

# ORIGINAL

## AGREEMENT FOR SERVICES #538-S1710

### IHSS Public Authority Labor Relations Consultation

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**THIS AGREEMENT** is made and entered into by and between the El Dorado County In-Home Supportive Services Public Authority, a local agency established by El Dorado County Ordinance Code Chapter 8.78 (hereinafter referred to as “Authority”) and Industrial Employers and Distributors Association, Inc., a California corporation, duly qualified to conduct business in the State of California, whose principal place of business is 2200 Powell Street, Suite 1000, Emeryville, CA 94563, and whose Agent for Service of Process is *David McKenzie, 2200 Powell Street, Suite 1000, Emeryville, CA 94563*, (hereinafter referred to as "Consultant");

#### RECITALS

**WHEREAS**, the County of El Dorado (County) Board of Supervisors sits as the Governing Board of the El Dorado County In-Home Supportive Services (IHSS) Public Authority; and

**WHEREAS**, Assembly Bill (AB) 1682 (1999) required that each county create an employer of record for IHSS providers for the sole purpose of setting salaries and benefits; and

**WHEREAS**, the County has been designated as the employer of record for IHSS workers in El Dorado County, and the County performs this function through the El Dorado County IHSS Public Authority; and

**WHEREAS**, the Authority does not “employ” the IHSS workers in the traditional sense, in that each IHSS client hires the IHSS worker for their care and is solely responsible for setting their schedule, working conditions, and determining the duration of their employment; and

**WHEREAS**, Authority has determined that it is necessary to obtain a Consultant to provide consultation and advice on employer-employee relations between the Authority and the union on an “as requested” basis; and

**WHEREAS**, Consultant has represented to Authority that it is specially trained, experienced, expert and competent to perform the special services required hereunder and Authority has determined to rely upon such representations; and

**WHEREAS**, it is the intent of the parties that such services be in conformity with all applicable federal, state and local laws; and

**WHEREAS**, Authority has determined that the provision of these services by Consultant is in the public's best interest, and that these services are more economically and feasibly performed by outside independent contractors as well as authorized by El Dorado County Charter, Section 210 (b) (6) and/or Government Code 31000;

**NOW, THEREFORE**, Authority and Consultant mutually agree as follows:

## **ARTICLE I**

**Scope of Services:** Consultant agrees to furnish the personnel and equipment necessary to provide consultation and advice on employer-employee relations including, but may not be limited to:

1. Advise and consult with the Authority's Governing Board and the Health and Human Services Agency (HHS) Director at such times and places as may be mutually agreed upon by Consultant and the Authority's Governing Board or the HHS Director on matters relating to employer-employee relations;
2. Meet and confer in good faith for and on behalf of the Authority as the designated representative of the Authority's Governing Board (Governing Board) and the HHS Director with representatives from the employee organization (currently United Domestic Workers of America [Union]) at such times and places as may be mutually agreed upon by Consultant, the Governing Board, the Union, and the HHS Director;
3. Report to the Governing Board and the HHS Director on the progress of meeting and conferring in good faith with the Union;
4. Analyze Union proposals, prepare written management proposals and counter proposals, and draft final memoranda of understanding (MOU) in a form and manner approved by the Governing Board and the HHS Director;
5. Consult on preparation of estimates of cost implementation of a MOU with the Union for the purpose of negotiating;
6. Prepare and retain complete records of the collective bargaining process(es) detailing the nature, status, and disposition of all bargaining proposals. Consultant shall provide all records, documents, and materials at the conclusion of the collective bargaining process(es);

## **ARTICLE II**

**Term:** This Agreement shall become effective upon final execution by both parties hereto and shall expire one (1) year from the date thereof, unless terminated earlier pursuant to the provisions contained herein this Agreement under Article XII "Default, Termination, and Cancellation" or Article X "Fiscal Considerations."

## **ARTICLE III**

**Compensation for Services:** For services provided herein, including any deliverables that may be identified herein, Authority agrees to pay Consultant upon the satisfactory completion and Authority's acceptance of work, monthly in arrears and within forty-five (45) days following the Authority's receipt and approval of itemized invoice(s) identifying services rendered.

For the purposes of this Agreement, the billing rate shall be \$1,882.33 per calendar month. For partial months the rate shall be \$1,882.33, prorated at a daily rate. This fee is all inclusive and shall include, but not be limited to: travel, lodging or meals, phone calls, and faxes. Invoices shall be mailed to Authority at the following address:

County of El Dorado  
Health and Human Services Agency  
3057 Briw Rd  
Placerville, California 95667

or to such other location as Authority directs.

In the event that Consultant fails to deliver the documents pursuant to this Agreement, Authority at its sole option may delay the monthly payment for the period of time of the delay, cease all payments until such time as the deliverables are received, or proceed as set forth herein below in Article titled "Default, Termination, and Cancellation."

#### **ARTICLE IV**

**Maximum Obligation:** The maximum contractual obligation under this Agreement shall not exceed \$24,000 for all of the stated services during the term of the Agreement.

#### **ARTICLE V**

**Taxes:** Consultant certifies that as of today's date, it is not in default on any unsecured property taxes or other taxes or fees owed by Consultant to Authority. Consultant agrees that it shall not default on any obligations to Authority during the term of this Agreement.

#### **ARTICLE VI**

**Changes to Agreement:** This Agreement may be amended by mutual consent of the parties hereto. Said amendments shall become effective only when in writing and fully executed by duly authorized officers of the parties hereto.

#### **ARTICLE VII**

**Consultant to Authority:** It is understood that the services provided under this Agreement shall be prepared in and with cooperation from Authority and its staff. It is further agreed that in all matters pertaining to this Agreement, Consultant shall act as Consultant only to Authority and shall not act as Consultant to any other individual or entity affected by this Agreement nor provide information in any manner to any party outside of this Agreement that would conflict with Consultant's responsibilities to Authority during term hereof.

#### **ARTICLE VIII**

**Assignment and Delegation:** Consultant is engaged by Authority for its unique qualifications and skills as well as those of its personnel. Consultant shall not subcontract, delegate or assign services

to be provided, in whole or in part, to any other person or entity without prior written consent of Authority.

## **ARTICLE IX**

**Independent Contractor/Liability:** Consultant is, and shall be at all times, deemed independent and shall be wholly responsible for the manner in which it performs services required by terms of this Agreement. Consultant exclusively assumes responsibility for acts of its employees, associates, and subcontractors, if any are authorized herein, as they relate to services to be provided under this Agreement during the course and scope of their employment.

Consultant shall be responsible for performing the work under this Agreement in a safe, professional, skillful and workmanlike manner and shall be liable for its own negligence and negligent acts of its employees. Authority shall have no right of control over the manner in which work is to be done and shall, therefore, not be charged with responsibility of preventing risk to Consultant or its employees.

## **ARTICLE X**

**Fiscal Considerations:** The parties to this Agreement recognize and acknowledge that Authority is a political subdivision of the State of California. As such, El Dorado County is subject to the provisions of Article XVI, Section 18 of the California Constitution and other similar fiscal and procurement laws and regulations and may not expend funds for products, equipment or services not budgeted in a given fiscal year. It is further understood that in the normal course of Authority business, Authority will adopt a proposed budget prior to a given fiscal year, but that the final adoption of a budget does not occur until after the beginning of the fiscal year.

Notwithstanding any other provision of this Agreement to the contrary, Authority shall give notice of cancellation of this Agreement in the event of adoption of a proposed budget that does not provide for funds for the services, products or equipment subject herein. Such notice shall become effective upon the adoption of a final budget which does not provide funding for this Agreement. Upon the effective date of such notice, this Agreement shall be automatically terminated and Authority released from any further liability hereunder.

In addition to the above, should the Board of Supervisors during the course of a given year for financial reasons reduce, or order a reduction, in the budget for any Authority department for which services were contracted to be performed, pursuant to this paragraph in the sole discretion of the Authority, this Agreement may be deemed to be canceled in its entirety subject to payment for services performed prior to cancellation.

## **ARTICLE XI**

**Audit by California State Auditor:** Consultant acknowledges that if total compensation under this agreement is greater than \$10,000.00, this Agreement is subject to examination and audit by the California State Auditor for a period of three (3) years, or for any longer period required by law, after final payment under this Agreement, pursuant to California Government Code §8546.7. In order to facilitate these potential examinations and audits, Consultant shall maintain, for a period of

at least three (3) years, or for any longer period required by law, after final payment under the contract, all books, records and documentation necessary to demonstrate performance under the Agreement.

**ARTICLE XII**

**Default, Termination, and Cancellation:**

A. Default: Upon the occurrence of any default of the provisions of this Agreement, a party shall give written notice of said default to the party in default (notice). If the party in default does not cure the default within ten (10) days of the date of notice (time to cure), then such party shall be in default. The time to cure may be extended at the discretion of the party giving notice. Any extension of time to cure must be in writing, prepared by the party in default for signature by the party giving notice and must specify the reason(s) for the extension and the date on which the extension of time to cure expires.

Notice given under this section shall specify the alleged default and the applicable Agreement provision and shall demand that the party in default perform the provisions of this Agreement within the applicable period of time. No such notice shall be deemed a termination of this Agreement unless the party giving notice so elects in this notice, or the party giving notice so elects in a subsequent written notice after the time to cure has expired. In the event of termination for default, Authority reserves the right to take over and complete the work by contract or by any other means.

- B. Bankruptcy: This Agreement, at the option of the Authority, shall be terminable in the case of bankruptcy, voluntary or involuntary, or insolvency of Consultant.
- C. Ceasing Performance: Authority may terminate this Agreement in the event Consultant ceases to operate as a business, or otherwise becomes unable to substantially perform any term or condition of this Agreement.
- D. Termination or Cancellation without Cause: Authority may terminate this Agreement in whole or in part upon seven (7) calendar days written notice by Authority without cause. If such prior termination is effected, Authority will pay for satisfactory services rendered prior to the effective dates as set forth in the Notice of Termination provided to Consultant, and for such other services, which Authority may agree to in writing as necessary for contract resolution. In no event, however, shall Authority be obligated to pay more than the total amount of the contract. Upon receipt of a Notice of Termination, Consultant shall promptly discontinue all services affected, as of the effective date of termination set forth in such Notice of Termination, unless the notice directs otherwise.

**ARTICLE XIII**

**Notice to Parties:** All notices to be given by the parties hereto shall be in writing and served by depositing same in the United States Post Office, postage prepaid and return receipt requested. Notices to Authority shall be addressed as follows:

COUNTY OF EL DORADO  
HEALTH AND HUMAN SERVICES AGENCY  
3057 BRIW ROAD  
PLACERVILLE, CA 95667  
ATTN: CONTRACTS UNIT

or to such other location as the Authority directs.

with a carbon copy to

COUNTY OF EL DORADO  
CHIEF ADMINISTRATIVE OFFICE  
PROCUREMENT AND CONTRACTS DIVISION  
330 FAIR LANE  
PLACERVILLE, CA 95667  
ATTN: PURCHASING AGENT

Notices to Consultant shall be addressed as follows:

INDUSTRIAL EMPLOYERS DISTRIBUTORS ASSOCIATION  
2200 POWELL STREET, SUITE 1000  
EMERYVILLE, CA 94608  
ATTN: PRESIDENT, or successor

or to such other location as the Consultant directs.

#### **ARTICLE XIV**

**Change of Address:** In the event of a change in address for Consultant's principal place of business, Consultant's Agent for Service of Process, or Notices to Consultant, Consultant shall notify Authority in writing pursuant to the provisions contained in this Agreement under the Article titled "Notice to Parties". Said notice shall become part of this Agreement upon acknowledgment in writing by the Authority Contract Administrator, and no further amendment of the Agreement shall be necessary provided that such change of address does not conflict with any other provisions of this Agreement.

#### **ARTICLE XV**

**Indemnity:** The Consultant shall defend, indemnify, and hold the Authority harmless against and from any and all claims, suits, losses, damages and liability for damages of every name, kind and description, including attorney's fees and costs incurred, brought for, or on account of, injuries to or death of any person, including but not limited to workers, Authority employees, and the public, or damage to property, or any economic or consequential losses, which are claimed to or in any way arise out of or are connected with the Consultant's services, operations, or performance hereunder, regardless of the existence or degree of fault or negligence on the part of the Authority, the Consultant, subContractor(s) and employee(s) of any of these, except for the sole, or active negligence of the Authority, its officers and employees, or as expressly prescribed by statute. This

duty of Consultant to indemnify and save Authority harmless includes the duties to defend set forth in California Civil Code Section 2778.

## ARTICLE XVI

**Insurance:** Consultant shall provide proof of a policy of insurance satisfactory to the Authority of El Dorado Risk Manager and documentation evidencing that Consultant maintains insurance that meets the following requirements:

- A. Full Worker's Compensation and Employer's Liability Insurance covering all employees of Consultant as required by law in the State of California.
- B. Commercial General Liability Insurance of not less than \$1,000,000.00 combined single limit per occurrence for bodily injury and property damage and a \$2,000,000.00 aggregate limit.
- C. Automobile Liability Insurance of not less than \$1,000,000.00 is required in the event motor vehicles are used by the Consultant in the performance of the Agreement.
- D. In the event Consultant is a licensed professional or professional consultant, and is performing professional services under this Agreement, professional liability is required with a limit of liability of not less than \$1,000,000.00 per occurrence.
- E. Consultant shall furnish a certificate of insurance satisfactory to the County of El Dorado Risk Manager as evidence that the insurance required above is being maintained.
- F. The insurance will be issued by an insurance company acceptable to Risk Management, or be provided through partial or total self-insurance likewise acceptable to Risk Management.
- G. Consultant agrees that the insurance required above shall be in effect at all times during the term of this Agreement. In the event said insurance coverage expires at any time or times during the term of this Agreement, Consultant agrees to provide at least thirty (30) days prior to said expiration date, a new certificate of insurance evidencing insurance coverage as provided for herein for not less than the remainder of term of the Agreement, or for a period of not less than one (1) year. New certificates of insurance are subject to the approval of Risk Management and Consultant agrees that no work or services shall be performed prior to the giving of such approval. In the event the Consultant fails to keep in effect at all times insurance coverage as herein provided, Authority may, in addition to any other remedies it may have, terminate this Agreement upon the occurrence of such event.
- H. The certificate of insurance must include the following provisions stating that:
  1. The insurer will not cancel the insured's coverage without prior written notice to Authority, and;

2. The County of El Dorado, its officers, officials, employees and volunteers are included as additional insured on an additional insured endorsement, but only insofar as the operations under this Agreement are concerned. This provision shall apply to the general liability policy.
- I. The Consultant's insurance coverage shall be primary insurance as respects the Authority, its officers, officials, employees and volunteers. Any insurance or self-insurance maintained by the Authority, its officers, officials, employees or volunteers shall be in excess of the Consultant's insurance and shall not contribute with it.
- J. Any deductibles or self-insured retentions must be declared to and approved by the Authority, either: the insurer shall reduce or eliminate such deductibles or self-insured retentions as respects the Authority, its officers, officials, employees and volunteers; or the Consultant shall procure a bond guaranteeing payment of losses and related investigations, claim administration and defense expenses.
- K. Any failure to comply with the reporting provisions of the policies shall not affect coverage provided to the Authority, its officers, officials, employees or volunteers.
- L. The insurance companies shall have no recourse against the County of El Dorado, its officers and employees or any of them for payment of any premiums or assessments under any policy issued by any insurance company.
- M. Consultant's obligations shall not be limited by the foregoing insurance requirements and shall survive expiration of this Agreement.
- N. In the event Consultant cannot provide an occurrence policy, Consultant shall provide insurance covering claims made as a result of performance of this Agreement for not less than three (3) years following completion of performance of this Agreement.
- O. Certificate of insurance shall meet such additional standards as may be determined by the contracting Authority Department either independently or in consultation with Risk Management, as essential for protection of the Authority.

#### **ARTICLE XVII**

**Interest of Public Official:** No official or employee of Authority who exercises any functions or responsibilities in review or approval of services to be provided by Consultant under this Agreement shall participate in or attempt to influence any decision relating to this Agreement which affects personal interest or interest of any corporation, partnership, or association in which he/she is directly or indirectly interested; nor shall any such official or employee of Authority have any interest, direct or indirect, in this Agreement or the proceeds thereof.

#### **ARTICLE XVIII**

**Interest of Consultant:** Consultant covenants that Consultant presently has no personal interest or financial interest, and shall not acquire same in any manner or degree in either: 1) any other



contract connected with or directly affected by the services to be performed by this Agreement; or, 2) any other entities connected with or directly affected by the services to be performed by this Agreement. Consultant further covenants that in the performance of this Agreement no person having any such interest shall be employed by Consultant.

#### **ARTICLE XIX**

**Conflict of Interest:** The parties to this Agreement have read and are aware of the provisions of Government Code Section 1090 et seq. and Section 87100 relating to conflict of interest of public officers and employees. Consultant attests that it has no current business or financial relationship with any Authority employee(s) that would constitute a conflict of interest with provision of services under this contract and will not enter into any such business or financial relationship with any such employee(s) during the term of this Agreement. Authority represents that it is unaware of any financial or economic interest of any public officer or employee of Consultant relating to this Agreement. It is further understood and agreed that if such a financial interest does exist at the inception of this Agreement either party may immediately terminate this Agreement by giving written notice as detailed in the Article in the Agreement titled, "Default, Termination and Cancellation".

#### **ARTICLE XX**

##### **Nondiscrimination:**

- A. Authority may require Consultant's services on projects involving funding from various state and/or federal agencies, and as a consequence, Consultant shall comply with all applicable nondiscrimination statutes and regulations during the performance of this Agreement including but not limited to the following: Consultant and its employees and representatives shall not unlawfully discriminate against any employee or applicant for employment because of race, religion, color, national origin, ancestry, physical handicap, medical condition, marital status, age, or sex; Consultant shall, unless exempt, comply with the applicable provisions of the Fair Employment and Housing Act (Government Code, Sections 12900 et seq.) and applicable regulations promulgated thereunder (California Code of Regulations, Title 2, Sections 7285.0 et seq.); the applicable regulations of the Fair Employment and Housing Commission implementing Government Code, Section 12990, set forth in Chapter 5 of Division 4 of Title 2 of the California Code of Regulations incorporated into this Agreement by reference and made a part hereof as if set forth in full; and Title VI of the Civil Rights Act of 1964, as amended. Consultant and its employees and representatives shall give written notice of their obligations under this clause as required by law.
- B. Where applicable, Consultant shall include these nondiscrimination and compliance provisions in any of its agreements that affect or are related to the services performed herein.
- C. Consultant's signature shall provide any certifications necessary under the federal laws, the laws of the State of California, including but not limited to Government Code Section 12990 and Title 2, California Code of Regulations, Section 8103.

## **ARTICLE XXI**

**California Residency (Form 590):** If Consultant is a California resident, Consultants must file a State of California Form 590, certifying its California residency or, in the case of a corporation, certifying that it has a permanent place of business in California. The Consultant will be required to submit a Form 590 prior to execution of an Agreement or Authority shall withhold seven (7) percent of each payment made to the Consultant during term of the Agreement. This requirement applies to any agreement/contract exceeding \$1,500.00.

## **ARTICLE XXII**

**Nonresident Withholding:** If Consultant is not a California resident, Consultant shall provide documentation that the State of California has granted a withholding exemption or authorized reduced withholding prior to execution of this Agreement or Authority shall withhold seven (7%) percent of each payment made to the Consultant during term of the Agreement as required by law. This requirement applies to any agreement/contract exceeding \$1,500.00. Consultant shall indemnify and hold the Authority harmless for any action taken by the California Franchise Tax Board.

## **ARTICLE XXIII**

**Taxpayer Identification Number (Form W-9):** All independent Consultants or corporations providing services to the Authority must file a Department of the Treasury Internal Revenue Service Form W-9, certifying their Taxpayer Identification Number.

## **ARTICLE XXIV**

**County Business License:** It is unlawful for any person to furnish supplies or services, or transact any kind of business in the unincorporated territory of El Dorado County without possessing a County business license unless exempt under County Code Section 5.08.070.

## **ARTICLE XXV**

**Licenses:** Consultant hereby represents and warrants that Consultant and any of its subContractors employed under this Agreement has all the applicable licenses, permits, and certifications that are legally required for Consultant and its subContractors to practice its profession or provide the services or work contemplated under this Agreement in the State of California. Consultant and its subContractors shall obtain or maintain said applicable licenses, permits, or certificates in good standing throughout the term of this Agreement.

## **ARTICLE XXVI**

**Administrator:** The Authority Officer or employee with responsibility for administering this Agreement is Patricia Charles-Heathers, Ph.D., Director, Health and Human Services Agency, or successor.

## **ARTICLE XXVII**

**Authorized Signatures:** The parties to this Agreement represent that the undersigned individuals executing this Agreement on their respective behalf are fully authorized to do so by law or other appropriate instrument and to bind upon said parties to the obligations set forth herein.

## **ARTICLE XXVIII**

**Partial Invalidity:** If any provision of this Agreement is held by a court of competent jurisdiction to be invalid, void or unenforceable, the remaining provisions will continue in full force and effect without being impaired or invalidated in any way.

## **ARTICLE XXIX**

**Venue:** Any dispute resolution action arising out of this Agreement, including, but not limited to, litigation, mediation, or arbitration, shall be brought in El Dorado County, California, and shall be resolved in accordance with the laws of the State of California.

## **ARTICLE XXX**

**No Third Party Beneficiaries:** Nothing in this Agreement is intended, nor will be deemed, to confer rights or remedies upon any person or legal entity not a party to this agreement.

## **ARTICLE XXXI**

### **Special Terms and Conditions:**

- A. **HIPAA Compliance:** All data, together with any knowledge otherwise acquired by Consultant during the performance of services provided pursuant to this Agreement, shall be treated by Consultant and Consultant's staff as confidential information. Consultant shall not disclose or use, directly or indirectly, at any time, any such confidential information. If the Consultant receives any individually identifiable health information (Protected Health Information or PHI), the Consultant shall maintain the security and confidentiality of such PHI as required by applicable laws and regulations, including the Health Insurance Portability and Accountability Act of 1996 (HIPAA) and the regulations promulgated thereunder.
- B. **Confidentiality and Information Security Provisions:** Consultant shall comply with applicable Federal, State, and local laws and regulations, including but not limited to the Code of Federal Regulations Title 45, parts 160-164, regarding the confidentiality and security of Personally Identifiable Information (PII).

Personally Identifiable Information means any information that identifies, relates to, describes, or is capable of being associated with, a particular individual, including but not limited to, his or her name, signature, social security number, passport number, driver's license or state identification card number, insurance policy number, education, employment, employment history, bank account number, credit card number, or any other financial information.

1. Permitted Uses and Disclosures of PII by Consultant.

- a. Permitted Uses and Disclosures. Consultant shall develop and maintain an information privacy and security program that includes the implementation of administrative, technical, and physical safeguards appropriate to the size and complexity of Consultant's operations and the nature and scope of its activities. The information privacy and security programs must reasonably and appropriately protect the confidentiality, integrity, and availability of the PII that it creates, receives, maintains, or transmits; and prevent the use or disclosure of PII other than as provided for in this Agreement. Except as otherwise provided in this Agreement, Consultant, may use or disclose PII to perform functions, activities or services identified in this Agreement provided that such use or disclosure would not violate Federal or State laws or regulations.
  - b. Specific Uses and Disclosures provisions. Except as otherwise indicated in the Agreement, Consultant shall:
    - i) Use and disclose only PII for the proper management and administration of Consultant or to carry out the legal responsibilities of Consultant, provided that such use and disclosures are permitted by law; and
    - ii) Take all reasonable steps to destroy, or arrange for the destruction of a client's records within its custody or control containing personal information that is no longer to be retained by Consultant by (1) shredding, (2) erasing, or (3) otherwise modifying the personal information in those records to make it unreadable or undecipherable through any means.
2. Responsibilities of Consultant.
- a. Consultant agrees to safeguards:
    - 1) To prevent use or disclosure of PII other than as provided for by this Agreement. Consultant shall provide Authority with information concerning such safeguards as Authority may reasonably request from time to time; and
      - i) Consultant shall restrict logical and physical access to confidential, personal (e.g., PII) or sensitive data to authorized users only; and
      - ii) Consultant shall implement a system to identify appropriate authenticated and authorized persons. If passwords are used in user authentication (e.g., username/password combination), Consultant shall implement strong password controls on all compatible computing systems that are consistent with the National Institute of Standards and Technology (NIST) Special Publication 800-86 and SANS Institute Password Protection Policy.
  - b. Consultant shall implement the following security controls on each server, workstation, or portable (e.g. laptop computer) computing device that processes or stores confidential, personal, or sensitive data:
    - 1) Network based firewall or personal firewall; and
    - 2) Continuously updated anti-virus software; and
    - 3) Patch-management process including installation of all operating system/software vendor security patches.
  - c. Mitigation of Harmful Effects. Consultant shall mitigate, to the extent practicable, any harmful effect that is known to Consultant of a use or disclosure of PII by Consultant or its subContractors.
  - d. Agents and subContractors of Consultant. The same restrictions and conditions

that apply through this Agreement to Consultant, shall also apply to Consultant's subContractors and agents.

- e. Notification of Electronic Breach or Improper Disclosure. During the term of this Agreement, Consultant shall notify Authority immediately upon discovery of any breach of PII or data, where the information or data are reasonably believed to have been acquired by an unauthorized person. Immediate notification shall be made to County Privacy Officer, within two (2) business days of discovery, at (530) 621-5565. Consultant shall take prompt corrective action to cure any deficiencies and any action pertaining to such unauthorized disclosure required by applicable Federal and State laws and regulations. Consultant shall investigate such breach and provide a written report of the investigation to County Privacy Officer, postmarked within thirty (30) working days of the discovery of the breach
- C. **Fraud or Abuse Reporting:** Consultant acknowledges and agrees to comply with mandated reporter requirements pursuant to provisions of Welfare and Institution Code, Section 15630-15632. Additionally, during the performance of this Agreement, the Consultant shall report immediately, by telephone to (530) 621-6161, or other such telephone number that may be provided, and in writing, to the County of El Dorado Health and Human Services Agency at 937 Spring Street, Placerville, CA 95667, any known or suspected incidents of fraud or abuse to Clients or household occupants observed or learned of during the delivery of Consultant services.
- D. **Access to Records:** The Consultant shall provide access to the federal, state or local Consultant agency, the Controller General of the United States, or any of their duly authorized federal, state or local representatives to any books, documents, papers and records of the Consultant which are directly pertinent to this specific Agreement for the purpose of making an audit, examination, excerpts and transcriptions.
- E. **Compliance with All Federal, State, and Local Laws and Regulations:** Consultant shall comply with all federal, state and local laws including, but not limited to, the Americans with Disabilities Act (ADA) of 1990 (42 USC 12101 et. seq.) and California Government Code Sections 11135-11139.5, and all regulations, requirements, and directives pertinent to its operations. Consultant shall abide by manuals, directives and other guidance issued by the State of California. All appropriate manuals and updates shall be available for review or reference by Consultant from the County Health and Human Services Agency.

Consultant shall further comply with all applicable laws relating to wages and hours of employment and occupational safety and to fire, safety, health, and sanitation regulations. Such laws shall include, but not be limited to, the Copeland "Anti-Kickback" Act, the Davis-Bacon Act, the Contract Work Hours and Safety Standards Act, the Clean Air Act and amendments, the Clean Water Act and amendments, and the Federal Water Pollution Control Act.

Consultant further warrants that it has all necessary licenses, permits, notices, approvals, certificates, waivers and exemptions necessary for the provision of services hereunder and required by the laws and regulations of the United States, the State of California, the County of El Dorado, and all other appropriate governmental agencies and shall maintain these throughout the term of the Agreement

F. **Debarment and Suspension Certification:** By signing this Agreement, the Consultant agrees to comply with applicable federal suspension and debarment regulations including, but not limited to 45 CFR 76 and Consultant further certifies to the best of its knowledge and belief that it and its principals or affiliates or any sub-contractors utilized under the Agreement:

1. Are not presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded by any federal department or agency.
2. Have not within a three (3)-year period preceding this application/proposal/Agreement been convicted of or had a civil judgment rendered against them for commission of fraud or a criminal offense in connection with obtaining, attempting to obtain, or performing a public (federal, state or local) transaction or contract under a public transaction; violation of federal or state antitrust statutes or commission of embezzlement, theft, forgery, bribery, falsification or destruction of records, making false statements, or receiving stolen property.
3. Are not presently indicted for or otherwise criminally or civilly charged by a governmental entity (federal, state, or local) with commission of any of the offenses enumerated in the above Paragraph B.
4. Have not within a three (3)-year period preceding this Agreement had one or more public transactions (federal, state or local) terminated for cause or default.
5. Shall not knowingly enter in to any lower tier or subrecipient covered transaction with any person(s) who are proposed for debarment under federal regulations (i.e., 48 CFR part 9, subpart 9.4) or are debarred, suspended, declared ineligible or voluntarily excluded from participation in such transactions, unless authorized by the state.
6. Shall include a clause titled, "Debarment and Suspension Certification" that essentially sets forth the provisions herein, in all lower tier or subrecipient covered transactions in accordance with 45 CFR Part 76.

If the Consultant is unable to certify to any of the statements in this certification, the Consultant shall submit an explanation in writing to Authority.

The terms and definitions herein have the meanings set out in the Definitions and Coverage sections of the rules implementing Federal Executive Order 12549 (<http://www.archives.gov/federal-register/codification/executive-order/12549.html>).

If the Consultant knowingly violates this certification, in addition to other remedies available to the federal and state governments, Authority may immediately terminate this Agreement for cause or default.

G. **Accounting Systems and Financial Records:** Consultant shall be required to establish and maintain accounting systems and financial records that accurately account for and reflect all federal funds received, including all matching funds from the State, County and

any other local or private organizations. Consultant's records shall reflect the expenditure and accounting of said funds in accordance with all State laws and procedures for expending and accounting for all funds and receivables, as well as meet the financial management standards in 45 CFR Part 92 and in the Office of Management and Budget Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards." More particularly, Consultants are responsible for complying with the Uniform Grants Guidance and 45 CFR Part 92, and the allowability of the costs covered therein. Consultant must obtain written approval from a member of the HHS Executive Management prior to the expenditure of any "special" or unusual costs in order to avoid possible disallowances or disputes based on any potential unreasonableness or unallowability of expenditures as detailed under the specific cost principles of the Uniform Grants Guidance. In order to obtain the most current regulations, the user should consult not only the latest version of the CFR, but also the List of (CFR) Sections Affected (LSA) issued in the current month. The *Federal Register* home page offers links to both the *Federal Register* and the CFR. Electronic CFR (e-CFR) versions are available online via the U.S. Government Printing Office (GPO) website. Please note that documents on e-CFR, although updated daily, are unofficial editorial compilations of CFR material and *Federal Register* amendments and on-line versions may not be the most current version available.

- H. **Annual Audit:** Pursuant to the Office of Management and Budget Uniform Grants Guidance, any entity that receives federal funds, as stated in the Uniform Grants Guidance, for the purposes of carrying out federal programs, must complete an annual audit. The funding threshold is aggregate funds from all sources. If requested by Authority, Consultant shall mail a certified copy of said completed annual audit to Authority's Health and Human Services Agency at the address listed in Agreement's "Notice to Parties" Article within thirty (30) days of Consultant's receipt of same. All adverse audit findings must be documented and included with completed annual audit. Certified evidence of correction(s) of adverse audit findings shall be provided to Authority at the HHS address listed in Agreement's Article titled "Notice to Parties."
- I. **Lobbying Certification:** The Consultant, by signing this Agreement, hereby certifies to the best of his or her knowledge and belief, that:
1. No federally appropriated funds have been paid or will be paid, by or on behalf of the Consultant, to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with the awarding of any federal contract, the making of any federal grant, the making of any federal loan, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any federal contract, grant, loan, or cooperative agreement.
  2. If any funds other than federally appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any federal agency, a Member of Congress, an officer or employee of Congress or an employee of a Member of Congress in connection with this federal contract, grant, loan or cooperative agreement, the Consultant shall complete and submit Standard Form SF-LLL, OMB Number 0348-0046 "Disclosure of Lobbying Activities" in accordance with its instructions.

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

- J. **Conflict Prevention and Resolution:** The terms of this Agreement shall control over any conflicting terms in any referenced document, except to the extent that the end result would constitute a violation of Federal or State law. In such circumstances, and only to the extent the conflict exists, this Agreement shall be considered the controlling document.
- K. **Waivers:** Failure of Authority to enforce any provision of this Agreement shall in no event be considered a waiver of any part of such provision or any other provision contained herein. No waiver by Authority of any breach or default by Consultant shall operate as a waiver of any succeeding breach of the same terms in the Agreement or other default or breach of any of Consultant's obligations under the Agreement. No waiver shall have any effect unless it is specific, irrevocable, and in writing.

## ARTICLE XXXII

**Entire Agreement:** This document and the documents referred to herein or exhibits hereto are the entire Agreement between the parties and they incorporate or supersede all prior written or oral Agreements or understandings.

### Requesting Contract Administrator and Department Head Concurrence:

By: Patricia Charles-Heathers  
Patricia Charles-Heathers, Ph.D.  
Director  
Health and Human Services Agency

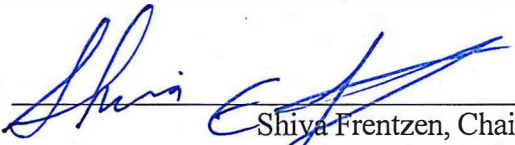
Dated: 5/30/17



IN WITNESS WHEREOF, the parties hereto have executed this Agreement on the dates indicated below.

-- AUTHORITY --

Dated: 6/20/2017

By:   
Shiva Frentzen, Chair  
Board of Supervisors  
"Authority"

ATTEST:  
James S. Mitrison  
Clerk of the Board of Supervisors

By:   
Deputy Clerk

Dated: 6/20/2017

-- CONSULTANT --

Industrial Employers Distributors Association  
A California Corporation

By:   
Bruce Heid  
President  
"Consultant"

Dated: 5-31-17

By:   
Corporate Secretary

Dated: 5/31/17

JA