

COPY

AGREEMENT FOR SERVICES #075-S1010

THIS AGREEMENT made and entered by and between the El Dorado County In-Home Supportive Services Public Authority, a political subdivision of the State of California (hereinafter referred to as "Authority") and the Industrial Employers and Distributors Association doing business as IEDA, 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 94608, and whose Agent for Service of Process is David McKenzie, 2200 Powell Street, Suite 1000, Emeryville, CA 94608; (hereinafter referred to as "Contractor");

RECITALS

WHEREAS, Authority has determined that it is necessary to obtain a Contractor to provide consultation and advice on employer-employee relations to the El Dorado County In-Home Supportive Services Public Authority; and

WHEREAS, Contractor 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 hereto that such services be in conformity with all applicable federal, state and local laws; and

WHEREAS, Authority has determined that the provisions of these services provided by Contractor are 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 Contractor mutually agree as follows:

ARTICLE I

Scope of Services: Services shall include, but not be limited to the following:

1. Advise and consult with the Authority's Governing Board and the Department of Human Services (DHS) Director at such times and places as may be mutually agreed upon by Contractor and the Authority's Governing Board or the DHS Director on all matters relating to employment conditions and employer-employee relations;
2. Meet and confer in good faith for and on behalf of the Authority as the designated representative of the Governing Board and the DHS Director with representatives of the employee organization of the Authority at such times and places as may be mutually agreed upon by Contractor, the Authority's Governing Board and the DHS Director;
3. Report to the Authority's Governing Board and the DHS Director on the progress of meeting and conferring in good faith with the recognized employee organization;
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 Authority's Governing Board and the DHS Director;
5. Consult on preparation of estimates of cost implementation of MOU with the union;
6. Prepare and retain complete records of the collective bargaining process detailing the nature, status and disposition of all bargaining proposals. Contractor shall provide all records, documents and materials at the conclusion of the collective bargaining process;
7. Consult on issues concerning various aspects of employment matters, including the Fair Labor Standards Act, Meyers-Miliias-Brown Act, and other employment issues regulated by State and Federal law;
8. Advise relative to and, upon request, help Authority Counsel represent the Authority with arbitrations, grievances, unfair practice and other employment charges;
9. Provide training for governing boards, supervisors and management employees;
10. Review and consult on personnel rules, Freedom of Information Act requests, employer-employee relations resolution, compensation policies or other policy documents.

ARTICLE II

Term: This Agreement shall become effective when fully executed by both parties and shall cover the period of October 1, 2009, through September 30, 2010.

ARTICLE III

Compensation for Services: For services provided herein, Authority agrees to pay Contractor monthly in arrears. Payment shall be made within forty-five (45) days following Authority's receipt and approval of itemized invoice(s) identifying services rendered. For the purpose of this Agreement the billing rate shall be \$1,791.67 per month through June 30, 2010. The billing rate shall be \$1,827.50 per month for the period of July 1, 2010 through September 30, 2010.

The total amount of this Agreement shall not exceed \$25,000.00 for the stated term.

ARTICLE IV

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. Contractor 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 shall 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 Contractor 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 V

Compliance with All Federal, State and Local Laws and Regulations: Contractor 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. Contractor 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 Contractor from the County Department of Human Services.

Contractor shall further comply with all applicable laws relating to wages and hours of employment and occupational safety and to fire, safety and 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.

Contractor 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.

ARTICLE VI

Access to Records: The Contractor shall provide access to the Federal, State or local Contractor 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 Contractor which are directly pertinent to this specific Agreement for the purpose of making an audit, examination, excerpts and transcriptions.

ARTICLE VII

Confidentiality and Information Security Provisions: Contractor shall comply with applicable laws and regulations, including but not limited to The Code of Federal Regulations, Title CFR45, parts 160-164, regarding the confidentiality and security of personal identifiable

information (PII).

Personal Identifiable Information (PII) 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.

A. Permitted Uses and Disclosures of PII by Contractor.

- (1) Permitted Uses and Disclosures. Contractor 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 Contractor'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, Contractor, 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.
- (2) Specific Uses and Disclosures provisions. Except as otherwise indicated in the Agreement, Contractor shall:
 - (a) Use and disclose PII for the proper management and administration of Contractor or to carry out the legal responsibilities of Contractor, provided that such use and disclosures are permitted by law; and
 - (b) Take all reasonable steps to destroy, or arrange for the destruction of a customer's records within its custody or control containing personal information which is no longer to be retained by Contractor by (1) shredding, (2) erasing or (3) otherwise modifying the personal information in those records to make it unreadable or undecipherable through any means.

B. Responsibilities of Contractor.

- (1) Contractor agrees to safeguards:
 - (a) To prevent use or disclosure of PII other than as provided for by this Agreement. Contractor shall provide Authority with information concerning such safeguards as Authority may reasonably request from time to time; and
 - (b) Contractor shall restrict logical and physical access to confidential, personal (e.g., PII) or sensitive data to authorized users only; and
 - (c) Contractor shall implement appropriate authenticated and authorized persons. If passwords are used in user authentication (e.g., username/password combination), Contractor 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.

- (2) Contractor 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:
 - (a) Network based firewall and/or personal firewall; and
 - (b) Continuously updated anti-virus software; and
 - (c) Patch-management process including installation of all operating system/software vendor security patches.
- (3) Mitigation of Harmful Effects. To mitigate, to the extent practicable, any harmful effect that is known to Contractor of a use or disclosure of PII by Contractor or its subcontractors in violation of the requirements of this Agreement.
- (4) Agents and Subcontractors of Contractor. To ensure that any agent, including a subcontractor to which Contractor provides PII received from Authority, or created or received by Contractor, for the purposes of this Agreement shall comply with the same restrictions and conditions that apply through this Agreement to Contractor with respect to such information.
- (5) Notification of Electronic Breach or Improper Disclosure. During the term of this Agreement, Contractor shall notify Authority immediately upon discovery of any breach of PII and/or data, where the information and/or data are reasonably believed to have been acquired by an unauthorized person. Immediate notification shall be made to County Privacy Officer, within two business days of discovery, at (530) 621-5852. Contractor 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. Contractor 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.

ARTICLE VIII

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 IX

Contractor 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, Contractor shall act as Contractor only to Authority and shall not act as Contractor 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 Contractor's responsibilities to Authority during term hereof.

ARTICLE X

Assignment and Delegation: Contractor is engaged by Authority for its unique qualifications and skills as well as those of its personnel. Contractor 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 XI

Independent Contractor/Liability: Contractor 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. Contractor 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.

Contractor 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 Contractor or its employees.

ARTICLE XII

Fiscal Considerations: The parties to this Agreement recognize and acknowledge that Authority is a political subdivision of the State of California. As such, Authority 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 cancelled in its entirety subject to payment for services performed prior to cancellation.

ARTICLE XIII

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.

- B. **Bankruptcy:** This Agreement, at the option of the Authority, shall be terminable in the case of bankruptcy, voluntary or involuntary, or insolvency of Contractor.
- C. **Ceasing Performance:** Authority may terminate this Agreement in the event Contractor 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 Contractor, 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, Contractor 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. 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.

ARTICLE XIV

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 XV

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:

EL DORADO COUNTY
IN-HOME SUPPORTIVE SERVICES PUBLIC AUTHORITY
3047 BRIW ROAD
PLACERVILLE, CA 95667
ATTN: DEBBIE STACK, IHSS PUBLIC AUTHORITY MANAGER

or to such other location as the Authority directs with a copy to:

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

Notices to Contractor shall be addressed as follows:

IEDA
2200 POWELL STREET, SUITE 1000
EMERYVILLE, CA 94608
ATTN: KEITH FLEMING, PRESIDENT

or to such other location as the Contractor directs.

ARTICLE XVI

Indemnity: The Contractor 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 attorneys 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 Contractor's services, operations or performance hereunder, regardless of the existence or degree of fault or negligence on the part of the Authority, the Contractor, subcontractor(s) and employee(s) or any of these, except for the sole or active negligence of the Authority, its officers and employees, or as expressly proscribed by statute. This duty of Contractor to indemnify and save Authority harmless includes the duties to defend set forth in California Civil Code Section 2778.

ARTICLE XVII

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

- A. Full Workers' Compensation and Employers' Liability Insurance covering all employees of Contractor 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.
- C. Automobile Liability Insurance of not less than \$1,000,000.00 is required in the event motor vehicles are used by the Contractor in the performance of the Agreement.
- D. In the event Contractor is a licensed professional, and is performing professional services

under this Agreement, professional liability (for example, malpractice insurance) is required with a limit of liability of not less than \$1,000,000.00 per occurrence.

- E. Contractor shall furnish a certificate of insurance satisfactory to the El Dorado County 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. Contractor 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, Contractor 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 the 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 Contractor agrees that no work or services shall be performed prior to the giving of such approval. In the event the Contractor 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 thirty (30) days prior written notice to Authority, and;
 - 2. The Authority, its officers, officials, employees, and volunteers are included as additional insured, but only insofar as the operations under this Agreement are concerned. This provision shall apply to the general liability policy.
- I. The Contractor'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 excess of the Contractor'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 Contractor 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 Authority, its officers and employees or any of them for payment of any premiums or assessments under any policy issued by any insurance company.

- M. Contractor's obligations shall not be limited by the foregoing insurance requirements and shall survive expiration of this Agreement.
- N. In the event Contractor cannot provide an occurrence policy, Contractor 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 the protection of the Authority.

ARTICLE XVIII

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 Contractor 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 XIX

Interest of Contractor: Contractor covenants that Contractor 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. Contractor further covenants that in the performance of this Agreement no person having any such interest shall be employed by Contractor.

ARTICLE XX

California Residency (Form 590): All independent Contractors providing services to the Authority must file a State of California Form 590, certifying their California residency or, in the case of a corporation, certify that they have a permanent place of business in California. The Contractor 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 Contractor during term of the Agreement. This requirement applies to any agreement/contract exceeding \$1,500.00.

ARTICLE XXI

Taxpayer Identification Number (Form W-9): All independent Contractors 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 XXII

Administrator: The Authority Officer or employee with responsibility for administering this

Agreement is Debbie Stack, Program Manager, Department of Human Services, or successor.

ARTICLE XXIII

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 XXIV

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 XXV

Venue: Any dispute resolution action rising 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. Contractor waives any removal rights it might have under Code of Civil Procedure Section 394.

ARTICLE XXVI

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 Concurrence:

By:  Dated: 9/4/09
Debbie Stack, Program Manager
Department of Human Services

Requesting Department Head Concurrence:

By:  Dated: 9-8-09
Daniel Nielson, M.P.A. Director
Department of Human Services

IN WITNESS WHEREOF, the parties hereto have executed this Agreement #075-S1010 on the dates indicated below.

-- COUNTY OF EL DORADO --

Dated: 9/29/09

By: [Signature]

Chairman
Board of Supervisors
"County"

Acting as the governing board of the
El Dorado County In-Home Supportive Services Public Authority

ATTEST:
Suzanne Allen de Sanchez, Clerk
of the Board of Supervisors

By: [Signature] Dated: 9/29/09
Deputy Clerk

-- CONTRACTOR --

INDUSTRIAL EMPLOYERS AND DISTRIBUTORS ASSOCIATION
A CALIFORNIA CORPORATION

By: [Signature]
Keith Fleming, President
"Contractor"

Dated: 9/2/09

By: [Signature]
Corporate Secretary

Dated: 9/2/09