



**County Executive Office**  
**Memorandum**

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October 25, 2006

**To:** Bill Campbell, Chairman

**From:** Thomas G. Mauk, County Executive Officer 

**Subject:** Exception to the Rule 21

S46B

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The County Executive Office is requesting a supplemental for the October 31, 2006 Board Hearing Meeting.

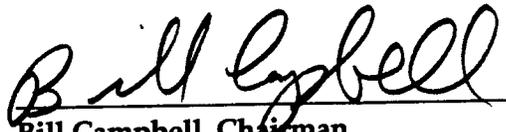
**Agency:** Health Care Agency

**Subject:** Price Agreement – Public Health Foundation Enterprises

**District:** All

**Reason for supplemental:** Contract Negotiations

**Concur:**

  
Bill Campbell, Chairman  
Orange County Board of Supervisors

**cc:** Rob Richardson  
Assistant to the County Executive Officer



SUPPLEMENTAL AGENDA ITEM
AGENDA STAFF REPORT

S46B

ASR Control

MEETING DATE: 10/31/06
LEGAL ENTITY TAKING ACTION: Board of Supervisors
BOARD OF SUPERVISORS DISTRICT(S): All Districts
SUBMITTING AGENCY/DEPARTMENT: Health Care Agency (Pending)
DEPARTMENT CONTACT PERSON(S): David L. Riley, (714) 834-6021

RECEIVED
06 OCT 27 AM 11:09
CLERK OF THE BOARD
ORANGE COUNTY
BOARD OF SUPERVISORS

SUBJECT: Price Agreement - Public Health Foundation Enterprises

CEO CONCUR
Pending Review

[Signature]

COUNTY COUNSEL REVIEW
Pending Review

[Signature]

CLERK OF THE BOARD
Consent Calendar
3 Votes Board Majority

Budgeted: Yes
Current Year Cost: 2/1/07 - 6/30/07: \$98,000
Annual Cost: 7/1/06 - 7/30/07: \$19,600
Staffing Impact: No
# of Positions:
Sole Source: Yes
Current Fiscal Year Revenue: N/A
Funding Source: GF: 15%, FED: 8%, State: 61%, Fees/Licenses: 17%

Prior Board Action: N/A

RECOMMENDED ACTION(S)

Authorize the Purchasing Agent or designee to renew Price Agreement N1000007391 as N2000007391 with Public Health Foundation Enterprises, Inc., for Human and Fiscal Agent Services in support of the Integrated Records Information System effective February 1, 2007 through July 31, 2007 in the amount not to exceed one hundred seventeen thousand six hundred dollars (\$117,600), per Board Policy.

SUMMARY:

The Health Care Agency requests approval of Price Agreement N2000007391 with Public Health Foundation Enterprises, Inc., for Human and Fiscal Agent Services.

BACKGROUND INFORMATION:

On January 24, 2006, your Honorable Board approved a one-year agreement with Public Health Foundation Enterprises, Inc., (PHFE) for human and fiscal agent services to retain Mr. Gerald Mann as the Integrated Records Information System (IRIS) Project Manager in support of the implementation of the automated laboratory system and other aspects of IRIS. The proposed new agreement with PHFE continues the use of Mr. Mann to direct the continued implementation of HCA IRIS system.

Mr. Mann has extensive experience in information technology, specifically in implementation of new governmental systems with needs similar to HCA. Mr. Mann has been assisting HCA with the IRIS project since September 16, 2005, including managing the Public Health Laboratory implementation, and planning for scheduling and Public Health registration. During this time, he has been effective working with both County and Cerner personnel.

Under the terms of this Agreement, HCA will pay PHFE \$117,600 for the period February 1, 2007 through July 31, 2007. This includes payment to Mr. Mann, required basic benefits (unemployment, Social Security, workers compensation) and an indirect rate of 5%. A 2003 survey of other agencies providing executive level personnel had indicated they would charge a higher indirect rate. The billing rate is comparable to similar high-level positions for information technology project management.

The Health Care Agency requests that your Board authorize the Purchasing Agent or designee to execute the Price Agreement with PHFE, as referenced in the Recommended Action.

**FINANCIAL IMPACT:**

This Price Agreement is included in the Health Care Agency's FY 2006-07 Current Budget and will be included in the budgeting process for FY 2007-08.

**STAFFING IMPACT:**

N/A

**ATTACHMENT(S):**

- A. Amendment to Price Agreement N1000007391 with Public Health Foundation Enterprises, Inc.
- B. Sole Source Justification

**Amendment No.1**  
**Contract No. N1000007391**  
**For**  
**Human Services and Fiscal Agent Services**

WHEREAS, the County of Orange/Health Care Agency hereinafter referred to as "County", and Public Health Foundation Ent., hereinafter referred to as "Contractor", entered into Contract No. N1000007391 hereinafter referred to as "Contract", effective February 1, 2006 through and including January 31, 2007, for Human Services and Fiscal Agent Services; and

WHEREAS, the County and Contractor agree to renew the Contract;

NOW, THEREFORE, the County and Contractor mutually agree as follows:

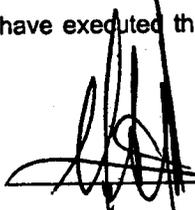
1. The term of Contract No. N1000007391 is renewed for a period of six (6) months, for the Contract period effective February 1, 2007 through and including July 31, 2008 as N2000007391 for a not to exceed amount of \$117,600. 742
2. Vendor to reference invoice with Contract No. N2000007391 and mail it to HCA/Accounts Payables, P.O. Box 689, Santa Ana, CA 92702.
3. Except as otherwise expressly set forth herein, all terms and conditions contained in the original Contract, including its renewals and amendments/modifications, are hereby incorporated herein by this reference as if fully set forth herein and shall remain in full force and effect.

This renewal modifies the Contract only as expressly set forth above. This renewal does not modify, alter or amend the Contract in any other way whatsoever. Except as stated herein, all other terms, conditions and pricing of the Contract remain unchanged.

IN WITNESS WHEREOF, the parties hereto have executed this renewal on the dates opposite their respective signatures below:

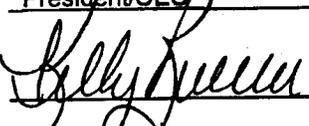
**\*Public Health Foundation Ent. :**

Date: 10/26/06

By: 

Title: President/CEO

Date: 10/26/06

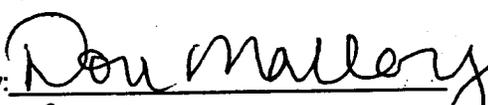
By: 

Title: Director Contracts & Grants

\*If the contracting party is a corporation, (2) two signatures are required: one (1) signature by the Chairman of the Board, the President or any Vice President; and one (1) signature by the Secretary, any Assistant Secretary, the Chief Financial Officer of any Assistant Treasurer.

**COUNTY OF ORANGE:**  
**Health Care Agency**

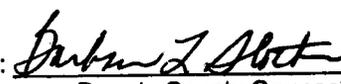
Date: 10/27/06

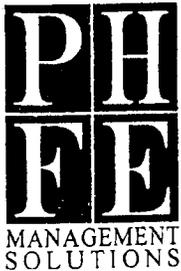
By: 

Title: Central Operations Manager DPA

**APPROVE AS TO FORM**  
**Office of the County Counsel**  
**Orange County, California**

Date: 10/27/06

By:   
Deputy County Counsel



RESOLUTION OF THE BOARD OF DIRECTORS OF  
PUBLIC HEALTH FOUNDATION ENTERPRISES, INC.  
dba PHFE MANAGEMENT SOLUTIONS  
RE: CONTRACT/GRANT SIGNING AUTHORITY

**August 16, 2006**

The Board of Directors hereby authorize Gerald R. Solomon, CEO/President; Susan Vacko, Vice President/Director Fiscal Services; and Kelly Rivera, Director of Contracts and Grants, to sign contracts, grants, leases and other non-financial related documents deemed appropriate and necessary on behalf of Public Health Foundation Enterprises, Inc., dba PHFE Management Solutions. Gerald R. Solomon shall be the primary signer.

This resolution is effective August 16, 2006 and shall remain in effect until rescinded by the Board of Directors.

Signed:

  
\_\_\_\_\_  
Dr. Azhar K. Qureshi, Chairman  
Board of Directors



**AGREEMENT N1000007391**

**FOR**

**HUMAN SERVICES AND  
FISCAL AGENT SERVICES**

**BETWEEN**

**THE COUNTY OF ORANGE  
HEALTH CARE AGENCY**

**AND**

**PUBLIC HEALTH FOUNDATION ENTERPRISES**

**AGREEMENT N1000007391  
FOR  
HUMAN SERVICES AND  
FISCAL AGENTPROFESSIONAL MANAGEMENT SERVICES  
FOR THE  
COUNTY OF ORANGE  
HEALTH CARE AGENCY**

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**AGREEMENT N1000007391  
FOR  
HUMAN SERVICES AND  
FISCAL AGENT SERVICES  
FOR THE  
COUNTY OF ORANGE  
HEALTH CARE AGENCY**

THIS AGREEMENT for human services and fiscal agent services, hereinafter referred to as "Contract" is made and entered into by and between Public Health Foundation Enterprises, with a place of business at 13200 Crossroads Parkway N., Suite 135, City of Industry, CA 91746 hereinafter referred to as "Contractor," and the County of Orange, a political subdivision of the State of California, hereinafter referred to as "County."

**RECITALS**

WHEREAS, County desires to obtain human services and fiscal agent services; and

WHEREAS, Contractor is agreeable to the rendering of such services on the terms and conditions hereinafter set forth; and

WHEREAS, the County of Orange Board of Supervisors has authorized the Purchasing Agent or his designee to enter into an agreement with Contractor for obtaining said services:

NOW, THEREFORE, the parties mutually agree as follows:

**ARTICLES**

**1. SCOPE OF CONTRACT**

This Contract, together with the Exhibits attached hereto and incorporated herein by reference, specifies the contractual terms and conditions by which the County will procure and receive program evaluation services from Contractor. The detailed Statement of Work (SOW) is fully set forth and incorporated herein as Exhibit A.

**2. TERM OF CONTRACT**

The term of the Contract shall be from February 1, 2006 through January 31, 2007.

This Contract shall commence on February 1, 2006 and be fully binding on both parties as approved by the County of Orange Board of Supervisors. Such approval by the County Board of Supervisors shall constitute acceptance by the County of the offer and pre-negotiated, pre-executed Contract tendered by Contractor. All Articles and Provisions of this Contract shall be deemed in effect upon the actual approval and authorization of the Board of Supervisors to have the Purchasing Agent execute the Contract. Both parties shall diligently tender all required submittals prior to the County's execution of the Contract and subsequent distribution and perform all obligations, tasks, and services set forth herein until all obligations, tasks and services are completed by the Contractor.

**3. COMPENSATION**

Compensation shall be paid to Contractor for its satisfactory performance under this Contract in accordance with Exhibit B. Exhibit B is attached hereto and incorporated by this reference.

## GENERAL TERMS AND CONDITIONS

- A. Governing Law and Venue:** This Contract has been negotiated and executed in the state of California and shall be governed by and construed under the laws of the state of California. In the event of any legal action to enforce or interpret this Contract, the sole and exclusive venue shall be a court of competent jurisdiction located in Orange County, California, and the parties hereto agree to and do hereby submit to the jurisdiction of such court, notwithstanding Code of Civil Procedure section 394. Furthermore, the parties specifically agree to waive any and all rights to request that an action be transferred for trial to another county.
- B. Entire Contract:** This Contract, when accepted by the Contractor either in writing or by commencement of performance hereunder, contains the entire Contract between the parties with respect to the matters herein and there are no restrictions, promises, warranties or undertakings other than those set forth herein or referred to herein. No exceptions, alternatives, substitutes or revisions are valid or binding on County unless authorized by County in writing. Electronic acceptance of any additional terms, conditions or supplemental Contracts by any County employee or agent, including but not limited to installers of software, shall not be valid or binding on County unless accepted in writing by County's Purchasing Agent or designee, hereinafter "Purchasing Agent".
- C. Amendments:** No alteration or variation of the terms of this Contract shall be valid unless made in writing and signed by the parties; no oral understanding or agreement not incorporated herein shall be binding on either of the parties; and no exceptions, alternatives, substitutes or revisions are valid or binding on County unless authorized by County in writing.
- D. Patent/Copyright Materials/Proprietary Infringement:** Unless otherwise expressly provided in this Contract, Contractor shall be solely responsible for clearing the right to use any patented or copyrighted materials in the performance of this Contract. Contractor warrants that any software as modified through services provided hereunder will not infringe upon or violate any patent, proprietary right, or trade secret right of any third party. Contractor agrees that, in accordance with the more specific requirement contained in paragraph "L" below, it shall indemnify, defend and hold County and County Indemnitees harmless from any and all such claims and be responsible for payment of all costs, damages, penalties and expenses related to or arising from such claim(s), including, but not limited to, attorney's fees, costs and expenses.
- E. Assignment or Subcontracting:** The terms, covenants, and conditions contained herein shall apply to and bind the heirs, successors, executors, administrators and assigns of the parties. Furthermore, neither the performance of this Contract nor any portion thereof may be assigned or sub-contracted by Contractor without the express written consent of County. Any attempt by Contractor to assign or subcontract the performance or any portion thereof of this Contract without the express written consent of County shall be invalid and shall constitute a breach of this Contract.
- In the event that the Contractor is authorized by the County to subcontract, this Contract shall prevail and the terms of the subcontract shall be incorporated by reference and not conflict with the terms of this Contract. In the manner in which the County expects to receive services, the County shall look to the Contractor for performance and not deal directly with any subcontractor. All matters related to this Contract shall be handled by the Contractor with the County; the County will have no direct contact with the subcontractor in matters related to the performance of this Contract. All work must meet the approval of the County.
- F. Non-Discrimination:** In the performance of this Contract, Contractor agrees that it will comply with the requirements of Section 1735 of the California Labor Code and not engage nor permit any subcontractors to engage in discrimination in employment of persons because of the race, religious creed, color, national origin, ancestry, physical disability, mental disability, medical condition, marital status, or sex of such persons. Contractor acknowledges that a violation of this provision shall subject Contractor to all the penalties imposed for a violation of Section 1720 et seq. of the California Labor Code.

- G. Termination:** In addition to any other remedies or rights it may have by law, County has the right to terminate this Contract without penalty immediately with cause or after 30 days' written notice without cause, unless otherwise specified. Cause shall be defined as any breach of this Contract, any misrepresentation or fraud on the part of the Contractor. Exercise by County of its right to terminate the Contract shall relieve County of all further obligations.
- H. Consent to Breach Not Waiver:** No term or provision of this Contract shall be deemed waived and no breach excused, unless such waiver or consent shall be in writing and signed by the party claimed to have waived or consented. Any consent by any party to, or waiver of, a breach by the other, whether express or implied, shall not constitute consent to, waiver of, or excuse for any other different or subsequent breach.
- I. Remedies Not Exclusive:** The remedies for breach set forth in this Contract are cumulative as to one another and as to any other provided by law, rather than exclusive; and the expression of certain remedies in this Contract does not preclude resort by either party to any other remedies provided by law.
- J. Independent Contractor:** Contractor shall be considered an independent contractor and neither Contractor, its employees, nor anyone working under Contractor shall be considered an agent or an employee of County. Neither Contractor, its employees, nor anyone working under Contractor, shall qualify for workers' compensation or other fringe benefits of any kind through County.
- K. Performance:** Contractor shall perform all work under this Contract, taking necessary steps and precautions to perform the work to County's satisfaction.
- L. Indemnification and Insurance:** 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 provided by Contractor pursuant to this Contract. 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.

#### **INSURANCE PROVISIONS**

Prior to the provision of services under this Contract, Contractor agrees to purchase all required insurance at Contractor's expense and to deposit with the County Certificates of Insurance, including all endorsements required herein, necessary to satisfy County that the insurance provisions of this Contract have been complied with and to keep such insurance coverage and the certificates therefor on deposit with the County of Orange, c/o HCA/Purchasing, 515 N. Sycamore Street, #126, Santa Ana, CA 92701, Attention: Maritza Fajardo (714) 834-2176, fax # (714) 834-2657 during the entire term of this Contract. In addition, all subcontractors performing work on behalf of Contractor pursuant to this Contract shall obtain insurance subject to the same terms and conditions as set forth herein for Contractor.

All insurance policies required by this Contract shall declare any deductible or self-insured retention (SIR) in an amount in excess of \$25,000 (\$5,000 for automobile liability), which shall specifically be approved by the County Executive Office (CEO)/Office of Risk Management. Contractor shall be responsible for reimbursement of any deductible to the insurer. Any self-insured retentions (SIRs) or deductibles shall be clearly stated on the Certificate of Insurance.

If Contractor fails to maintain insurance acceptable to the County for the full term of this Contract, County may terminate this Contract.

#### **Qualified Insurer**

The policy or policies of insurance must be issued by an insurer licensed to do business in the state of California (California Admitted Carrier).

Minimum insurance company ratings as determined by the most current edition of the **Best's Key Rating Guide/Property-Casualty/United States** or **ambest.com** shall be A- (Secure Best's Rating) and VIII (Financial Size Category).

If at any time the Contractor proposes to purchase any insurance policy required by this Contract from a non-admitted carrier in the state of California, CEO/Office of Risk Management retains the sole and express right to approve or reject the non-admitted carrier after review of the company's performance and financial ratings.

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

Coverage	Per Occurrence	Annual Aggregate
Commercial General Liability, including a Broad Form Property Damage Endorsement	\$1,000,000 combined single limit per occurrence	\$2,000,000
Automobile Liability including coverage for all owned, non-owned and hired vehicles	\$1,000,000 combined single limit per occurrence	\$1,000,000
Employers' Liability	\$1,000,000 per occurrence	\$1,000,000
Professional Liability	\$1,000,000 per claims made	\$1,000,000
Workers' Compensation	Statutory	Statutory

All liability insurance, except Professional Liability, required by this Contract shall be at least \$1,000,000 combined single limit per occurrence. Professional Liability may also be provided on a "Claims Made" basis. The minimum aggregate limit for the Commercial General Liability policy shall be \$2,000,000.

The County of Orange shall be added as an additional insured on all insurance policies required by this Contract with respect to work done by the Contractor under the terms of this Contract (except Workers' Compensation/Employers' Liability and Professional Liability). An additional insured endorsement evidencing that the County of Orange is an additional insured shall accompany the Certificate of Insurance.

All insurance policies required by this Contract shall be primary insurance, and any insurance maintained by the County of Orange shall be excess and non-contributing with insurance provided by these policies. An endorsement evidencing that the Contractor's insurance is primary and non-contributing shall specifically accompany the Certificate of Insurance for the Commercial General Liability.

All insurance policies required by this Contract shall give the County of Orange 30 days notice in the event of cancellation. This shall be evidenced by an endorsement separate from the Certificate of Insurance. In addition, the cancellation clause must include language as follows, which edits the pre-printed ACORD certificate:

**SHOULD ANY OF THE ABOVE DESCRIBED POLICIES BE CANCELLED BEFORE THE EXPIRATION DATE THEREOF, THE ISSUING COMPANY WILL MAIL 30 DAYS WRITTEN NOTICE TO THE CERTIFICATE HOLDER NAMED TO THE LEFT.**

All insurance policies required by this Contract shall waive 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 when acting within the scope of their appointment or employment.

If Contractor's Professional Liability policy is a "claims made" policy, Contractor shall agree to maintain professional liability coverage for two years following completion of this Contract.

The Commercial General Liability policy shall contain a severability of interests clause.

The Contractor is aware of the provisions of Section 3700 of the California Labor Code which requires every employer to be insured against liability for Workers' Compensation or be self-insured in accordance with provisions of that code. The Contractor will comply with such provisions and shall furnish the County satisfactory evidence that the Contractor has secured, for the period of this Contract, statutory Workers' Compensation insurance and Employers' Liability insurance with minimum limits of \$1,000,000 per occurrence.

Insurance certificates should be forwarded to the agency/department address listed on the Contract.

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 Contract. Any increase or decrease in insurance will be as deemed by County of Orange Risk Manager as appropriate to adequately protect County.

County shall notify Contractor in writing of changes in the insurance requirements. If Contractor does not deposit copies of acceptable certificates of insurance and endorsements with County incorporating such changes within thirty days of receipt of such notice, this Contract may be in breach without further notice to Contractor, and County shall be entitled to all legal remedies.

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 Contract.

The County of Orange Certificate of Insurance and the Special Endorsement for the County of Orange can be utilized to verify compliance with the above-mentioned insurance requirements in place of commercial insurance certificates and endorsements.

- M. Bill and Liens:** Contractor shall pay promptly all indebtedness for labor, materials and equipment used in performance of the work. Contractor shall not permit any lien or charge to attach to the work or the premises, but if any does so attach, Contractor shall promptly procure its release and, in accordance with the requirements of paragraph "L" above, indemnify, defend, and hold County harmless and be responsible for payment of all costs, damages, penalties and expenses related to or arising from or related thereto.
- N. Changes:** Contractor shall make no changes in the work or perform any additional work without the County's specific written approval.
- O. Change of Ownership:** Contractor agrees that if there is a change or transfer in ownership of Contractor's business prior to completion of this Contract, the new owners shall be required under terms of sale or other transfer to assume Contractor's duties and obligations contained in this Contract and complete them to the satisfaction of County.
- P. Force Majeure:** Contractor shall not be assessed with liquidated damages or unsatisfactory performance penalties during any delay beyond the time named for the performance of this Contract caused by any act of God, war, civil disorder, employment strike or other cause beyond its reasonable control, provided Contractor gives written notice of the cause of the delay to County within 36 hours of the start of the delay and Contractor avails itself of any available remedies.
- Q. Confidentiality:** Contractor, Contractor's staff, agents, and employees agree to maintain the confidentiality of all County and County-related records and information pursuant to all statutory laws relating to privacy and confidentiality that currently exist or exist at any time during the term of this Contract and at all times thereafter. Contractor acknowledges that it may be exposed to confidential

and proprietary information of County, including, but not limited to, custom work product; software and other technical information including, but not limited to, functional and technical specifications; designs; drawings; analysis; research; processes; computer programs; methods; ideas; "know how;" business information including, but not limited to sales and marketing research, materials, plans, accounting and financial information, and personnel records; and other information designated as confidential expressly or by the circumstances in which it is provided (collectively hereinafter referred to as "Confidential Information"). Confidential and proprietary information shall not include (i) information already known or independently developed by the recipient; (ii) information in the public domain through no wrongful act of the recipient; or (iii) information received by the recipient from a third party who was free to disclose it.

With respect to Confidential Information, Contractor agrees that during the Term and at all times thereafter it shall not use, commercialize or disclose such Confidential Information to any person or entity, except to its own employees having a "need to know" and who are themselves bound by similar nondisclosure restrictions and to such other recipients as approved in writing by County; provided, however, that all such recipients shall have first executed a confidentiality agreement in a form acceptable to County or the owner of such information. Contractor may not alter or remove from any software or associated documentation owned or provided by County any proprietary, copyright, trademark or trade secret legend. Each party shall use at least the same degree of care in safeguarding the other party's Confidential Information as it uses in safeguarding its own Confidential Information.

- R. Compliance with Laws:** Contractor represents and warrants that services to be provided under this Contract shall fully comply, at Contractor's expense, with all standards, laws, statutes, restrictions, ordinances, requirements, and regulations (collectively "laws"), including, but not limited to those issued by County in its governmental capacity and all other laws applicable to the services at the time services are provided to and accepted by County. Contractor acknowledges that County is relying on Contractor to ensure such compliance, and pursuant to the requirements of paragraph "L" above, Contractor agrees that it shall defend, indemnify and hold County and County Indemnitees harmless from all liability, damages, costs and expenses arising from or related to a violation of such laws.
- S. Pricing:** The Contract amount shall include full compensation for providing all services as specified herein or when applicable, in the Statement of Work attached to this Contract, and no additional compensation will be allowed therefor, unless otherwise provided for in this Contract.
- T. Terms and Conditions:** Contractor acknowledges that it has read and agrees to all terms and conditions included in this Contract.
- U. Headings:** The various headings and numbers herein, the grouping of provisions of this Contract into separate clauses and paragraphs, and the organization hereof are for the purpose of convenience only and shall not limit or otherwise affect the meaning hereof.
- V. Severability:** If any term, covenant, condition or provision of this Contract is held by a court of competent jurisdiction to be invalid, void or unenforceable, the remainder of the provisions hereof shall remain in full force and effect and shall in no way be affected, impaired or invalidated thereby.
- W. Calendar Days:** Any reference to the word "day" or "days" herein shall mean calendar day or calendar days, respectively, unless otherwise expressly provided.
- X. Attorneys Fees:** In any action or proceeding to enforce or interpret any provision of this Contract, or where any provision hereof is validly asserted as a defense, each party shall bear its own attorney's fees, costs and expenses.
- Y. Interpretation:** This Contract has been negotiated at arm's length and between persons sophisticated and knowledgeable in the matters dealt with in this Contract. In addition, each party has been represented by experienced and knowledgeable independent legal counsel of its own choosing, or has knowingly declined to seek such counsel despite being encouraged and given the opportunity to do so. Each party further acknowledges that it has not been influenced to any extent whatsoever in

executing this Contract by any other party hereto or by any person representing either or both of them. Accordingly, any rule of law (including California Civil Code Section 1654) or legal decision that would require interpretation of any ambiguities in this Contract against the party that has drafted it is not applicable and is waived. The provisions of this Contract shall be interpreted in a reasonable manner to effect the purpose of the parties and this Contract.

2. **Authority:** The parties to this Contract represent and warrant that this Contract has been duly authorized and executed and constitutes the legally binding obligation, enforceable in accordance with its terms.

### **ADDITIONAL TERMS AND CONDITIONS**

1. **FISCAL APPROPRIATIONS – SUBJECT TO**

This Contract is subject to and contingent upon applicable budgetary appropriations being approved by the County of Orange Board of Supervisors for each fiscal year during the term of this Contract. If such appropriations are not approved, the Contract will be terminated without penalty to the County.

2. **CONTINGENCY OF FUNDS**

Contractor acknowledges that funding or portions of funding for this Contract may also be contingent upon the receipt of funds from, and/or appropriation of funds by, the State of California to County. If such funding and/or appropriations are not forthcoming, or are otherwise limited, County may immediately terminate or modify this Contract without penalty.

3. **PROJECT DIRECTOR – COUNTY**

The County appoints Dave Riley, or designee, as Project Director to act as liaison between the County and the Contractor during the term of this Contract. The County's Project Director shall coordinate the activities of the County staff assigned to work with the Contractor.

Contractor reserves the right to, from time to time, employ, retain or engage assistant services of others, as Contractor deems necessary, in order to properly perform the duties and obligations required of Contractor under this Contract at Contractor's cost. County maintains the right to request the replacement of an individual providing these services should the services of an individual retained by Contractor prove not to meet with County's approval. Contractor shall accomplish the removal within 14 calendar days after written notice by County's Project Director.

4. **CONTRACTOR'S PROJECT MANAGER AND KEY PERSONNEL**

Contractor shall appoint Gerald L. Mann as Project Manager to direct the Contractor's efforts in fulfilling Contractor's obligations under this Contract. This Project Manager shall be subject to approval by the County and shall not be changed without the written consent of the County's Project Director, which consent shall not be unreasonably withheld.

The Contractor's Project Manager and County-assigned key personnel shall be assigned to this project for the duration of this Contract and shall diligently pursue all work and services to meet the project time lines. Key personnel are those individuals who report directly to the Contractor's Project Manager.

5. **INTERPRETATION OF CONTRACT**

In the event of a conflict or question involving the provisions of any part of this Contract, interpretation and clarification as necessary shall be determined by the County's assigned Deputy Purchasing Agent. If disagreement exists between the Contractor and the County's Project Director in interpreting the provision(s), final interpretation and clarification shall be determined by the County's Purchasing Agent or his designee.

6. **PRECEDENCE**

The Contract documents consist of this Contract and its Exhibits. In the event of a conflict between the Contract documents, the order of precedence shall be the provisions of the main body of this Contract, i.e., those provisions set forth in the recitals and articles of this Contract and then the Exhibits.

**7. BREACH OF CONTRACT**

The failure of the Contractor to comply with any of the provisions, covenants or conditions of this Contract shall be a material breach of this Contract. In such event the County may, and in addition to any other remedies available at law, in equity, or otherwise specified in this Contract:

- a. Afford the Contractor written notice of the breach and ten calendar days or such shorter time that may be specified in this Contract within which to cure the breach;
- b. Discontinue payment to the Contractor for and during the period in which the Contractor is in breach; and
- c. Offset against any monies billed by the Contractor but yet unpaid by the County those monies disallowed pursuant to the above.

**8. COUNTY OF ORANGE CHILD SUPPORT ENFORCEMENT**

In order to comply with the child support enforcement requirements of the County of Orange, within 30 days of award of the Contract, the Contractor agrees to furnish the required Contractor data and certifications to the agency/department Deputy Purchasing Agent, as specified in the form attached - Exhibit C.

Failure of the Contractor to timely submit the data and/or certifications required or to comply with all federal, state, and local 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 the Contract. Failure to cure such breach within 60 calendar days of notice from the County shall constitute grounds for termination of the Contract.

**9. CONFLICT OF INTEREST**

The Contractor shall exercise reasonable care and diligence to prevent any actions or conditions that could result in a conflict with the best interests of the County. This obligation shall apply to the Contractor; the Contractor's employees, agents, and relatives; sub-tier contractors; and third parties associated with accomplishing work and services hereunder. The Contractor's efforts shall include, but not be limited to establishing precautions to prevent its employees or agents from making, receiving, providing or offering gifts, entertainment, payments, loans or other considerations which could be deemed to appear to influence individuals to act contrary to the best interests of the County.

The County of Orange Board of Supervisors policy prohibits its public employees from engaging in activities involving conflict of interest. The Contractor shall not, during the period of this Contract, employ any County employee for any purpose.

**10. CONFLICT WITH EXISTING LAW**

The Contractor and the County agree that if any provision of this Contract is found to be illegal or unenforceable, such term or provision shall be deemed stricken and the remainder of the Contract shall remain in full force and effect. Either party having knowledge of such term or provisions shall promptly inform the other of the presumed non-applicability of such provision. Should the offending provision go to the heart of the Contract, the Contract shall be terminated in a manner commensurate with interests of both parties to the maximum extent reasonable.

**11. WAIVERS - CONTRACT**

The failure of the County in any one or more instances to insist upon strict performance of any of the terms of this Contract or to exercise any option contained herein shall not be construed as a waiver or relinquishment to any extent of the right to assert or rely upon any such terms or option on any future occasion.

**12. TERMINATION - DEFAULT**

If Contractor is in default of any of its obligations under this Contract and has not commenced cure within ten days after receipt of a written notice of default from County and cured such default within the time specified in the notice, the County shall immediately be entitled to either commence resolution in

accordance with this paragraph or to terminate this Contract by giving written notice to take effect immediately. Default shall include failure to carry out any of the requirements of this Contract, including, but not limited to persistently disregarding laws and or ordinances, not proceeding with the work as agreed to herein, or otherwise substantially violating any provision of this Contract. Upon termination of the Contract with Contractor, the County may begin negotiations with a third-party contractor to provide services as specified in this Contract.

The right of either party to terminate this Contract hereunder shall not be affected in any way by its waiver of or failure to take action with response to any previous default.

### **13. TERMINATION – CONVENIENCE OF THE COUNTY**

The County may terminate provision of services under this Contract for its convenience in whole, or, from time to time, in part if the user agency/department determines that a termination is in the County's interest. The agency/department assigned Deputy Purchasing Agent shall terminate the Contract by delivering to the Contractor a written notice of termination specifying the extent of the termination and the effective date thereof.

After receipt of a notice of termination, and except as otherwise directed by County, Contractor shall immediately proceed with the following obligations, as applicable, regardless of any delay in determining or adjusting any amounts due under this clause. The Contractor shall:

- a. Stop work as specified in the notice of termination;
- b. Place no further subcontracts or orders for materials, services or facilities, except as may be necessary to complete the continued portion of the Contract;
- c. Terminate all orders and subcontracts to the extent that they relate to the work terminated;
- d. Settle all outstanding liabilities and termination settlement proposals arising from the termination of any subcontracts, the approval or ratification of which will be final for purposes of this clause;
- e. As directed by the assigned Deputy Purchasing Agent transfer title and deliver to County (a) work in process, completed work, supplies, and other material produced or acquired for the work terminated, and (b) completed or partially completed plans, information, and other property that, if the Contract had been completed, would be required to be furnished to the County;
- f. Complete performance of the work not terminated; and
- g. Take any action that may be necessary or as the County may direct for the protection and preservation of the property related to this Contract that is in the possession of Contractor and in which County has or may acquire an interest and to mitigate any potential damages or requests for Contract adjustment or termination settlement to the maximum practical extent.

At the completion of the Contractor's termination efforts, the Contractor shall submit to the assigned buyer a list indicating quantity and quality of termination inventory not previously disposed of and request instructions for disposition of the residual termination inventory.

After termination the Contractor shall submit a final termination settlement proposal to the user agency/department in a format acceptable to the County. The Contractor shall submit the proposal promptly, but no later than 60 days from the effective date of the termination, unless extended in writing by the County upon written request of the Contractor within the 90-day period. However, if the agency/department determines that the facts justify it, a termination settlement proposal may be received and acted on after the expiration of the filing period or any extension.

Contractor and the County may agree upon the whole or any part of the amount to be paid because of the termination. The amount may include a reasonable allowance for profit on work done, including a reasonable amount for accounting, legal, clerical and other expenses reasonably necessary for the preparation of termination settlement proposals and supporting data, and storage, transportation and other costs incurred, reasonably necessary for the preservation, protection, or disposition of the termination inventory. However, the agreed amount may not exceed the total Contract price as

reduced by (a) the amount of payment previously made and (b) the Contract price of work not terminated. The Contract shall be amended and the Contractor paid the agreed amount.

If the Contractor and the County fail to agree on the whole amount to be paid because of the termination of work, the County shall pay the Contractor the amounts determined by the County as follows, but without duplication of any amounts agreed on as set forth above:

- h. The Contract price for completed services accepted by the County (or sold or acquired) not previously paid for, adjusted for any savings of other charges; and

The Contractor shall use generally accepted accounting principles and sound business practices in determining all costs claimed, agreed to, or determined under this clause. Such costs shall be allocable to the terminated Contract or portion thereof, allowable under applicable laws, regulations, generally accepted accounting principles and good business judgment and objectively reasonable.

The Contractor shall have the right to appeal, under the County's protest procedure, any determination made by the County, except that if the Contractor failed to submit the termination settlement proposal within the time provided and failed to request a time extension, there is no right of appeal.

In arriving at the amount due the Contractor under this clause, there shall be deducted:

- i. All payment to the Contractor under the terminated portion of this Contract;
- j. Any claim which the County has against the Contractor under this or any other Contract; and
- k. The agreed price for or proceeds of sale of materials, supplies, or other things acquired by the Contractor or sold under the provisions of this clause and not recovered by or credited to the County.

If the termination is partial, the Contractor may file a proposal with the agency/department for an equitable adjustment of the price(s) of the continued portion of the Contract. The agency/department shall make any equitable adjustment agreed upon. Any proposal by the Contractor for an equitable adjustment under this clause shall be requested within 30 days from the effective date of termination unless extended in writing by the agency/department.

The County may:

- l. Under the terms and conditions it prescribes, make partial payment and payments against costs incurred by the Contractor for its terminated portion of the Contract, if the County believes that the total of these payments will not exceed the amount to which the Contractor will be entitled; and
- m. If the total payments exceed the amount finally determined to be due, the Contractor shall repay the excess to the County upon demand.

In determining the amount payable to the Contractor and notwithstanding any other provision, if it appears that the Contractor would have sustained a loss on the entire Contract had it been completed, the County shall allow no profit and shall reduce the settlement to reflect the indicated rate of loss.

Unless otherwise provided in this Contract or by statute, the Contractor shall maintain all records and documents relating to the terminated portion of this Contract for three years after final settlement. This includes all books and other evidence bearing on the Contractor's costs and expenses under this Contract. The Contractor shall make these records and documents available to the County, at the Contractor's office, at all reasonable times, without any direct charge. If approved by the County, photographs, microphotographs, electronic storage, or other authentic reproductions may be maintained instead of original records and documents.

#### **14. DATA – TITLE TO**

All materials, documents, data or information obtained from the County data files or any County medium furnished to the Contractor in the performance of this Contract will at all times remain the

property of the County. Such data or information may not be used or copied for direct or indirect use by the Contractor after completion or termination of this Contract without the express written consent of the County.

**15. CONTRACTOR BANKRUPTCY/INSOLVENCY**

If the Contractor should be adjudged bankrupt or should have a general assignment for the benefit of its creditors or if a receiver should be appointed on account of the Contractor's insolvency, the County may terminate this Contract.

**16. OWNERSHIP OF DOCUMENTS**

The County has permanent ownership of all directly connected and derivative materials produced under this Contract by the Contractor. All documents, reports and other incidental or derivative work or materials furnished hereunder shall become and remain the sole property of the County and may be used by the County as it may require without additional cost to the County. None of the documents, reports and other incidental or derivative work or furnished materials shall be used by the Contractor without the express written consent of the County.

**17. DISPUTES – CONTRACT**

A. The parties shall deal in good faith and attempt to resolve potential disputes informally. If the dispute concerning a question of fact arising under the terms of this Contract is not disposed of in a reasonable period of time by the Contractor's Project Manager and the County's Project Director, such matter shall be brought to the attention of the County Purchasing Agent by way of the following process:

- 1) The Contractor shall submit to the agency/department assigned Deputy Purchasing Agent a written demand for a final decision regarding the disposition of any dispute between the parties arising under, related to, or involving this Contract, unless the County, on its own initiative, has already rendered such a final decision.
- 2) The Contractor's written demand shall be fully supported by factual information, and, if such demand involves a cost adjustment to the Contract, the Contractor shall include with the demand a written statement signed by a senior official indicating that the demand is made in good faith, that the supporting data are accurate and complete, and that the amount requested accurately reflects the Contract adjustment for which the Contractor believes the County is liable.

B. Pending the final resolution of any dispute arising under, related to, or involving this Contract, the Contractor agrees to diligently proceed with the performance of this Contract, including the provision of services. The Contractor's failure to diligently proceed shall be considered a material breach of this Contract.

Any final decision of the County shall be expressly identified as such, shall be in writing, and shall be signed by the County Purchasing Agent or his designee. If the County fails to render a decision within 90 days after receipt of the Contractor's demand, it shall be deemed a final decision adverse to the Contractor's contentions. The County's final decision shall be conclusive and binding regarding the dispute unless the Contractor commences action in a court of competent jurisdiction to contest such decision within 90 days following the date of the County's final decision or one year following the accrual of the cause of action, whichever is later.

**18. NEWS/INFORMATION RELEASE**

The Contractor agrees that it will not issue any news releases in connection with either the award of this Contract or any subsequent amendment of or effort under this Contract without first obtaining review and approval of said news releases from the County through the County's Project Director.

**19. NOTICES**

As listed below, any and all Purchasing notices shall be directed to Maritza Fajardo, while any and all Program matters shall be directed to Dave Riley. Any and all notices, requests, demands, and other communications contemplated, called for, permitted, or required to be given hereunder shall be in writing, except through the course of Contractor's Project Manager's and County's Project Director's routine

exchange of information and cooperation during the term of the work and services, and shall be deemed to have been duly given (a) upon actual in-person delivery, if delivery is by direct hand; or (b) upon delivery agreed to as the actual day of receipt or no greater than four calendar days after being mailed (the date of mailing shall count as the first day), whichever occurs first by United States certified or registered mail, return receipt requested, postage prepaid, addressed to the appropriate party at the following address or such other address as the parties hereto may designate by written notice from time to time in the manner aforesaid:

For Contractor: Name: Public Health Foundation Enterprises  
Address: 13200 Crossroads Parkway N., Suite 135  
City of Industry, CA 91746  
Attn: Gerald Solomon  
Title: CEO  
Phone: (562) 699-7320  
Fax: (562) 699-8856  
E-mail: [gsolomon@phfe.org](mailto:gsolomon@phfe.org)

For County: Name: County of Orange  
Health Care Agency/Purchasing  
Address: 511 N. Sycamore St.  
Santa Ana, CA 92701  
Attn: Maritza Fajardo  
Title: Deputy Purchasing Agent  
Phone: (714) 834-2176  
Fax: (714) 834-2657  
E-mail: [mfajardo@ochca.com](mailto:mfajardo@ochca.com)

Name: County of Orange  
Health Care Agency  
Address: 405 W. 5<sup>th</sup> Street, Suite 720  
Santa Ana, CA 92701  
Attn: Dave Riley  
Title: Project Director  
Phone: (714) 834-3021  
Fax: (714) 834-3660  
E-mail: [driley@ochca.com](mailto:driley@ochca.com)

## **20. REPORTS/MEETINGS**

The Contractor shall develop reports and any other relevant documents necessary to complete the services and requirements as set forth in this Contract. The County's Project Director and the Contractor will meet periodically on reasonable notice to discuss the Contractor Project Manager's performance progress under this Contract. The Contractor shall provide such information that is requested by the County for the purpose of monitoring progress under this Contract.

## **21. RESPONSIBILITY OF CONTRACTOR**

Contractor shall be responsible for the professional quality, technical accuracy, timely completion, and coordination of all services furnished by Contractor's Project Manager under this Contract. Contractor shall perform such human services and fiscal agent services as may be necessary to accomplish the work required to be performed under this Contract and in accordance with this Contract.

Contractor shall provide services and other relevant documents necessary to complete the services and fulfill the requirements as set forth in Exhibit A, Statement of Work.

## **22. COMPLIANCE**

A. County's Health Care Agency (HCA) has established an Office of Compliance and associated Compliance Program for purposes of ensuring adherence to all rules and regulations related to the provision of services and expenditure of funds in federal and state health care programs.

County shall provide Contractor with a copy of the relevant HCA Policies and Procedures relating to the Office of Compliance.

- B. **CODE OF CONDUCT** - Under the direction of the HCA Office of Compliance, a Code of Conduct for adherence by all HCA employees and contract providers has been developed. Contractor will be provided with a copy and shall be required to adhere to said HCA Code of Conduct.
- C. Contractor shall comply with the United States Department of Health and Human Services, Office of Inspector General (OIG) requirements related to eligibility for participation in federal and state health care programs.
  1. Contractor affirmatively asserts that its employees are not Ineligible Persons as defined hereunder.
  2. Contractor further acknowledges that County shall review at least semi-annually all individual Contractors for eligibility against General Services Administration and OIG Parties Excluded from Federal Programs Lists and Cumulative Sanction Lists respectively to ensure that Ineligible Persons are not employed or retained to provide services related to this Contract.
  3. Ineligible Persons may include both entities and individuals and are defined as any individual or entity who:
    - a. Is currently excluded, suspended, debarred or otherwise ineligible to participate in the 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.
  4. Contractor acknowledges that Ineligible Persons are precluded from providing federally 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. County shall terminate this Contract immediately in the event that Contractor is identified as an Ineligible Person during the term of this Contract.

#### D. REIMBURSEMENT STANDARDS

1. Contractor shall submit no false, fraudulent, inaccurate or fictitious claims for payment or reimbursement of any kind.
2. Contractor shall bill only for those eligible services actually rendered which are also fully documented.
3. Contractor shall act promptly to investigate and correct any problems or errors in billing, if and when, any such problems or errors are identified by anyone.

#### E. COMPLIANCE TRAINING

1. County will provide and Contractor shall complete Compliance training when offered initially as well as any refresher training provided on an annual basis.
2. Unless otherwise specified in this Contract and in accordance with the Termination paragraph of this Contract, County may terminate this Contract upon five (5) days written notice if Contractor fails to perform any of the terms of this Compliance paragraph. At County's sole discretion, Contractor may be allowed up to thirty (30) days for corrective action.

## **23. HIPAA – BUSINESS ASSOCIATES:**

### **A. GENERAL PROVISIONS**

1. The parties agree that the terms used in this Contract shall have the same meaning as those terms in the Standards for Privacy of Individually Identifiable Health Information, 45 Code of Federal Regulations (CFR), Parts 160 and 164, otherwise known as the Health Insurance Portability and Accountability Act (HIPAA) Privacy Rule, as it may exist now or be hereafter amended.
2. It is agreed by both parties that Contractor is a Business Associate of County for the purposes of this Contract.
3. It is understood by both parties that Contractor is not a Covered Entity, as defined by HIPAA, and is not responsible for complying with said regulations for purposes of safeguarding any Protected Health Information (PHI) generated by Contractor for its own purposes.
4. It is understood by both parties that the Privacy Rule does not pre-empt any State and/or Federal laws, rules or regulations that impose more stringent requirements with respect to confidentiality of client information.
5. **Security Rule**
  - a. Contractor shall establish and maintain appropriate administrative, physical, and technical safeguards that reasonably and appropriately protect the confidentiality, integrity, and availability of electronic protected health information. Contractor shall follow generally accepted system security principles and the requirements of the final HIPAA rule pertaining to the security of health information.
  - b. Contractor shall ensure that any agent, including a subcontractor, to whom it provides electronic protected health information agrees to implement reasonable and appropriate safeguards to protect that information.
  - c. Contractor shall report any security incident of which it becomes aware to County. For the purposes of this Contract, a "security incident" means the attempted or successful unauthorized access, use, disclosure, modification, or destruction of information or interference with system operations. This 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.

### **B. OBLIGATIONS AND ACTIVITIES OF CONTRACTOR AS BUSINESS ASSOCIATE**

1. Contractor agrees not to use or disclose Protected Health Information (PHI) other than as permitted or required by this Contract or as required by law.
2. Contractor agrees to use appropriate safeguards to prevent use or disclosure of PHI other than as provided for by this Contract.
3. 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 Contract.
4. Contractor agrees to report to County within ten (10) calendar days any use or disclosure of PHI not provided for by this Contract of which Contractor becomes aware.
5. Contractor agrees to ensure that any agent, including a subcontractor, to whom it provides PHI received from County, or PHI created or received by Contractor on behalf of County, agrees to the same restrictions and conditions set forth in the business associate provisions of the Privacy Rule that apply throughout this Contract.

6. Contractor agrees to provide access, within fifteen (15) days of receipt of a written request by County, to PHI in a Designated Record Set, to COUNTY or, as directed by County, to an individual client in order to meet the requirements under 45 CFR Section 164.524.
7. Contractor agrees to make any amendment(s) to PHI in a Designated Record Set that County directs or agrees to pursuant to 45 CFR Section 164.526 at the request of County or an individual client, within thirty (30) days of receipt of said request by County.
8. Contractor agrees to make internal practices, books, and records, including policies and procedures and PHI, 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 of the Department of Health and Human Services, 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 Privacy Rule.
9. Contractor agrees to document any disclosures of PHI and information related to such disclosures as would be required for County to respond to a request by an individual client for an accounting of disclosures of PHI in accordance with 45 CFR Section 164.528.
10. Contractor agrees to provide County or an individual client, as directed by County, in a time and manner to be determined by County, that information collected in accordance with paragraph twenty-seven (27) of the Contract, in order to permit COUNTY to respond to a request by an individual client for an accounting of disclosures of PHI in accordance with 45 CFR Section 164.528.

**C. PERMITTED USES AND DISCLOSURES BY CONTRACTOR**

Except as otherwise limited in this Contract, Contractor may use or disclose PHI to perform functions, activities, or services for, or on behalf of, County as specified in this Contract, provided that such use or disclosure would not violate the Privacy Rule if done by County or the Minimum Necessary policies and procedures of the County.

**D. OBLIGATIONS OF COUNTY**

1. County shall notify Contractor of any limitation(s) in County's notice of privacy practices in accordance with 45 CFR Section 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, permission by an individual client to use or disclose 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 Section 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 Privacy Rule if done by County.

**E. BUSINESS ASSOCIATE TERMINATION**

1. In addition to the rights and remedies provided to County by this Contract upon termination, if County gains knowledge of any material breach by Contractor of the requirements of paragraph twenty-three (23), County shall:
  - a. Provide an opportunity for Contractor to cure the breach or end the violation and terminate this Contract if Contractor does not cure the breach or end the violation within thirty (30) days; or

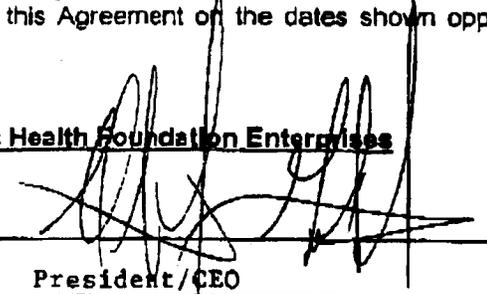
- b Immediately terminate this Contract if Contractor has breached a material term of this Contract and cure is not possible; or
  - c If neither termination nor cure is feasible, County shall report the violation to the Secretary of the Department of Health and Human Services.
2. Upon termination of this Contract, all PHI provided by County to Contractor, or created or received by Contractor on behalf of County, shall either be destroyed or returned to County at County's sole discretion, and in conformity with the Privacy Rule. This provision shall apply to PHI that is in the possession of subcontractors or agents of Contractor. If it is infeasible to return or destroy PHI, Contractor shall extend the protections of this Contract to such PHI and limit further uses and disclosures of such PHI to those purposes that make the return or destruction infeasible, for so long as Contractor maintains such PHI.

AGREEMENT N100007391  
FOR  
HUMAN SERVICES AND  
FISCAL AGENT SERVICES  
FOR THE  
COUNTY OF ORANGE  
HEALTH CARE AGENCY

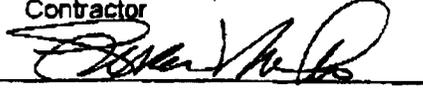
SIGNATURE PAGE

IN WITNESS WHEREOF, the parties hereto certify that they have read and understand all the terms and conditions contained herein and have hereby executed this Agreement on the dates shown opposite their respective signatures below.

DATE: 11/30/05

Public Health Foundation Enterprises  
BY:   
TITLE: President/CEO  
Contractor

\*DATE: 2/14/06

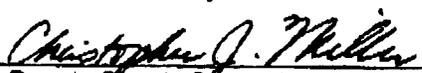
BY:   
TITLE: VP Controller  
Contractor

\* IF A CORPORATION, TWO CORPORATE OFFICERS MUST SIGN THE DOCUMENT; THE FIRST SIGNATURE MUST BE EITHER THE CHAIRMAN OF THE BOARD, PRESIDENT, OR ANY VICE PRESIDENT. THE SECOND SIGNATURE MUST BE EITHER THE SECRETARY, AN ASSISTANT SECRETARY, THE CHIEF FINANCIAL OFFICER, OR ANY ASSISTANT TREASURER.

DATE: 2/14/06

COUNTY OF ORANGE, a Political Subdivision of the  
State of California  
BY:   
TITLE: Supervising Buyer

DATE: 11-21-05

Approved as to Form  
Orange County, California  
Office of the County Counsel  
BY:   
Deputy County Counsel

**EXHIBIT A  
AGREEMENT N1000007391  
STATEMENT OF WORK  
FOR  
HUMAN SERVICES AND  
FISCAL AGENT SERVICES  
FOR THE COUNTY OF ORANGE  
HEALTH CARE AGENCY**

**I. CONTRACTOR RESPONSIBILITIES**

Contractor agrees to provide the following services:

- A. Contractor shall serve as human services provider and fiscal agent and provide one (1) Project Manager employee to County to provide support to County's Information Technology Division in the Health Care Agency (HCA), specifically implementation and management of HCA's Integrated Records Information System (IRIS).
- B. The Contractor's Project Manager shall be at all times an employee of Contractor. Contractor shall provide salary, benefits, and personnel services for the employee, and shall be fully responsible for such employee.
- C. The Contractor's Project Manager shall perform the following duties:
  - 1. Implementation and coordination of the County's purchased IRIS software modules across the Health Care Agency, ensuring products already implemented are minimally impacted by new products to be implemented.
  - 2. Roll out of the multiphase IRIS project through direct supervision of individual project managers assigned to each module implementation.
  - 3. Train, develop, and mentor selected staff in advanced project management which will result in their ability to accept higher level complex project assignments.
  - 4. Serve as chair of stakeholder meetings for each module implementation and plan project implementation based on group needs and recommendations.
  - 5. Review allocation of all IRIS resources and make recommendations for more appropriate distribution of resources, or additional resources, as implementation timelines progress.
  - 6. Serve as agency-wide coordinator between Health Care Agency and its contracted software vendor.
  - 7. Prepare written plans and schedules for all module implementations, in phases if appropriate, and each phase to have measurable milestones.
  - 8. Interface with County operations and Division managers as needed.
- D. Contractor's Project Manager shall provide County Project Director with written monthly progress reports, or weekly if requested.

**EXHIBIT B  
 AGREEMENT N100007391  
 COMPENSATION  
 FOR  
 HUMAN SERVICES AND  
 FISCAL AGENT SERVICES  
 FOR THE COUNTY OF ORANGE  
 HEALTH CARE AGENCY**

**I. COMPENSATION**

**A. Fixed Price Agreement**

This Contract is an hourly rate Fixed Price Agreement at the rate of \$100.00 per hour, and includes a provision for calculated benefits and indirect costs, between the County and the Contractor for human services and fiscal agent services, up to a maximum of \$235,200.00 for the period of February 1, 2006 through January 31, 2007. The total number of hours worked per period shall not exceed two thousand (2000).

<u>Personnel:</u>	<u>Rate/Hour</u>	<u>Maximum Allowed</u>
Gerald Mann, IRIS Project Manager	\$100.00	\$200,000.00
Required Benefits, FICA, WC, SUI @ 12.00%		\$ 24,000.00
Indirect @ 5%		\$ 11,200.00
Total:		<u>\$235,200.00</u>

Contractor agrees to accept the specified compensation as full remuneration for performing all services and furnishing all staffing and materials called for; for any reasonably foreseen difficulties under the responsibility of Contractor, which may arise or be encountered in the prosecution of the services until their acceptance; for risks connected with the services; and for performance by Contractor of all of its duties and obligations hereunder. The fixed price shall include the fee and all expenses related to the performance of work and services required to meet the tasks and deliverables in the Statement of Work, set forth more fully in Exhibit A of this Contract. Any extra work resulting in an increase in the Contract price shall be authorized by written Amendment to this Contract. Said Amendment shall be issued by the County of Orange Purchasing Agent or his designee and may be subject to approval by the County Board of Supervisors.

**II. PAYMENT TERMS**

**A. Terms**

Contractor shall be paid monthly in arrears. Contractor shall submit invoices with dates of services rendered within the past 30 days. Payment will be made within 30 days upon the Auditor-Controller's receipt of an approved invoice submitted in accordance with the terms set forth herein. County will not be obligated to pay invoices received more than 30 days after the end of the month in which services were provided. The invoice must be verified and approved by County's Project Director and is subject to routine processing requirements of the County. County's Project Director may withhold or delay any payment if Contractor fails to comply with any provision of this Contract.

Payment made by County shall not preclude the right of County from thereafter disputing any items or services involved or billed under this Contract and shall not be construed as acceptance of any part of the services.

**B. Invoicing Instructions**

1. Invoices and all supporting documentation shall be forwarded to the following address:

County of Orange  
Health Care Agency  
Attn: Accounts Payable  
P.O. Box 689  
Santa Ana, CA 92702

County's Project Director is responsible for preliminary approval of invoices and subsequent submittal of invoices to County Auditor-Controller for payment.

2. Acceptable Invoicing Format: Contractor may bill on any standard invoice form, but the following references must be made:
  - a. County Agreement Number N1000007391;
  - b. Person performing work;
  - c. Period billing;
  - d. Total amount due;
  - e. Report acceptable to County's Project Director of hours worked and activities performed.

The responsibility for providing acceptable invoice(s) to County for payment rests with Contractor. Incomplete or incorrect invoices are not acceptable and will be returned to Contractor for correction.



County of Orange  
Health Care Agency

SOLE SOURCE/PROPRIETARY REQUEST JUSTIFICATION

Date: November 18, 2005 Department/Agency: HCA/Information Technology

0000043049 David Riley (714) 834 - 6021  
Requisition Number Agency/Department Contact Phone

Recommended Vendor: Public Health Foundation Enterprises, Inc (PHFE)

Description of Services/Items: PHFE employees people to work in projects directed by other organizations. They provide all required workers compensation, SDI, and liability insurance. Under the proposed contract, Gerald Mann, a seasoned information technology executive with a successful public sector track record will provide information technology project management services to the HCA/IT – IRIS implementation as an employee of PHFE.

Please state the reason that the product/service can be provided only by the recommended vendor. Include any back-up information or documentation, which supports your recommendation. Use additional sheets if necessary.

PHFE is a non-profit organization, and as such, is able to charge a significantly lower administrative fee (5%) than for profit businesses. In addition, PHFE focuses on working with governmental entities, particularly health care agencies and departments.

Have other providers of the product or service been contacted? Yes  
Please provide detailed information. Use additional sheets if necessary.

A phone survey was conducted in 2003 with other potential providers of temporary executive management services.

How does recommended vendor's prices or fees compare to the general market? Use additional sheets if necessary.

The 5% administrative rate is considerably lower than the rates quoted. The next vendor rate was 13%, and the County master agreement for information technology professionals is approximately 35%.

If recommended vendor could not provide the product or service, how would the agency accomplish this particular task? Use additional sheets if necessary.

As an alternative, the Health Care Agency could seek to contract directly with Mr. Mann for services, but it is questionable if he would choose to do so because of the insurance and other requirements he would have to personally meet. A contract with PHFE is considered preferable since he will be a PHFE employee, and these requirements will be handled by that organization.

Michelle Ryan 11/22/05  
Authorized Program Support Signature Date

DECENTRALIZED PURCHASING AGENT USE ONLY

Deputy Purchasing Buyer Comments:  
Deputy Buyer Signature: \_\_\_\_\_ Date: \_\_\_\_\_  
Deputy Purchasing Agent Concurrence: [Signature] Date 11/22/05