



**AMENDMENT NO. 1  
TO  
CONTRACT NO. MA-042-18010436  
FOR  
TOBACCO USE PREVENTION SERVICES**

This Amendment (“Amendment No. 1”) to Contract No. MA-042-18010436 for Tobacco Use Prevention Services is made and entered into on July 1, 2020 (“Effective Date”) between National Council on Alcoholism and Drug Dependence – Orange County (“Contractor”), with a place of business at 21068 Bake Parkway, Lake Forest, CA 92630, and the County of Orange, a political subdivision of the State of California (“County”), through its Health Care Agency, with a place of business at 405 W. 5th St., Ste. 600, Santa Ana, CA 92701. Contractor and County may sometimes be referred to individually as “Party” or collectively as “Parties”.

**RECITALS**

WHEREAS, the Parties executed Contract No. MA-042-18010436 for Tobacco Use Prevention Services, effective July 1, 2017 through June 30, 2020, in an amount not to exceed \$1,800,000 (“Contract”); and

WHEREAS, the Parties now desire to enter into this Amendment No. 1 to renew the Contract for one year, in an amount not to exceed \$460,000 for the renewal period, for County to continue receiving and Contractor to continue providing the services set forth in the Contract, to amend specific terms and conditions in the Contract, and to amend Exhibit A of the Contract.

NOW THEREFORE, Contractor and County agree to amend the Contract as follows:

1. The Contract is renewed for a period of 1 year, effective July 1, 2020 through June 30, 2021, in an amount not to exceed \$460,000 for this renewal period, for a new total maximum obligation of \$2,260,000, renewable for two additional one-year periods; on the amended terms and conditions.
2. Paragraph IV. COMPLIANCE, Sub-Paragraph A, Section 3 is deleted in its entirety and replaced with the following:

“3. If CONTRACTOR does not provide proof of its own compliance program to ADMINISTRATOR, CONTRACTOR shall internally comply with ADMINISTRATOR’s Compliance Program and Code of Conduct, the CONTRACTOR shall submit to the ADMINISTRATOR within thirty (30) calendar days of execution of this Agreement a signed acknowledgement that CONTRACTOR will internally comply with ADMINISTRATOR’s Compliance Program and Code of Conduct. CONTRACTOR shall have as many Covered Individuals it determines necessary complete ADMINISTRATOR’s annual compliance training to ensure proper compliance.”
3. Paragraph IV. COMPLIANCE, Sub-Paragraph B, opening paragraph is deleted in its entirety and replaced with the following:

“B. SANCTION SCREENING – CONTRACTOR shall screen all Covered Individuals

employed or retained to provide services related to this Agreement semi-annually to ensure that they are not designated as Ineligible Persons, as pursuant to this Agreement. Screening shall be conducted against the General Services Administration's Excluded Parties List System or System for Award Management, the Health and Human Services/Office of Inspector General List of Excluded Individuals/Entities, the California Medi-Cal Suspended and Ineligible Provider List, the Social Security Administration's Death Master file at date of employment, and/or any other list or system as identified by the ADMINISTRATOR."

4. Paragraph IV. COMPLIANCE, Sub-Paragraph B, Section 1 is deleted in its entirety and replaced with the following:

"1. For purposes of this Compliance Paragraph, Covered Individuals includes all employees, interns, volunteers, contractors, subcontractors, agents, and other persons who provide health care items or services or who perform billing or coding functions on behalf of ADMINISTRATOR. CONTRACTOR shall ensure that all Covered Individuals relative to this Agreement are made aware of ADMINISTRATOR's Compliance Program, Code of Conduct and related policies and procedures (or CONTRACTOR's own compliance program, code of conduct and related policies and procedures if CONTRACTOR has elected to use its own)."

5. Paragraph IV. Compliance, Sub-Paragraph D, Section 1 is deleted in its entirety and replaced with the following:

"1. CONTRACTOR shall ensure completion of Specialized Provider Training by all Covered Individuals relative to this Agreement. This includes compliance with federal and state healthcare program regulations and procedures or instructions otherwise communicated by regulatory agencies; including the Centers for Medicare and Medicaid Services or their agents."

6. Paragraph IV. COMPLIANCE, Sub-Paragraph E, Sections 6 and 7 are added to the Contract as follows:

"6. CONTRACTOR shall meet the HCA MHP Quality Management Program Standards and participate in the quality improvement activities developed in the implementation of the Quality Management Program.

7. CONTRACTOR shall comply with the provisions of the ADMINISTRATOR's Cultural Competency Plan submitted and approved by the State. ADMINISTRATOR shall update the Cultural Competency Plan and submit the updates to the State for review and approval annually. (CCR, Title 9, §1810.410.subds.(c)-(d)."

7. Paragraph XXIX. CONFLICT OF INTEREST is added to the Contract as follows:

"CONTRACTOR shall exercise reasonable care and diligence to prevent any actions or conditions that could result in a conflict with COUNTY interests. In addition to CONTRACTOR, this obligation shall apply to CONTRACTOR's employees, agents, and subcontractors associated with the provision of goods and services provided under this Agreement. CONTRACTOR's efforts shall include, but not be limited to establishing rules and procedures preventing its employees, agents, and subcontractors from providing or offering gifts, entertainment, payments, loans or other considerations which could be deemed to influence or

appear to influence COUNTY staff or elected officers in the performance of their duties.”

8. Paragraph VI. COST REPORT, Sub-Paragraph A, opening paragraph is deleted in its entirety and replaced with the following:

“A. CONTRACTOR shall submit a Cost Report to COUNTY no later than sixty (60) calendar days following termination of this Agreement. CONTRACTOR shall prepare the Cost Report in accordance with all applicable federal, state and COUNTY requirements, GAAP and the Special Provisions Paragraph of this Agreement. CONTRACTOR shall allocate direct and indirect costs to and between programs, cost centers, services, and funding sources in accordance with such requirements and consistent with prudent business practice, which costs and allocations shall be supported by source documentation maintained by CONTRACTOR, and available at any time to ADMINISTRATOR upon reasonable notice.”

9. Paragraph VI. COST REPORT, Sub-Paragraph B, opening paragraph is deleted in its entirety and replaced with the following:

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

10. Paragraph VII. DELEGATION, ASSIGNMENT, AND SUBCONTRACTS, Sub-Paragraph B, opening paragraph is deleted in its entirety and replaced with the following:

“B. CONTRACTOR agrees that if there is a change or transfer in ownership of CONTRACTOR’s business prior to completion of this Agreement, and COUNTY agrees to an assignment of the Agreement, the new owners shall be required under the terms of sale or other instruments of transfer to assume CONTRACTOR’s duties and obligations contained in this Agreement and complete them to the satisfaction of COUNTY. CONTRACTOR may not assign the rights hereunder, either in whole or in part, without the prior written consent of COUNTY.”

11. Paragraph VII. DELEGATION, ASSIGNMENT, AND SUBCONTRACTS, Sub-Paragraph B, Section 6 is added to the Contract as follows:

“6. COUNTY reserves the right to immediately terminate the Agreement in the event COUNTY determines, in its sole discretion, that the assignee is not qualified or is otherwise unacceptable to COUNTY for the provision of services under the Agreement.”

12. Paragraph VII. DELEGATION, ASSIGNMENT, AND SUBCONTRACTS, Sub-Paragraph C, opening paragraph is deleted in its entirety and replaced with the following:

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

authorized in writing by ADMINISTRATOR prior to the beginning of service delivery.”

13. Paragraph VII. DELEGATION, ASSIGNMENT, AND SUBCONTRACTS, Sub-Paragraph C, Section 1 is deleted in its entirety and replaced with the following:

“1. After approval of the subcontractor, ADMINISTRATOR may revoke the approval of the subcontractor upon five (5) calendar days’ written notice to CONTRACTOR if the subcontractor subsequently fails to meet the requirements of this Agreement or any provisions that ADMINISTRATOR has required. ADMINISTRATOR may disallow subcontractor expenses reported by CONTRACTOR.”

14. Paragraph VII. DELEGATION, ASSIGNMENT, AND SUBCONTRACTS, Sub-Paragraph D is added to the Contract as follows:

“D. CONTRACTOR shall notify COUNTY in writing of any change in the CONTRACTOR’s status with respect to name changes that do not require an assignment of the Agreement. CONTRACTOR is also obligated to notify COUNTY in writing if the CONTRACTOR becomes a party to any litigation against COUNTY, or a party to litigation that may reasonably affect the CONTRACTOR’s performance under the Agreement, as well as any potential conflicts of interest between CONTRACTOR and County that may arise prior to or during the period of Contract performance. While CONTRACTOR will be required to provide this information without prompting from COUNTY any time there is a change in CONTRACTOR’s name, conflict of interest or litigation status, CONTRACTOR must also provide an update to COUNTY of its status in these areas whenever requested by COUNTY.”

15. Paragraph XXX. DISPUTE RESOLUTION is added to the Contract as follows:

“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 Agreement is not disposed of in a reasonable period of time by the CONTRACTOR and the ADMINISTRATOR, such matter shall be brought to the attention of the County Purchasing Agency by way of the following process:

1. CONTRACTOR shall submit to the County Purchasing Agency a written demand for a final decision regarding the disposition of any dispute between the Parties arising under, related to, or involving this Agreement, unless COUNTY, on its own initiative, has already rendered such a final decision.

2. CONTRACTOR’s written demand shall be fully supported by factual information, and, if such demand involves a cost adjustment to the Agreement, CONTRACTOR shall include with the demand a written statement signed by an authorized representative 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 Agreement adjustment for which CONTRACTOR believes COUNTY is liable.

B. Pending the final resolution of any dispute arising under, related to, or involving this Agreement, CONTRACTOR agrees to proceed diligently with the performance of services secured via this Agreement, including the delivery of goods and/or provision of services. CONTRACTOR’s failure to proceed diligently shall be considered a material breach of this Agreement.

C. Any final decision of COUNTY shall be expressly identified as such, shall be in writing, and shall be signed by a COUNTY Deputy Purchasing Agent or designee. If COUNTY fails to render a decision within ninety (90) calendar days after receipt of CONTRACTOR's demand, it shall be deemed a final decision adverse to CONTRACTOR's contentions.

D. This Agreement 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 Agreement, 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 adjudication to another county."

16. Paragraph XI. INDEMNIFICATION AND INSURANCE is deleted in its entirety and replaced with the following:

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

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

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

D. All SIRs shall be clearly stated on the COI. Any SIR in an amount in excess of fifty thousand dollars (\$50,000) shall specifically be approved by the CEO/Office of Risk Management upon review of CONTRACTOR's current audited financial report. If CONTRACTOR's SIR is approved, CONTRACTOR, in addition to, and without limitation of, any

other indemnity provision(s) in this Agreement, agrees to all of the following:

1. In addition to the duty to indemnify and hold the COUNTY harmless against any and all liability, claim, demand or suit resulting from CONTRACTOR's, its agents, employee's or subcontractor's performance of this Agreement, CONTRACTOR shall defend the COUNTY at its sole cost and expense with counsel approved by Board of Supervisors against same; and

2. CONTRACTOR's duty to defend, as stated above, shall be absolute and irrespective of any duty to indemnify or hold harmless; and

3. The provisions of California Civil Code Section 2860 shall apply to any and all actions to which the duty to defend stated above applies, and the CONTRACTOR's SIR provision shall be interpreted as though the CONTRACTOR was an insurer and the COUNTY was the insured.

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

F. QUALIFIED INSURER

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

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

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

<b><u>Coverage</u></b>	<b><u>Minimum Limits</u></b>
Commercial General Liability	\$1,000,000 per occurrence \$2,000,000 aggregate
Automobile Liability including coverage for owned, non-owned, and hired vehicles	\$1,000,000 per occurrence
Workers' Compensation	Statutory
Employers' Liability Insurance	\$1,000,000 per occurrence
Network Security & Privacy Liability	\$1,000,000 per claims -made

Technology Errors & Omissions	\$1,000,000 per claims -made \$1,000,000 aggregate
Professional Liability Insurance	\$1,000,000 per claims -made \$1,000,000 aggregate
Sexual Misconduct Liability	\$1,000,000 per occurrence
Employee Dishonesty (Client Coverage)	\$1,000,000 per occurrence (Limit commensurate with exposure)

#### H. REQUIRED COVERAGE FORMS

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

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

#### I. REQUIRED ENDORSEMENTS

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

a. An Additional Insured endorsement using ISO form CG 20 26 04 13 or a form at least as broad naming the County of Orange, its elected and appointed officials, officers, agents and employees as Additional Insureds, or provide blanket coverage, which will state AS REQUIRED BY WRITTEN AGREEMENT.

b. A primary non-contributing endorsement using ISO form CG 20 01 04 13, or a form at least as broad evidencing that the CONTRACTOR's insurance is primary and any insurance or self-insurance maintained by the County of Orange shall be excess and non-contributing.

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

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

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

J. All insurance policies required by this Agreement shall waive all rights of subrogation against the County of Orange, its elected and appointed officials, officers, agents and employees when acting within the scope of their appointment or employment.

K. The Workers' Compensation policy shall contain a waiver of subrogation endorsement waiving all rights of subrogation against the County of Orange, its elected and appointed

officials, officers, agents and employees, or provide blanket coverage, which will state AS REQUIRED BY WRITTEN AGREEMENT.

L. All insurance policies required by this Agreement shall waive all rights of subrogation against the County of Orange, its elected and appointed officials, officers, agents and employees when acting within the scope of their appointment or employment.

M. The County of Orange shall be the loss payee on the Employee Dishonesty coverage. A Loss Payee endorsement evidencing that the County of Orange is a Loss Payee shall accompany the Certificate of Insurance. [Only include this provision when Employee Dishonesty Insurance is required]). This is primarily used if an "advance" payment is given to the provider. This does not apply to provisional payments which are then reconciled to actual costs in the following month]

N. CONTRACTOR shall notify COUNTY in writing within thirty (30) days of any policy cancellation and within ten (10) days for non-payment of premium and provide a copy of the cancellation notice to COUNTY. Failure to provide written notice of cancellation shall constitute a breach of CONTRACTOR's obligation hereunder and ground for COUNTY to suspend or terminate this Agreement.

O. If CONTRACTOR's Professional Liability, Technology Errors & Omissions and/or Network Security & Privacy Liability are "Claims -Made" policies, CONTRACTOR shall agree to maintain coverage for two (2) years following the completion of the Agreement.

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

Q. If the Contractor fails to provide the insurance certificates and endorsements within seven (7) days of notification by CEO/Purchasing or the agency/department purchasing division, contract may be terminated.

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

S. COUNTY shall notify CONTRACTOR in writing of changes in the insurance requirements. If CONTRACTOR does not deposit copies of acceptable Certificate of Insurance and endorsements with COUNTY incorporating such changes within thirty (30) calendar days of receipt of such notice, this Agreement may be in breach without further notice to CONTRACTOR, and COUNTY shall be entitled to all legal remedies.

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

#### U. SUBMISSION OF INSURANCE DOCUMENTS

1. The COI and endorsements shall be provided to COUNTY as follows:
  - a. Prior to the start date of this Agreement.
  - b. No later than the expiration date for each policy.
  - c. Within thirty (30) calendar days upon receipt of written notice by COUNTY regarding changes to any of the insurance requirements as set forth in the Coverage



Subparagraph above.

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

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

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

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

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

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

17. Paragraph XIII. LICENSES AND LAWS is deleted in its entirety and replaced with the following:

"A. CONTRACTOR, its officers, agents, employees, affiliates, and subcontractors shall, throughout the term of this Agreement, maintain all necessary licenses, permits, approvals, certificates, accreditations, waivers, and exemptions necessary for the provision of the services hereunder and required by the laws, regulations and requirements of the United States, the State of California, COUNTY, and all other applicable governmental agencies. CONTRACTOR shall notify ADMINISTRATOR immediately and in writing of its inability to obtain or maintain, irrespective of the pendency of any hearings or appeals, permits, licenses, approvals, certificates, accreditations, waivers and exemptions. Said inability shall be cause for termination of this Agreement.

18. Paragraph XV. MAXIMUM OBLIGATION is deleted in its entirety and replaced with the following:

"A. The Maximum Obligation of COUNTY for services provided in accordance with this Agreement is as specified in the Referenced Contract Provisions of this Agreement, except as allowed for in Subparagraph B. below.

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

19. Paragraph XVI. MINIMUM WAGE LAWS is deleted in its entirety and replaced with the following:

“A. Pursuant to the United States of America Fair Labor Standards Act of 1938, as amended, and State of California Labor Code, §1178.5, CONTRACTOR shall pay no less than the greater of the federal or California Minimum Wage to all its Covered Individuals (as defined within the “Compliance” paragraph of this Agreement) that directly or indirectly provide services pursuant to this Agreement, in any manner whatsoever. CONTRACTOR shall require and verify that all of its Covered Individuals providing services pursuant to this Agreement be paid no less than the greater of the federal or California Minimum Wage.”

B. CONTRACTOR shall comply and verify that its Covered Individuals comply with all other federal and State of California laws for minimum wage, overtime pay, record keeping, and child labor standards pursuant to providing services pursuant to this Agreement.

C. Notwithstanding the minimum wage requirements provided for in this clause, CONTRACTOR, where applicable, shall comply with the prevailing wage and related requirements, as provided for in accordance with the provisions of Article 2 of Chapter 1, Part 7, Division 2 of the Labor Code of the State of California (§§1770, et seq.), as it now exists or may hereafter be amended.”

20. Paragraph XVII. NONDISCRIMINATION, Sub-Paragraph C, opening paragraph is deleted in its entirety and replaced with the following:

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

21. Paragraph XVII. NONDISCRIMINATION, Sub-Paragraph F is deleted in its entirety and replaced with the following:

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

22. Paragraph XXXI. NOTIFICATION OF DEATH is added to the Contract as follows:

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

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

1. TELEPHONE NOTIFICATION – CONTRACTOR shall notify ADMINISTRATOR by telephone immediately upon becoming aware of the death due to non-terminal illness of any person served pursuant to this Agreement; notice need only be given during normal business hours.

2. WRITTEN NOTIFICATION

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

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

c. When notification via encrypted email is not possible or practical CONTRACTOR may hand deliver or fax to a known number said notification.

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

23. Paragraph XX. RECORDS MANAGEMENT AND MAINTENANCE, Sub-Paragraph D is deleted in its entirety and replaced with the following:

“D. CONTRACTOR shall retain all financial records for a minimum of ten (10) years from the commencement of the Agreement, unless a longer period is required due to legal proceedings such as litigations and/or settlement of claims.”

24. Paragraph XXIII. SPECIAL PROVISIONS is deleted in its entirety and replaced with the following:

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

1. Making cash payments to intended recipients of services through this Agreement.
2. Lobbying any governmental agency or official. CONTRACTOR shall file all certifications and reports in compliance with this requirement pursuant to Title 31, USC, §1352 (e.g., limitation on use of appropriated funds to influence certain federal contracting and financial transactions).
3. Fundraising.
4. Purchase of gifts, meals, entertainment, awards, or other personal expenses for CONTRACTOR’s staff, volunteers, interns, consultants, subcontractors, and members of the Board of Directors or governing body.
5. Reimbursement of CONTRACTOR’s members of the Board of Directors or governing body for expenses or services.
6. Making personal loans to CONTRACTOR’s staff, volunteers, interns, consultants, subcontractors, and members of the Board of Directors or governing body, or its designee or authorized agent, or making salary advances or giving bonuses to CONTRACTOR’s staff.
7. Paying an individual salary or compensation for services at a rate in excess of the current Level I of the Executive Salary Schedule as published by the OPM. The OPM Executive Salary Schedule may be found at [www.opm.gov](http://www.opm.gov).

8. Severance pay for separating employees.

9. Paying rent and/or lease costs for a facility prior to the facility meeting all required building codes and obtaining all necessary building permits for any associated construction.

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

1. Funding travel or training (excluding mileage or parking).

2. Making phone calls outside of the local area unless documented to be directly for the purpose of client care.

3. Payment for grant writing, consultants, certified public accounting, or legal services.

4. Purchase of artwork or other items that are for decorative purposes and do not directly contribute to the quality of services to be provided pursuant to this Agreement.”

25. Paragraph XXIV. STATUS OF CONTRACTOR is deleted in its entirety and replaced with the following:

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

26. Paragraph XXVI. TERMINATION is deleted in its entirety and replaced with the following:

“A. CONTRACTOR shall be responsible for meeting all programmatic and administrative contracted objectives and requirements as indicated in this Agreement. CONTRACTOR shall be subject to the issuance of a CAP for the failure to perform to the level of contracted objectives, continuing to not meet goals and expectations, and/or for non-compliance. If CAPs are not completed within timeframe as determined by ADMINISTRATOR notice, payments may be reduced or withheld until CAP is resolved and/or the Agreement could be terminated.

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

1. The loss by CONTRACTOR of legal capacity.

2. Cessation of services.

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

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

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

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

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

#### C. CONTINGENT FUNDING

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

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

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

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

D. In the event this Agreement is suspended or terminated prior to the completion of the term as specified in the Referenced Contract Provisions of this Agreement, ADMINISTRATOR may, at its sole discretion, reduce the Not To Exceed Amount of this Agreement to be consistent with the reduced term of the Agreement.

E. In the event this Agreement is terminated, CONTRACTOR shall do the following:

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

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

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

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

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

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

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

8. To the extent services are terminated, cancel outstanding commitments covering

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

9. Provide written notice of termination of services to each Client being served under this Agreement, within fifteen (15) calendar days of receipt of termination notice. A copy of the notice of termination of services must also be provided to ADMINISTRATOR within the fifteen (15) calendars day period.

F. COUNTY may terminate this Agreement, without cause, upon thirty (30) calendar days' written notice. The rights and remedies of COUNTY provided in this Termination Paragraph shall not be exclusive, and are in addition to any other rights and remedies provided by law or under this Agreement."

27. Exhibit A is deleted in its entirety and replaced with Exhibit A-1, which is incorporated by this reference:

**“EXHIBIT A-1**  
**TO CONTRACT FOR PROVISION OF TOBACCO CESSATION SERVICES**  
**BETWEEN COUNTY OF ORANGE**  
**AND**  
**NATIONAL COUNCIL ON ALCOHOLISM AND DRUG DEPENDENCE – ORANGE COUNTY,**  
**JULY 1, 2020 THROUGH JUNE 30, 2021**

**I. SERVICE AREA IDENTIFICATION**

A. CENTRAL REGION

1. CONTRACTOR agrees to provide Tobacco Use Prevention Services in the Newport-Mesa Unified School District, focusing on two (2) middle schools, two (2) high schools, and alternative schools.

B. SOUTH REGION

2. CONTRACTOR agrees to provide Tobacco Use Prevention Services in the Capistrano Unified School District, focusing on one (1) middle school, one (1) high school, and alternative schools.

**II. BUDGET**

A. The following budget is per period for the provision of Tobacco Use Prevention Services in both Central and South Regions, and is set forth for informational purposes only and may be adjusted by mutual agreement, in writing, by ADMINISTRATOR and CONTRACTOR.

	FY 2020-2021
ADMINISTRATIVE	
Salaries	\$ 35,124
Benefits	7,376
Services and Supplies	<u>11,158</u>
SUBTOTAL ADMINISTRATIVE COST	\$ 53,658
 PROGRAM	
Salaries	\$197,979
Benefits	41,576
Services and Supplies	120,794
Subcontractors	<u>45,993</u>
SUBTOTAL PROGRAM COST	\$406,342

TOTAL COST	\$460,000
REVENUE	
TSR	<u>\$460,000</u>
TOTAL REVENUE	\$460,000
MAXIMUM OBLIGATION	\$460,000

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

C. CONTRACTOR shall be responsible for the development and implementation of an evaluation subcontract using criteria developed by HCA/TUPP. Ten percent (10%) of the total requested funding must be applied to evaluation services. The evaluator chosen shall be a subcontracted professional evaluator or a staff member experienced in comprehensive evaluation methodology, or a combination of both.

D. CONTRACTOR and ADMINISTRATOR may mutually agree, in writing, to modify the Budget Paragraph to this Exhibit A-1 to the Agreement.

### **III. DEFINITIONS**

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

1. Action Plan means a plan that clearly describes how performance outcomes will be achieved. The Action Plan includes, at minimum, performance outcomes, strategies, activities and evaluation; it documents strategies and action steps that will be used to create change in any identified issues area.

2. TUPP Provider Manual means the manual developed by ADMINISTRATOR to describe the specific services to be performed by CONTRACTOR. The TUPP Provider Manual provides guidance, goals, objectives, terminology, and evaluation components.

B. CONTRACTOR and ADMINISTRATOR may mutually agree, in writing, to modify the Definitions Paragraph to this Exhibit A-1 to the Agreement.

### **IV. PAYMENTS**



A. COUNTY shall pay CONTRACTOR monthly, in arrears, for the actual costs of providing services described hereunder, less revenues which are actually received by CONTRACTOR. All payments are interim payments only and are subject to Final Settlement in accordance with the Cost Report Paragraph of the Agreement for which CONTRACTOR shall be reimbursed for the actual cost of providing the services; hereunder provided, however, the total of such payments does not exceed COUNTY's Total Maximum Obligation and, provided further, CONTRACTOR's costs are reimbursable pursuant to County, State and/or Federal regulations. ADMINISTRATOR may, at its discretion, pay supplemental billings for any month in which the interim payment amount specified above has not been fully paid.

1. In support of the monthly billing, CONTRACTOR shall submit an Expenditure and Revenue Report, which shall have other information including but not limited to, staffing, units of service, and any other information requested by ADMINISTRATOR, as specified in the Reports Paragraph of this Exhibit A-1 to the Agreement. ADMINISTRATOR shall use the Expenditure and Revenue Report to determine payment to CONTRACTOR as specified in Subparagraphs A.2. and A.3., below.

2. If, at any time, CONTRACTOR's Expenditure and Revenue Reports indicate that the monthly interim payments exceed the actual cost of providing services, ADMINISTRATOR may reduce COUNTY payments to CONTRACTOR by an amount not to exceed the difference between the year-to-date interim payment amount to CONTRACTOR and the year-to-date actual cost incurred by CONTRACTOR.

3. If, at any time, CONTRACTOR's Expenditure and Revenue Reports indicate that the interim payment amounts are less than the actual cost of providing services, ADMINISTRATOR may authorize a supplemental payment to CONTRACTOR by an amount not to exceed the difference between the year-to-date interim payment amount to CONTRACTOR and the year-to-date actual cost incurred by CONTRACTOR.

B. CONTRACTOR's invoices shall be on a form approved or supplied by COUNTY and include such information as is required by ADMINISTRATOR. Invoices are due the twentieth (20th) calendar day of each month and payments to CONTRACTOR should be released by COUNTY no later than twenty-one (21) calendar days after receipt of the correctly completed invoice.

C. All invoices to COUNTY shall be supported, at CONTRACTOR's facility, by source documentation including, but not limited to, ledgers, journals, time sheets, invoices, bank statements, canceled checks, receipts, receiving records and records of services provided.

D. At ADMINISTRATOR's sole discretion, ADMINISTRATOR may withhold or delay all or a part of any payment if CONTRACTOR fails to comply with any provision of the Agreement.

E. COUNTY shall not reimburse CONTRACTOR for services provided beyond the expiration and/or termination of this Agreement, except as may otherwise be provided under this Agreement, or specifically agreed upon in a subsequent agreement.

F. CONTRACTOR and ADMINISTRATOR may mutually agree, in writing, to modify the Payments Paragraph of this Exhibit A-1 to the Agreement.

## **V. REPORTS**

### **A. FISCAL**

1. Expenditure-Revenue Report – CONTRACTOR shall submit Expenditure and

Revenue Reports to ADMINISTRATOR in support of the monthly invoice. These reports shall be on a form approved or provided by ADMINISTRATOR, and shall report actual costs and revenue for each of the CONTRACTOR's program(s) or cost center(s) described in the Services Paragraph of this Exhibit A-1 to the Agreement. These reports are due to ADMINISTRATOR by the twentieth (20th) calendar day of each month following the end of the month being reported.

2. Year-End Projection Reports – CONTRACTOR shall provide monthly, year-end projections that shall include year-to-date actual costs and revenues, and anticipated year-end actual costs and revenues for CONTRACTOR's program described in the Services Paragraph of this Exhibit A-1 to the Agreement, and shall be on a form approved or provided by ADMINISTRATOR. Year-End Projection Reports will be submitted in conjunction with the monthly Expenditure and Revenue Reports and are due to ADMINISTRATOR by the twentieth (20th) calendar day of each month following the end of the month being reported.

3. Staffing Report – CONTRACTOR shall submit Staffing Reports to ADMINISTRATOR in support of the monthly invoice. These reports shall be on a form approved or provided by ADMINISTRATOR and shall, at a minimum include actual hours worked by each staff member. These reports are due to ADMINISTRATOR by twentieth (20th) calendar day of each month following the end of the month being reported and are to be submitted in conjunction with the monthly Expenditure and Revenue and Year-End Projection Reports.

#### B. PROGRAMMATIC

1. CUMULATIVE PROGRAMMATIC REPORTS – CONTRACTOR shall submit quarterly cumulative programmatic reports to ADMINISTRATOR. These reports shall be on a form provided by ADMINISTRATOR. The final programmatic report shall include a process evaluation that shall contain, but not be limited to, an analysis of the effectiveness of strategies used in conducting outreach and tobacco use prevention activities, the overall effectiveness of the program, and changes/recommendations for future projects. The due dates for these reports are identified in the TUPP Provider Manual.

2. MONTHLY NARRATIVE REPORTS – CONTRACTOR shall submit a monthly narrative report documenting progress toward project performance outcomes set forth in the TUPP Provider Manual, project successes, and plans for the following month. These reports are due to ADMINISTRATOR by the fifth (5th) calendar day of each month following the end of the month being reported. CONTRACTOR shall use the monthly Tobacco Settlement Revenue narrative format provided by ADMINISTRATOR. The first monthly narrative report is due to ADMINISTRATOR by August 5, 2020.

C. ADDITIONAL REPORTS - CONTRACTOR shall make additional reports as required by ADMINISTRATOR concerning CONTRACTOR's activities as they affect the services hereunder. These reports shall be on forms approved or provided by ADMINISTRATOR. ADMINISTRATOR shall be specific as to the nature of the information requested and, when possible, shall allow thirty (30) calendar days for CONTRACTOR to respond.

D. CONTRACTOR shall be responsible for the professional quality, technical accuracy, timely completion, and coordination of all reports and services provided pursuant to this Agreement. CONTRACTOR shall review the reasonableness and accuracy of information prior to making any recommendation, or incorporating such data into any report required hereunder.

E. All reports, drawings, specifications, data, and other incidental work or materials furnished by CONTRACTOR hereunder shall become and remain the property of COUNTY,

and may be used by COUNTY as it may require, without any additional cost to COUNTY.

F. CONTRACTOR shall not use reports produced as the result of providing Tobacco Use Prevention Services or data obtained for the purpose of producing such reports without the express written consent of ADMINISTRATOR. All reports shall indicate that the County of Orange Health Care Agency – Tobacco Use Prevention Program funds CONTRACTOR's services.

G. EVALUATION TOOLS - ADMINISTRATOR shall provide all evaluation tools to CONTRACTOR and train CONTRACTOR staff on protocols for implementation of evaluation tools.

H. CONTRACTOR and ADMINISTRATOR may mutually agree, in writing, to modify the Reports Paragraph of this Exhibit A-1 to the Agreement.

## **VI. SERVICES**

A. CONTRACTOR shall provide Tobacco Use Prevention Services in accordance with this Exhibit A-1 to the Agreement, and in support of the COUNTY's Tobacco Use Prevention plan and goals as defined in the TUPP Provider Manual provided by ADMINISTRATOR. ADMINISTRATOR reserves the right to revise and update the TUPP Provider Manual as needed. ADMINISTRATOR shall notify CONTRACTOR of changes to the TUPP Provider Manual within three (3) business days of said changes.

### **B. CENTRAL REGION**

#### **1. Performance Objectives – FISCAL YEAR 2020 - 2021**

CONTRACTOR shall meet the following performance objectives and complete the detailed activities specified in the TUPP Provider Manual for prevention services by June 30, 2021:

a. Conduct classroom tobacco/vape educational presentations to a minimum of two hundred (200) students in two (2) target high schools and to two hundred (200) students in each of the two (2) feeder middle schools for a total of four hundred (400) high school students and four hundred (400) middle school students.

b. Maintain a student task force who will serve as peer educators on each middle school and high school campus, and facilitate a minimum of two (2) campus-wide and/or community-based events on each campus, for a total of eight (8) events.

c. Collaborate with local law enforcement, including School Resource Officers (SRO) and Drug Liaison Officers (DLO), to assess illegal vape/e-cigarette sales to youth by conducting "attempted buys" with all stores within a one (1) mile radius of target schools, to assess illegal e-cigarette sales to persons under 21 years of age.

d. In collaboration with local law enforcement and youth volunteers, merchant education will be conducted with the previously surveyed ("attempted buys") retailers in the catchment area to provide information on the laws governing the sale and advertising of traditional and non-traditional tobacco products, and the new requirements from the five tobacco control bills signed into California law in 2016. .

e. Adapt and implement the "5 Star Merchant" recognition program to recognize responsible vape/e-cigarette retailers in the school catchment areas.

f. In collaboration with the Orange County Health Care Agency/Tobacco Use

Prevention Program and other providers, utilize existing media campaign(s) and conduct community outreach activities to increase awareness about social sources of vaping among youth and adults.

g. Conduct a minimum of two (2) vaping prevention outreach activities to parent groups in the catchment area.

### C. SOUTH REGION

#### 1. Performance Objectives – FISCAL YEAR 2020 - 2021

CONTRACTOR shall meet the following performance objectives and complete the detailed activities specified in the TUPP Provider Manual for prevention services by June 30, 2021:

a. Conduct classroom vape prevention educational presentations to a minimum of four hundred (400) students in one (1) high school in the catchment area and to four hundred (400) students in one feeder middle school for a total of eight hundred (800) high school and middle school students.

b. Maintain a student task force who will serve as peer educators on each middle school and high school campus, and facilitate a minimum of five (4) middle school and four (4) high school campus-wide and/or community-based events, for a total of eight (8) events

c. Collaborate with local law enforcement, including School Resource Officers (SRO) and Drug Liaison Officers (DLO), to assess illegal vape/e-cigarette sales to youth by conducting "Attempted Buys" with 14 stores in the catchment area, within a two (2) mile radius of target schools, to assess illegal vape/e-cigarette sales to persons under 21 years of age.

d. In collaboration with local law enforcement and youth volunteers, merchant education will be conducted with the previously surveyed ("Attempted Buys") retailers in the catchment area to provide information on the laws governing the sale and advertising of traditional and non-traditional tobacco products, and the new requirements from the five tobacco control bills signed into California law in 2016.

e. Adapt and implement the "5 Star Merchant" recognition program to recognize responsible vape/e-cigarette retailers in the school catchment areas.

f. In collaboration with the Orange County Health Care Agency/Tobacco Use Prevention Program, and other providers, utilize existing media campaign(s) and conduct community outreach activities to increase awareness about social sources of vaping among youth and adults.

g. Conduct a minimum of two (2) tobacco and vape prevention outreach activities to parent groups from one (1) high school and one (1) feeder middle school in the catchment area.

### D. MEETINGS

1. CONTRACTOR and ADMINISTRATOR shall meet at least once a month to discuss program and strategic issues. ADMINISTRATOR and CONTRACTOR shall agree to the meeting dates in writing.

2. CONTRACTOR shall invite ADMINISTRATOR to all regional meetings scheduled by CONTRACTOR.

3. CONTRACTOR's Executive Director, Project Coordinator, or designee who has authority to make decisions, shall participate in meetings related to the provision of services

pursuant to this Agreement, when requested by ADMINISTRATOR.

E. PATENTS AND COPYRIGHT MATERIALS

1. Unless otherwise expressly provided in this Agreement, CONTRACTOR shall be solely responsible for clearing the right to use any patented or copyrighted materials in the performance of this Agreement.

2. CONTRACTOR agrees that any and all "works of authorship," as defined in

17 United States Code Annotated (U.S.C.A.), Section 102(a) which are created, produced, developed, or delivered as part of this Agreement, whether or not published, which can be considered "works made for hire" per 17 U.S.C.A., Section 101, shall be considered works made for hire. CONTRACTOR also agrees that the copyright to any and all such works made for hire under this Agreement, whether published or unpublished, belongs to COUNTY from the moment of creation as that term is defined in 17 U.S.C.A., Section 101. CONTRACTOR agrees that COUNTY shall have a royalty-free, non-exclusive right to use, reproduce, and disseminate all such material.

3. CONTRACTOR agrees and does hereby grant to COUNTY for all purposes a royalty-free, non-exclusive and irrevocable license throughout the world to reproduce, to prepare derivative works, to distribute copies, to perform, to display or to otherwise use, duplicate, or dispose of any work, data or material in any manner, which is created, produced, developed, or delivered as part of this Agreement, but which is not considered a "work made for hire." CONTRACTOR agrees that the COUNTY shall have authority to grant such license to others.

4. CONTRACTOR agrees that if CONTRACTOR enters into any agreements with other parties to perform the work required under this Agreement, that CONTRACTOR shall require that each agreement include clauses granting COUNTY:

a. A copyright interest in any works created, produced, developed, or delivered as "works made for hire," and

b. A royalty-free, non-exclusive, and irrevocable license throughout the world to reproduce, to prepare derivative works, to distribute copies, to perform, to display or to otherwise use, duplicate, or dispose of "works made for hire" or, any work, data or material "not made for hire" under this Agreement.

F. CONTRACTOR shall collaborate with tobacco use prevention providers funded by COUNTY to promote the activities and services described within this Agreement.

G. ADMINISTRATOR may conduct periodic reviews of CONTRACTOR to evaluate performance in meeting the terms of this Agreement. ADMINISTRATOR will notify CONTRACTOR in writing of any issue(s) or concern(s) related to the provision of services pursuant to this Agreement, and may request a plan of corrective action. Corrective action plans may address, but are not limited to performance outcomes, preventative strategies, and/or action plans. CONTRACTOR shall submit a written plan of corrective action for approval within two (2) weeks of request by ADMINISTRATOR. CONTRACTOR may request in advance and in writing, an extension to the due date for a corrective action plan. Approval of the request shall be at the sole discretion of ADMINISTRATOR.

H. CONTRACTOR shall not conduct any proselytizing activities, regardless of funding sources, with respect to any person who has been referred to CONTRACTOR by COUNTY under the terms of this Agreement. Further, CONTRACTOR agrees that the funds provided

hereunder shall not be used to promote, directly or indirectly, any religion, religious creed or cult, denomination or sectarian institution, or religious belief.

I. SOCIAL MEDIA - If a project related to social media is to be used, CONTRACTOR shall develop necessary policies and procedures and keep them on file.

J. CONTRACTOR agrees to comply with the terms and requirements as directed in the Cessation/Prevention Provider Manual.

K. CONTRACTOR and ADMINISTRATOR may mutually agree, in writing, to modify the Services Paragraph of this Exhibit A-1 to the Agreement.

## **VII. STAFFING**

A. CONTRACTOR shall provide services pursuant to this Agreement by recruiting, hiring, and maintaining administrative and program staff who have the requisite qualifications and experience to provide tobacco use prevention services under this Agreement.

B. CONTRACTOR shall perform a pre-employment screening of any person who will provide services pursuant to this Agreement. All staff, including volunteers and interns, shall meet the following requirements prior to providing any service pursuant to this Agreement:

1. No person, within the preceding two (2) years, shall have been convicted of any criminal offense other than a traffic violation.

2. No person, within the preceding two (2) years, shall have been found guilty of any crime related to the use of drugs or alcohol.

3. No person, at any time, shall have been found guilty of any crime involving moral turpitude by a court of law.

4. No person shall be on parole or probation.

C. All individuals working directly with youth must submit fingerprints and pass a background check, prior to providing services pursuant to this Agreement. CONTRACTOR shall submit to ADMINISTRATOR copies of the results for each individual that has successfully passed the background check. CONTRACTOR shall keep copies for its records.

D. All individuals working directly with youth shall obtain an Activity Supervisor Clearance Certificate issued by the Commission on Teacher Credentialing, prior to assuming a paid or volunteer position to supervise, direct, or coach a pupil activity program sponsored by or affiliated with a school district. The application to obtain a certificate is available at the Commission on Teacher Credentialing website at <http://www.ctc.ca.gov/credentials/apply.html>. CONTRACTOR shall submit to ADMINISTRATOR copies of the certificates for each individual who has successfully obtained an Activity Supervisor Clearance Certificate. Contractor shall keep copies for its records.

E. Separate from the Code of Conduct specified in the Compliance Paragraph of this Agreement, CONTRACTOR shall establish a written Code of Conduct for employees, subcontractors, volunteers, interns, and the Board of Directors which shall include, but not be limited to, standards related to the use of drugs and/or alcohol; staff-participant relationships; prohibition of sexual conduct with participants; and conflict of interest. Prior to providing any services pursuant to this Agreement, all employees, subcontractors, volunteers, interns, and the Board of Directors shall agree in writing to maintain the standards set forth in the Code of Conduct.

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

G. CONTRACTOR shall, at a minimum, provide the following paid staffing expressed in Full-Time Equivalents (FTEs) per region, which shall be equal to an average of forty (40) hours of work per week:

<u>POSITION</u>	<u>CENTRAL FTEs</u>	<u>SOUTH FTEs</u>
ADMINISTRATIVE		
Chief Executive Officer	0.08	0.08
Financial Director	<u>0.12</u>	<u>0.12</u>
SUBTOTAL ADMINISTRATIVE FTEs	0.20	0.20
PROGRAM ADMIN		
Program Director	<u>0.10</u>	<u>0.10</u>
SUBTOTAL PROGRAM ADMIN FTEs	0.10	0.10
PROGRAM		
Program Director	0.20	0.20
Health Educator	0.85	0.85
Health Educator	<u>0.85</u>	<u>0.85</u>
SUBTOTAL PROGRAM FTEs	01.90	1.90
SUBCONTRACTOR		
Program Evaluation	0.06	0.06
Advertising/Marketing	0.00	0.00
Health Educator	0.15	0.15
Health Educator	<u>0.15</u>	<u>0.15</u>
SUBTOTAL SUBCONTRACTOR FTEs	0.36	0.36
TOTAL FTEs	2.56	2.56

H. CONTRACTOR shall notify ADMINISTRATOR, in writing, within seventy-two (72) hours, of any staffing changes; including vacancies associated with termination, resignation,

and/or notice of resignation; leaves of absence; promotions; temporary FTE changes; and internal or external temporary staffing assignment requests that occur during the term of the Agreement. CONTRACTOR's notification to ADMINISTRATOR shall provide appropriate information regarding the staffing change, such as but not limited to employee name(s), position title(s), date(s) of resignation/separation, date(s) of hire/promotion, FTE adjustments, leave timeframes/estimates, internships, jobs duties, and description of recruitment activity for replacement staff.

I. CONTRACTOR may augment the above paid staff with volunteers and/or part-time student interns; provided, however, CONTRACTOR shall provide supervision as specified in the respective job descriptions or work contracts.

J. CONTRACTOR shall maintain personnel files for each paid or unpaid staff member, both administrative and programmatic, which shall include as appropriate and applicable, but not be limited to, an application for employment, qualifications for the positions, job description, documentation of bicultural/bilingual capabilities, pay rate, evaluations justifying pay increases, and copies of pertinent training certifications pursuant to the terms of this Agreement.

K. EVALUATION – CONTRACTOR shall collaborate with ADMINISTRATOR for the development of evaluation design, evaluation tools, and to create databases.

L. CONTRACTOR and ADMINISTRATOR may mutually agree, in writing, to modify the Staffing Paragraph to this Exhibit A-1 to the Agreement.”

This Amendment No. 1 modifies the Contract only as expressly set forth herein. Wherever there is a conflict in the terms or conditions between this Amendment No. 1 and the Contract, the terms and conditions of this Amendment No. 1 prevail. In all other respects, the terms and conditions of the Contract not specifically changed by this Amendment No. 1 remain in full force and effect.

**SIGNATURE PAGE FOLLOWS**



**SIGNATURE PAGE**

IN WITNESS WHEREOF, the Parties have executed this Amendment No. 1. If Contractor is a corporation, Contractor shall provide two signatures as follows: 1) the first signature must be either the Chairman of the Board, President, or any Vice President; 2) the second signature must be that of the Secretary, an Assistant Secretary, the Chief Financial Officer, or any Assistant Treasurer. In the alternative, a single corporate signature is acceptable when accompanied by a corporate resolution or by-laws demonstrating the legal authority of the signature to bind the company.

**Contractor: National Council on Alcohol and Drug Dependence – Orange County**

Phillip Falcetti	CEO
_____	_____
Print Name	Title
DocuSigned by: <i>Phillip Falcetti</i>	3/24/2020
EDF3CE2E8C284AA...	_____
	Date

---

**County of Orange**, a political subdivision of the State of California

Purchasing Agent/Designee Authorized Signature:

_____	_____
Print Name	Title
_____	_____
Signature	Date

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

Brittany McLean	Deputy County Counsel
_____	_____
Print Name	Title
DocuSigned by: <i>Brittany McLean</i>	3/25/2020
9713A4081D4343D...	_____
	Date

## Agenda Item



## AGENDA STAFF REPORT

ASR Control 19-001296

**MEETING DATE:** 04/28/20

**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):** Marc Meulman (714) 834-2980  
David Souleles (714) 834-3882

**SUBJECT:** Renewal of Contracts for Tobacco Use Prevention and Cessation Services

**CEO CONCUR**  
Pending Review

**COUNTY COUNSEL REVIEW**  
Pending Review

**CLERK OF THE BOARD**  
Discussion  
3 Votes Board Majority

**Budgeted:** N/A

**Current Year Cost:** N/A

**Annual Cost:** FY 2020-2021  
\$1,230,000

**Staffing Impact:** No

**# of Positions:**

**Sole Source:** No

**Current Fiscal Year Revenue:** N/A

**Funding Source:** State: 100% (Tobacco Settlement Revenue)  
**County Audit in last 3 years:** No

**Prior Board Action:** 08/28/2018 #18; 05/09/2017 #21

**RECOMMENDED ACTION(S):**

1. Approve Amendment No. 1 to renew the Contract with America On Track for provision of Tobacco Use Prevention Services, for the term July 1, 2020, through June 30, 2021, for an amount not to exceed \$230,000, for a revised cumulative total amount not to exceed \$1,130,000, renewable for two additional one-year terms.

2. Approve Amendment No. 1 to renew the Contract with National Council on Alcoholism and Drug Dependence – Orange County for provision of Tobacco Use Prevention Services, for the term of July 1, 2020, through June 30, 2021, for an amount not to exceed \$460,000, for a revised cumulative total amount not to exceed \$2,260,000, renewable fo two additional one-year terms.

3. Approve Amendment No. 3 to renew the Contract with AHMC Anaheim Regional Medical Center for provision of Tobacco Cessation Services, for the term of July 1, 2020, through June 30, 2021, for an amount not to exceed \$540,000, for a revised cumulative total amount not to exceed \$2,440,000, renewable for two additional one-year terms.

4. Pursuant to Contract Policy Manual Section 3.4-114, authorize County Procurement Officer or authorized Deputy, to exercise a contingency contract cost increase not to exceed a total of 10 percent of the contract amount for the first year of the contract(s) as referenced in the Recommended Actions above, for the entire term of the contract, including renewals, and within the scope of work set forth in the

contract. The use of this contingency contract cost increase is subject to approval requirements established by the County Procurement Officer.

5. Authorize the County Procurement Officer or authorized Deputy, to execute the Amendments to the Contracts as referenced in the Recommended Actions above.

### **SUMMARY:**

Approval of the Amendments to renew the Contracts with America On Track and National Council on Alcoholism and Drug Dependence – Orange County for Tobacco Use Prevention Services, and AHMC Anaheim Regional Medical Center for Tobacco Cessation Services, will reduce tobacco prevalence, morbidity and mortality in Orange County.

### **BACKGROUND INFORMATION:**

On May 9, 2017, your Honorable Board of Supervisors (Board) approved the selection of and Contracts with America On Track, National Council on Alcoholism and Drug Dependence – Orange County, and AHMC Anaheim Regional Medical Center for provision of Tobacco Use Prevention and Cessation Services, for the term of July 1, 2017, through June 30, 2020. On August 28, 2018, the Board approved Amendment No. 1 to the Contract with AHMC Anaheim Regional Medical Center for Tobacco Cessation Services to increase contract amount by \$400,000, for the term of July 1, 2017 through June 30, 2020. The proposed Amendments to renew the Contracts continue the provision of tobacco prevention and cessation services through June 30, 2021.

Tobacco use continues to be the primary cause of preventable death in the United States. Smoking and smokeless tobacco use are initiated and established primarily during adolescence, with an estimated 88 percent of adults who smoke daily reporting that they started smoking by the age of 18. In Orange County, smoking prevalence trends among adults and youth have shown a decline over the last five years. Among adults, smoking prevalence has decreased from 11.0 percent in 2013 to 9.1 percent in 2018. Among youth, Orange County's 11th grade smoking prevalence has decreased from approximately seven percent over the 2013/14 school year to about two percent over 2017/18, though recent data suggest a concerning level of electronic cigarette use (vaping), which was estimated at 16.0 percent in 2013/14, declined to 11.0 percent over the 2015/17 school year, but increased again to 13.0 percent during the 2017/18 school year. This increase demonstrates an 18.0 percent increase in electronic cigarette use among 11<sup>th</sup> graders. Due to the increase in vaping among youth in Orange County, the Health Care Agency's (HCA) Tobacco Use Prevention Program (TUPP) has seen an increase in requests for vaping prevention education and cessation services from school districts, schools, parents and community-based organizations.

<b>Adult Smoking, Orange County</b> (Source: California Health Interview Survey)	2013 Percent	2018 Percent
	11.0	9.1

<b>11<sup>th</sup> Grade Smoking, Orange County</b> (Source: California Healthy Kids Survey)	2013/14 Percent	2015/17 Percent	2017/18 Percent
	7.0	4.0	2.0

<b>11<sup>th</sup> Grade Electronic Cigarette Use, Orange County</b> <i>(Source: California Healthy Kids Survey)</i>	2013/14 Percent	2015/17 Percent	2017/18 Percent
	16.0	11.0	13.0

Utilizing Tobacco Settlement Revenue (TSR) funds, the HCA's TUPP has contracted with community-based organizations since 2001 to provide programs that prevent initiation of tobacco use and/or offer free cessation services for tobacco users who wish to quit. Services follow recommendations of the Centers for Disease Control and Prevention, such as combining the implementation of school-based interventions with awareness campaigns and other community efforts.

TUPP services include cigarette and vaping prevention services to lower the prevalence of youth ages 11 to 17 from initiating tobacco use. Performance outcomes for prevention services are listed below:

Prevention Project Outcomes	FY 2018-19 Target	FY 2018-19 Reached	FY 2018-19 Percent of Target	FY 2020-21 Target
Students Educated	3,900	3,669	94.0	2,770
Campus Events Conducted	30	33	110.0	28
Merchants Educated	160	160	100.0	140
Merchants Qualifying as "5 Star Merchants"	160	142	88.7	140

Cessation services include several modalities: telephone counseling, in-person one-on-one counseling, a 90-minute seminar, a five-session class series and nicotine patches. Performance outcomes for cessation services are listed below:

Cessation Service Outcomes	FY 2018-19 Target	FY 2018-19 Reached	FY 2018-19 Percent of Target	FY 2018-19 Quit Rate Target	180-Day Quit Rate*	FY 2020-21 Target	FY 2020-21 Quit Rate Target
Adult Individual Counseling	775	780	100.6	33	42.1	600	33
Adult Telephone Counseling	50	20	40.0	33	25.0	40	33
Adult Seminars	800	528	66.0	33	40.9	220	33
Adult 5 Session Series	300	68	22.7	33	37.5	150	33
Sober Living Facilities and Treatment Facilities	1050	1050	100.0	N/A	N/A	690	N/A
Homeless Population Facilities	50	110	220.0	N/A	N/A	190	N/A
<b>Total: Adult Clients</b>	<b>3,025</b>	<b>2,556</b>	<b>84.5</b>	<b>33</b>	<b>41.1</b>	<b>1,890</b>	<b>33</b>
Youth Tobacco Use 5 Session Series	200	155	77.5	33	100.0	150	33
Youth E-cigarette Use 5 Session Series <sup>^</sup>	N/A	124	N/A	N/A	54.8		33
Youth Tobacco Use Seminar	525	700	133.3	33	90.5	825	33
Youth E-cigarette Use Seminar <sup>^</sup>	N/A	252	N/A	N/A	40.3		33
<b>Total: Youth Clients<sup>§</sup></b>	<b>725</b>	<b>855</b>	<b>117.9</b>	<b>33</b>	<b>91.0</b>	<b>975</b>	<b>33</b>
<i>*Quit rates listed here are a preliminary estimates for FY 2018-19.</i>							
<i><sup>^</sup>E-cigarette client counts already included in "tobacco" client counts. Quit rates are independent.</i>							
<i><sup>§</sup>Aggregate youth client counts include those for "tobacco" and "ecig." but quit rates are for "tobacco" clients ONLY.</i>							

During the Contract period, the performance of America On Track, National Council on Alcoholism and Drug Dependence – Orange County and AHMC Anaheim Regional Medical Center for provision of Tobacco Use Prevention and Cessation Services has been confirmed satisfactory with no identifiable issues. HCA has verified there are no concerns that must be addressed with respect to the Contractors' ownership/name, litigation status or conflicts with County interests.

Each of the proposed Contracts for Tobacco Use Prevention and Cessation Services includes a subcontract for evaluation services as required by HCA. See Attachments G, H and I for information regarding subcontractors and Contract Summary Forms.

HCA requests the Board authorize the Purchasing Agent, or designee, to exercise, pursuant to Contract Policy Manual Section 3.4-114, a contingency contract cost increase not to exceed 10 percent of the contract amount for the first year of the contract(s) as referenced in the Recommended Actions, for the entire term of the contract, including renewals, and within the scope of work set forth in the contract. The use of this contingency contract cost increase is subject to approval requirements established by the County Procurement Officer.

HCA requests that the Board approve the renewal of the Contracts for Tobacco Use Prevention and Cessation Services with America On Track, National Council on Alcoholism and Drug Dependence – Orange County and AHMC Anaheim Regional Medical Center as referenced in the Recommended Actions.

**FINANCIAL IMPACT:**

Appropriations for the Contracts are included in Budget Control 042 FY 2020-21 Budget and will be included in the budgeting process for future years if funding is available to continue the services.

Should services need to be reduced or terminated due to lack of funding, the Contracts contain language that allows HCA to give 30 days' notice to either terminate or renegotiate the level of services to be provided. The notice will allow HCA adequate time to transition or terminate services to clients, if necessary.

**STAFFING IMPACT:**

N/A

**ATTACHMENT(S):**

- Attachment A - Amendment No. 1 to renew Contract MA# 042-18010435 for Tobacco Use Prevention Services with America On Track
- Attachment B - Amendment No. 1 to renew Contract MA# 042-18010436 for Tobacco Use Prevention Services with National Council on Alcoholism and Drug Dependence - Orange County
- Attachment C - Amendment No. 3 to renew Contract MA# 042-18010434 for Tobacco Cessation Services with AHMC Anaheim Regional Medical Center
- Attachment D - Contract Summary Form for Attachment A
- Attachment E - Contract Summary Form for Attachment B
- Attachment F - Contract Summary Form for Attachment C
- Attachment G - Redline Version for Attachment A
- Attachment H - Redline Version for Attachment B
- Attachment I - Redline Version for Attachment C