PETROSINO. However, no waiver or modification of this AGREEMENT shall be valid unless in writing and duly executed by the parties hereto.

10. ACKNOWLEDGEMENT AND CONSENT

By signing below, PETROSINO and Chairwoman Lisa A. Bartlett, authorized by action of the BOARD to sign this AGREEMENT on behalf of the COUNTY, acknowledge that they each have read and fully understand the terms and conditions of this AGREEMENT, and that they consent and agree to each and every term and condition contained herein.



Sharon L. Petrosino



Date

FOR THE COUNTY OF ORANGE:

Lisa A. Bartlett
Chairwoman of the Board of Supervisors
County of Orange

Date

Signed and certified that a copy of this document has been delivered to the Chairman of the Board per G.C. Sec. 25103, Reso 79-1535

Attest:

Robin Stieler
Clerk of the Board of Supervisors
Orange County, California

Approved as to form:
Office of the County Counsel
Orange County, California

By: Mark Howe, SUPERVISING DEPUTY FOR
Leon J. Page, COUNTY COUNSEL
County Counsel



OFFICE OF THE COUNTY COUNSEL
COUNTY OF ORANGE

333 West Santa Ana Boulevard, Suite 407
Santa Ana, California 92701
Direct No.: (714) 834-3303
E-Mail: leon.page@coco.ocgov.com

LEON J. PAGE
COUNTY COUNSEL

Agenda Item No. SCS-~~4~~
July 12, 2016

MEMORANDUM

July 6, 2016

TO: Robin Stieler, Clerk of the Board of Supervisors
FROM: Leon J. Page, County Counsel
SUBJECT: Request for Supplemental Closed Session

RECEIVED
2016 JUL -6 AM 9:58
CLERK OF THE BOARD
ORANGE COUNTY
BOARD OF SUPERVISORS

I am requesting a supplemental closed session on Tuesday, July 12, 2016, to discuss with the Board the status of existing litigation, pursuant to Government Code section 54956.9(d)(1).

Accordingly, please prepare the Agenda Item to read:

“CONFERENCE WITH LEGAL COUNSEL --
EXISTING LITIGATION Pursuant to Government Code Section
54956.9(d)(1).
Name of Case: *Lorena Martinez v. Carlos Bustamante and County
of Orange*, Orange County Superior Court Case No. 30-2013-
00666624.

RECOMMENDED ACTION: Conduct Closed Session.”

Thank you.

LJP:nr

cc: Members of the Board of Supervisors
Frank Kim, CEO



OFFICE OF THE COUNTY COUNSEL
COUNTY OF ORANGE

333 West Santa Ana Boulevard, Suite 407
Santa Ana, California 92701
Direct No.: (714) 834-3303
E-Mail: leon.page@coco.ocgov.com

LEON J. PAGE
COUNTY COUNSEL

Agenda Item No. SCS-5
July 12, 2016

MEMORANDUM

TO: Robin Stieler, Clerk of the Board of Supervisors
FROM: Leon J. Page, County Counsel
SUBJECT: Request for Supplemental Closed Session

July 2016
2016 JUL -6 AM 9:58
RECEIVED
CLERK OF THE BOARD
ORANGE COUNTY
BOARD OF SUPERVISORS

I am requesting a supplemental closed session on Tuesday, July 12, 2016, to discuss with the Board the status of existing litigation, pursuant to Government Code section 54956.9(d)(1).

Accordingly, please prepare the Agenda Item to read:

“CONFERENCE WITH LEGAL COUNSEL --
EXISTING LITIGATION Pursuant to Government Code Section
54956.9(d)(1).
Name of Case: *Jackelyne Mora v. Carlos Bustamante and County
of Orange*, Orange County Superior Court Case No. 30-2013-
00672190.

RECOMMENDED ACTION: Conduct Closed Session.”

Thank you.

Jack W. Stiller, Sr. Asst.
A LJP

LJP:nr

cc: Members of the Board of Supervisors
Frank Kim, CEO



OFFICE OF THE COUNTY COUNSEL
COUNTY OF ORANGE

333 West Santa Ana Boulevard, Suite 407
Santa Ana, California 92701
Direct No.: (714) 834-3303
E-Mail: leon.page@coco.ocgov.com

LEON J. PAGE
COUNTY COUNSEL

Agenda Item No. SCS- 6
July 12, 2016

MEMORANDUM

TO: Robin Stieler, Clerk of the Board of Supervisors
FROM: Leon J. Page, County Counsel
SUBJECT: Request for Supplemental Closed Session

RECEIVED
2016 JUL -8 PM 3:51
CLERK OF THE BOARD
ORANGE COUNTY
BOARD OF SUPERVISORS
July 8, 2016

I am requesting a supplemental closed session on Tuesday, July 12, 2016, to discuss with the Board the status of existing litigation, pursuant to Government Code section 54956.9(d)(1).

Accordingly, please prepare the Agenda Item to read:

“CONFERENCE WITH LEGAL COUNSEL --
EXISTING LITIGATION Pursuant to Government Code Section
54956.9(d)(1).
Name of Cases: *Steve Castillo v. County of Orange, Code
Enforcement*, Orange County Superior Court Case No.
30-2014-00763116
Diane Le v. County of Orange Code Enforcement,
Orange County Superior Court Case No. 30-2014-00763184;
Thanh Le v. County of Orange Code Enforcement,
Orange County Superior Court Case No. 30-2014-00763189.

RECOMMENDED ACTION: Conduct Closed Session.”

Thank you.

An LJP

NMW:nr

cc: Members of the Board of Supervisors
Frank Kim, CEO