

AGREEMENT FOR PROVISION OF
TOBACCO CESSATION SERVICES

BETWEEN

COUNTY OF ORANGE

AND

NHAN HOA COMPREHENSIVE HEALTH CARE CLINIC

JULY 1, 2010 THROUGH JUNE 30, 2011

THIS AGREEMENT entered into this 1st day of July 2010, which date is enumerated for purposes of reference only, is by and between the COUNTY OF ORANGE (COUNTY) and NHAN HOA COMPREHENSIVE HEALTH CARE CLINIC, a California nonprofit corporation (CONTRACTOR). This Agreement shall be administered by the County of Orange Health Care Agency (ADMINISTRATOR).

W I T N E S S E T H:

WHEREAS, COUNTY wishes to contract with CONTRACTOR for the provision of Tobacco Cessation Services described herein to the residents of Orange County; and

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

NOW, THEREFORE, IT IS MUTUALLY AGREED AS FOLLOWS:

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REFERENCED CONTRACT PROVISIONS

Term: July 1, 2010 through June 30, 2011

Maximum Obligation: \$177,000 ~~\$157,000~~

Basis for Reimbursement: Actual Cost

Payment Method: Actual Cost

Notices to COUNTY and CONTRACTOR:

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

CONTRACTOR: Nhan Hoa Comprehensive Health Care Clinic
 ATTN: Executive Director
 14221 Euclid St., Suite H
 Garden Grove, CA 92843

CONTRACTOR's Insurance Coverages:

<u>Coverage</u>	<u>Minimum Limits</u>
Comprehensive General Liability with broad form Property damage and contractual liability	\$1,000,000 combined single limit per occurrence \$2,000,000 aggregate
Automobile Liability, including coverage for owned, non-owned and hired vehicles	\$1,000,000 combined single limit per occurrence
Workers' Compensation	Statutory
Employer's Liability	\$1,000,000 per occurrence
Sexual Misconduct	\$1,000,000 per occurrence

1 **I. ALTERATION OF TERMS**

2 This Agreement, together with Exhibit A attached hereto and incorporated herein by reference, fully
3 expresses all understanding of COUNTY and CONTRACTOR with respect to the subject matter of this
4 Agreement, and shall constitute the total Agreement between the parties for these purposes. No addition
5 to, or alteration of, the terms of this Agreement, whether written or verbal, shall be valid unless made in
6 writing and formally approved and executed by both parties.

7
8 **II. ASSIGNMENT OF DEBTS**

9 Unless this Agreement is followed without interruption by another Agreement between the parties
10 hereto for the same services and substantially the same scope, at the termination of this Agreement,
11 CONTRACTOR shall assign to COUNTY any debts owing to CONTRACTOR by or on behalf of
12 persons receiving services pursuant to this Agreement. CONTRACTOR shall immediately notify by
13 mail each of these persons, specifying the date of assignment, the County of Orange as assignee, and the
14 address to which payments are to be sent. Payments received by CONTRACTOR from or on behalf of
15 said persons, shall be immediately given to COUNTY.

16
17 **III. COMPLIANCE**

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

21 1. ADMINISTRATOR shall ensure that CONTRACTOR is made aware of the relevant
22 policies and procedures relating to ADMINISTRATOR's Compliance Program.

23 2. CONTRACTOR shall ensure that its employees, subcontractors, interns, volunteers, and
24 members of Board of Directors or duly authorized agents, if appropriate, ("Covered Individuals")
25 relative to this Agreement are made aware of ADMINISTRATOR's Compliance Program and related
26 policies and procedures.

27 3. CONTRACTOR has the option to adhere to ADMINISTRATOR's Compliance Program or
28 establish its own.

29 4. If CONTRACTOR elects to have its own Compliance Program then it shall submit a copy
30 of its Compliance Program and relevant policies and procedures to ADMINISTRATOR within thirty
31 (30) calendar days of award of this Agreement.

32 5. ADMINISTRATOR's Compliance Officer shall determine if CONTRACTOR's
33 Compliance Program is accepted. CONTRACTOR shall take necessary action to meet said standards or
34 shall be asked to acknowledge and agree to the ADMINISTRATOR's Compliance Program.

35 6. Upon approval of CONTRACTOR's Compliance Program by ADMINISTRATOR's
36 Compliance Officer, CONTRACTOR shall ensure that its employees, subcontractors, interns,
37 volunteers, and members of Board of Directors or duly authorized agents, if appropriate, ("Covered

1 Individuals") relative to this Agreement are made aware of CONTRACTOR's Compliance Program and
2 related policies and procedures.

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

7 B. CODE OF CONDUCT - ADMINISTRATOR has developed a Code of Conduct for adherence
8 by ADMINISTRATOR's employees and contract providers.

9 1. ADMINISTRATOR shall ensure that CONTRACTOR is made aware of
10 ADMINISTRATOR's Code of Conduct.

11 2. CONTRACTOR shall ensure that its employees, subcontractors, interns, volunteers, and
12 members of Board of Directors or duly authorized agents, if appropriate, ("Covered Individuals")
13 relative to this Agreement are made aware of ADMINISTRATOR's Code of Conduct.

14 3. CONTRACTOR has the option to adhere to ADMINISTRATOR's Code of Conduct or
15 establish its own.

16 4. If CONTRACTOR elects to have its own Code of Conduct, then it shall submit a copy of its
17 Code of Conduct to ADMINISTRATOR within thirty (30) calendar days of award of this Agreement.

18 5. ADMINISTRATOR's Compliance Officer shall determine if CONTRACTOR's Code of
19 Conduct is accepted. CONTRACTOR shall take necessary action to meet said standards or shall be
20 asked to acknowledge and agree to the ADMINISTRATOR's Code of Conduct.

21 6. Upon approval of CONTRACTOR's Code of Conduct by ADMINISTRATOR,
22 CONTRACTOR shall ensure that its employees, subcontractors, interns, volunteers, and members of
23 Board of Directors or duly authorized agents, if appropriate, ("Covered Individuals") relative to this
24 Agreement are made aware of CONTRACTOR's Code of Conduct.

25 7. If CONTRACTOR elects to adhere to ADMINISTRATOR's Code of Conduct then
26 CONTRACTOR shall submit to ADMINISTRATOR a signed acknowledgement and agreement that
27 CONTRACTOR shall comply with ADMINISTRATOR's Code of Conduct.

28 8. Failure of CONTRACTOR to timely submit the acknowledgement of
29 ADMINISTRATOR's Code of Conduct shall constitute a material breach of this Agreement, and failure
30 to cure such breach within sixty (60) calendar days of such notice from ADMINISTRATOR shall
31 constitute grounds for termination of this Agreement as to the non-complying party.

32 C. COVERED INDIVIDUALS - CONTRACTOR shall screen all Covered Individuals employed
33 or retained to provide services related to this Agreement to ensure that they are not designated as
34 "Ineligible Persons," as defined hereunder. Screening shall be conducted against the General Services
35 Administration's List of Parties Excluded from Federal Programs and the Health and Human
36 Services/Office of Inspector General List of Excluded Individuals/Entities.

37 //

1 1. Ineligible Person shall be any individual or entity who:
2 a. is currently excluded, suspended, debarred or otherwise ineligible to participate in the
3 federal health care programs; or
4 b. has been convicted of a criminal offense related to the provision of health care items or
5 services and has not been reinstated in the federal health care programs after a period of exclusion,
6 suspension, debarment, or ineligibility.

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

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

16 4. Covered Individuals shall be required to disclose to CONTRACTOR immediately any
17 debarment, exclusion or other event that makes the Covered Individual an Ineligible Person.
18 CONTRACTOR shall notify ADMINISTRATOR immediately upon such disclosure.

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

25 6. CONTRACTOR shall notify ADMINISTRATOR immediately if a Covered Individual or
26 entity is currently excluded, suspended or debarred, or is identified as such after being sanction screened.
27 Such individual or entity shall be immediately removed from participating in any activity associated
28 with this AGREEMENT. ADMINISTRATOR will determine if any repayment is necessary from
29 CONTRACTOR for services provided by ineligible person or individual.

30 D. REIMBURSEMENT STANDARDS

31 1. CONTRACTOR shall take reasonable precaution to ensure that the coding of health care
32 claims, billings and/or invoices for same are prepared and submitted in an accurate and timely manner
33 and are consistent with federal, state and county laws and regulations.

34 2. CONTRACTOR shall submit no false, fraudulent, inaccurate or fictitious claims for
35 payment or reimbursement of any kind.

36 3. CONTRACTOR shall bill only for those eligible services actually rendered which are also
37 fully documented. When such services are coded, CONTRACTOR shall use accurate billing codes to

1 accurately describe the services provided and to ensure compliance with all billing and documentation
2 requirements.

3 4. CONTRACTOR shall act promptly to investigate and correct any problems or errors in
4 coding of claims and billing, if and when, any such problems or errors are identified.

5 E. COMPLIANCE TRAINING - ADMINISTRATOR shall make General Compliance Training
6 and Provider Compliance Training, where appropriate, available to Covered Individuals.

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

10 2. Such training will be made available to Covered Individuals within thirty (30) calendar days
11 of employment or
12 shall provide copies of the certifications.

13 **IV. CONFIDENTIALITY**

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

18 B. Prior to providing any services pursuant to this Agreement, all CONTRACTOR members of the
19 Board of Directors or
20 its designee or authorized agent, employees, consultants, subcontractors, volunteers and interns shall
21 agree, in writing, with CONTRACTOR to maintain the confidentiality of any and all information and
22 records which may be obtained in the course of providing such services. The agreement shall specify
23 that it is effective irrespective of all subsequent resignations or terminations of CONTRACTOR
24 members of the Board of Directors or its designee or authorized agent, employees, consultants,
25 subcontractors, volunteers and interns.

26 **V. COST REPORT**

28 A. CONTRACTOR shall submit a Cost Report to COUNTY no later than sixty (60) calendar days
29 following termination of this Agreement. CONTRACTOR shall prepare the Cost Report in accordance
30 with all applicable federal, state and county requirements and generally accepted accounting principles.
31 CONTRACTOR shall allocate direct and indirect costs to and between programs, cost centers, services,
32 and funding sources in accordance with such requirements and consistent with prudent business practice,
33 which costs and allocations shall be supported by source documentation maintained by CONTRACTOR,
34 and available at any time to ADMINISTRATOR upon reasonable notice.

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

1 a. CONTRACTOR may be assessed a late penalty of one hundred dollars (\$100) for each
2 business day after the above specified due date that the accurate and complete Cost Report is not
3 submitted. Imposition engagement.

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

5 4. Each Covered Individual attending training shall certify, in writing, attendance at
6 compliance training. CONTRACTOR shall retain the certifications. Upon written request by
7 ADMINISTRATOR, CONTRACTOR of the late penalty shall be at the sole discretion of the
8 ADMINISTRATOR. The late penalty shall be assessed separately on each outstanding Cost Report due
9 COUNTY by CONTRACTOR.

10 b. ADMINISTRATOR may withhold or delay any or all payments due CONTRACTOR
11 pursuant to any or all agreements between COUNTY and CONTRACTOR until such time that the Cost
12 Report is delivered to ADMINISTRATOR.

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

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

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

25 C. Final settlement shall be based upon the actual and reimbursable costs for services hereunder,
26 less applicable revenues and late penalty, not to exceed COUNTY's Maximum Obligation as set forth
27 on Page 4 of this Agreement. CONTRACTOR shall not claim expenditures to COUNTY which are not
28 reimbursable pursuant to applicable federal, state and county laws, regulations and requirements. Any
29 payment made by COUNTY to CONTRACTOR, which is subsequently determined to have been for an
30 unreimbursable expenditure or service, shall be repaid by CONTRACTOR to COUNTY in cash, or
31 other authorized form of payment, within thirty (30) calendar days of submission of the Cost Report or
32 COUNTY may elect to reduce any amount owed CONTRACTOR by an amount not to exceed the
33 reimbursement due COUNTY.

34 D. If the Cost Report indicates the actual and reimbursable costs of services provided pursuant to
35 this Agreement, less applicable revenues and late penalty, are lower than the aggregate of interim
36 monthly payments to CONTRACTOR, CONTRACTOR shall remit the difference to COUNTY. Such
37 reimbursement shall be made, in cash, or other authorized form of payment, with the submission of the

1 Cost Report. If such reimbursement is not made by CONTRACTOR within thirty (30) calendar days
2 after submission of the Cost Report, COUNTY may, in addition to any other remedies, reduce any
3 amount owed CONTRACTOR by an amount not to exceed the reimbursement due COUNTY.

4 E. If the Cost Report indicates the actual and reimbursable costs of services provided pursuant to
5 this Agreement, less applicable revenues and late penalty, are higher than the aggregate of interim
6 monthly payments to CONTRACTOR, COUNTY shall pay CONTRACTOR the difference, provided
7 such payment does not exceed the Maximum Obligation of COUNTY.

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

10
11 "I HEREBY CERTIFY that I have executed the accompanying Cost Report and
12 supporting documentation prepared by _____ for the cost report period
13 beginning _____ and ending _____ and that, to the best of my
14 knowledge and belief, costs reimbursed through this Agreement are reasonable and
15 allowable and directly or indirectly related to the services provided and that this Cost
16 Report is a true, correct, and complete statement from the books and records of
17 (provider name) in accordance with applicable instructions, except as noted. I also
18 hereby certify that I have the authority to execute the accompanying Cost Report.

19
20 Signed _____
21 Name _____
22 Title _____
23 Date _____"

24
25 **VI. DELEGATION, ASSIGNMENT AND SUBCONTRACTS**

26 A. CONTRACTOR may not delegate the obligations hereunder, either in whole or in part, without
27 prior written consent of COUNTY; provided, however, obligations undertaken by CONTRACTOR
28 pursuant to this Agreement may be carried out by means of subcontracts, provided such subcontracts are
29 approved in advance, in writing by ADMINISTRATOR, meet the requirements of this Agreement as
30 they relate to the service or activity under subcontract, and include any provisions that
31 ADMINISTRATOR may require. No subcontract shall terminate or alter the responsibilities of
32 CONTRACTOR to COUNTY pursuant to this Agreement. CONTRACTOR may not assign the rights
33 hereunder, either in whole or in part, without the prior written consent of COUNTY.

34 B. For CONTRACTORS which are nonprofit corporations, any change from a nonprofit
35 corporation to any other corporate structure of CONTRACTOR, including a change in more than fifty
36 percent (50%) of the composition of the Board of Directors within a two (2) month period of time, shall
37 be deemed an assignment for purposes of this paragraph. Any attempted assignment or delegation in

1 derogation of this paragraph shall be void. ADMINISTRATOR may disallow, from payments otherwise
2 due CONTRACTOR, amounts claimed for subcontracts not approved in accordance with this paragraph.

3 C. For CONTRACTORS which are for-profit organizations, any change in the business structure,
4 including but not limited to, the sale or transfer of more than ten percent (10%) of the assets or stocks of
5 CONTRACTOR, change to another corporate structure, including a change to a sole proprietorship, or a
6 change in fifty percent (50%) or more of CONTRACTOR's directors at one time shall be deemed an
7 assignment pursuant to this paragraph. Any attempted assignment or delegation in derogation of this
8 paragraph shall be void.

9 10 **VII. EMPLOYEE ELIGIBILITY VERIFICATION**

11 CONTRACTOR warrants that it shall fully comply with all federal and state statutes and regulations
12 regarding the employment of aliens and others and to ensure that employees, subcontractors and
13 consultants performing work under this Agreement meet the citizenship or alien status requirement set
14 forth in federal statutes and regulations. CONTRACTOR shall obtain, from all employees,
15 subcontractors and consultants performing work hereunder, all verification and other documentation of
16 employment eligibility status required by federal or state statutes and regulations including, but not
17 limited to, the Immigration Reform and Control Act of 1986, 8 U.S.C. §1324 et seq., as they currently
18 exist and as they may be hereafter amended. CONTRACTOR shall retain all such documentation for all
19 covered employees, subcontractors and consultants for the period prescribed by the law.

20 21 **VIII. EQUIPMENT**

22 A. Unless otherwise specified in writing by ADMINISTRATOR, Equipment is defined as
23 moveable property of a relatively permanent nature with significant value. Equipment which costs
24 \$5,000 or over, including sales taxes, freight charges and other taxes are considered Fixed Assets.
25 Equipment which cost less than \$5,000, including sales taxes, freight charges and other taxes are
26 considered Minor Equipment or Controlled Assets. The cost of Equipment purchased, in whole or in
27 part, with funds paid pursuant to this Agreement shall be depreciated according to generally accepted
28 accounting principles.

29 B. CONTRACTOR shall obtain Administrator's prior written approval to purchase any Equipment
30 with funds paid pursuant to this Agreement. Upon delivery of Equipment, CONTRACTOR shall
31 forward to ADMINISTRATOR, copies of the purchase order, receipt, and other supporting
32 documentation, which includes delivery date, unit price, tax, shipping, serial numbers, etc.
33 CONTRACTOR shall request an applicable asset tag (Fixed or Controlled) for said Equipment and shall
34 include each purchased asset in an Equipment inventory.

35 C. Upon ADMINISTRATOR's prior written approval, CONTRACTOR may expense to COUNTY
36 the cost of specified items of Equipment (Fixed or Controlled Assets) purchased by CONTRACTOR.
37 To "expense," in relation to Equipment, means to charge the full cost of Equipment in the fiscal year in

1 which it is purchased. Title of expensed Equipment shall be vested with COUNTY and the Equipment
2 shall be deemed to be "Loaned Equipment" while in the possession of CONTRACTOR.

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

8 E. CONTRACTOR shall cooperate with ADMINISTRATOR in conducting periodic physical
9 inventories of Loaned Equipment. EQUIPMENT shall be tagged with a COUNTY issued tag. Upon
10 demand by ADMINISTRATOR, CONTRACTOR shall return any or all Loaned Equipment to
11 COUNTY.

12 F. CONTRACTOR must report any loss or theft of Loaned Equipment in accordance with the
13 procedure approved by ADMINISTRATOR and the Notices paragraph of this Agreement. In addition,
14 CONTRACTOR must complete and submit to ADMINISTRATOR a notification form when items of
15 Loaned Equipment are moved from one location to another or returned to COUNTY as surplus.

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

20
21 **IX. FACILITIES, PAYMENTS AND SERVICES**

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

27
28 **X. INDEMNIFICATION AND INSURANCE**

29 A. CONTRACTOR agrees to indemnify, defend with counsel approved in writing by COUNTY,
30 and hold COUNTY, its elected and appointed officials, officers, employees, agents and those special
31 districts and agencies for which COUNTY's Board of Supervisors acts as the governing Board
32 ("COUNTY INDEMNITEES") harmless from any claims, demands or liability of any kind or nature,
33 including but not limited to personal injury or property damage, arising from or related to the services,
34 products or other performance provided by CONTRACTOR pursuant to this Agreement. If judgment is
35 entered against CONTRACTOR and COUNTY by a court of competent jurisdiction because of the
36 concurrent active negligence of COUNTY or COUNTY INDEMNITEES, CONTRACTOR and

37 //

1 COUNTY agree that liability will be apportioned as determined by the court. Neither party shall request
2 a jury apportionment.

3 B. Without limiting CONTRACTOR's indemnification, it is agreed that CONTRACTOR shall
4 maintain in force at all times during the term of this Agreement a policy, or policies, of insurance
5 covering its operations as specified on Page 4 of this Agreement.

6 C. All insurance policies except Workers' Compensation and Employer's Liability shall contain the
7 following clauses:

8 1. "The County of Orange is included as an additional insured with respect to the operations of
9 the named insured performed under contract with the County of Orange."

10 2. "It is agreed that any insurance maintained by the County of Orange shall apply in excess of,
11 and not contribute with, insurance provided by this policy."

12 3. "This insurance shall not be canceled, limited or non-renewed until after thirty (30)
13 calendar days written notice has been given to Orange County HCA/Contract Development and
14 Management, 405 West 5th Street, Suite 600, Santa Ana, CA 92701-4637."

15 D. Certificates of insurance and endorsements evidencing the above coverages and clauses shall be
16 mailed to COUNTY as referenced on Page 4 of this Agreement.

17 E. All insurance policies required by this contract shall waive all rights of subrogation against the
18 County of Orange and members of the Board of Supervisors, its elected and appointed officials, officers,
19 agents and employees when acting within the scope of their appointment or employment.

20
21 **XI. INSPECTIONS AND AUDITS**

22 A. ADMINISTRATOR, any authorized representative of COUNTY, any authorized representative
23 of the State of California, the Secretary of the United States Department of Health and Human Services,
24 the Comptroller General of the United States, or any other of their authorized representatives, shall have
25 access to any books, documents, and records, including but not limited to, medical and client records, of
26 CONTRACTOR that are directly pertinent to this Agreement, for the purpose of responding to a
27 beneficiary complaint or conducting an audit, review, evaluation, or examination, or making transcripts
28 during the periods of retention set forth in the Records Management and Maintenance paragraph of this
29 Agreement. Such persons may at all reasonable times inspect or otherwise evaluate the services
30 provided pursuant to this Agreement, and the premises in which they are provided.

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

35 **C. AUDIT RESPONSE**

36 1. Following an audit report, in the event of non-compliance with applicable laws and
37 regulations governing funds provided through this Agreement, COUNTY may terminate this Agreement

1 as provided for in the Termination paragraph or direct CONTRACTOR to immediately implement
2 appropriate corrective action. A plan of corrective action shall be submitted to ADMINISTRATOR in
3 writing within thirty (30) calendar days after receiving notice from ADMINISTRATOR.

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

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

15 **XII. LICENSES AND LAWS**

16 A. CONTRACTOR, its officers, agents, employees and subcontractors shall, throughout the term
17 of this Agreement, maintain all necessary licenses, permits, approvals, certificates, waivers, and
18 exemptions necessary for the provision of services hereunder and required by the laws and regulations of
19 the United States, the State of California, COUNTY, and any other applicable governmental agencies.
20 CONTRACTOR shall notify ADMINISTRATOR immediately and in writing of its inability to obtain or
21 maintain, irrespective of the pendency of an appeal, such permits, licenses, approvals, certificates,
22 waivers and exemptions. Said inability shall be cause for termination of this Agreement.

23 B. CONTRACTOR shall comply with all applicable governmental laws, regulations, and
24 requirements as they exist now or may be hereafter amended or changed.

25 **C. ENFORCEMENT OF CHILD SUPPORT OBLIGATIONS**

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

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

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

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

35 d. A certification that CONTRACTOR has fully complied with all lawfully served Wage
36 and Earnings Assignment Orders and Notices of Assignment, and will continue to so comply.
37

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

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

9
10 **XIII. LITERATURE AND ADVERTISEMENTS**

11 A. Any written information or literature, including educational or promotional materials,
12 distributed by CONTRACTOR to any person or organization for purposes directly or indirectly related
13 to this Agreement must be approved in advance and in writing by ADMINISTRATOR before
14 distribution. For the purposes of this Agreement, distribution of written materials shall include, but not
15 be limited to, pamphlets, brochures, flyers, newspaper or magazine ads, and electronic media such as the
16 Internet. Such information shall not imply endorsement by COUNTY, unless ADMINISTRATOR
17 consents thereto in writing.

18 B. Any advertisement through radio, television broadcast, or the Internet, for educational or
19 promotional purposes, made by CONTRACTOR for purposes directly or indirectly related to this
20 Agreement must be approved in advance and in writing by ADMINISTRATOR.

21
22 **XIV. MAXIMUM OBLIGATION**

23 The Maximum Obligation of COUNTY for services provided in accordance with this Agreement is
24 as specified on Page 4 of this Agreement.

25
26 **XV. NONDISCRIMINATION**

27 **A. EMPLOYMENT**

28 1. During the performance of this Agreement, CONTRACTOR shall not unlawfully
29 discriminate against any employee or applicant for employment because of his/her ethnic group
30 identification, race, religion, ancestry, color, creed, sex, marital status, national origin, age (40 and over),
31 sexual orientation, medical condition, or physical or mental disability. CONTRACTOR shall warrant
32 that the evaluation and treatment of employees and applicants for employment are free from
33 discrimination in the areas of employment, promotion, demotion or transfer; recruitment or recruitment
34 advertising; layoff or termination; rate of pay or other forms of compensation; and selection for training,
35 including apprenticeship. There shall be posted in conspicuous places, available to employees and
36 applicants for employment, notices from ADMINISTRATOR and/or the United States Equal
37 Employment Opportunity Commission setting forth the provisions of the Equal Opportunity clause.

1 2. All solicitations or advertisements for employees placed by or on behalf of CONTRACTOR
2 shall state that all qualified applicants will receive consideration for employment without regard to
3 ethnic group identification, race, religion, ancestry, color, creed, sex, marital status, national origin, age
4 (40 and over), sexual orientation, medical condition, or physical or mental disability. Such requirement
5 shall be deemed fulfilled by use of the phrase "an equal opportunity employer."

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

10 B. SERVICES, BENEFITS, AND FACILITIES - CONTRACTOR shall not discriminate in the
11 provision of services, the allocation of benefits, or in the accommodation in facilities on the basis of
12 ethnic group identification, race, religion, ancestry, color, creed, sex, marital status, national origin, age
13 (40 and over), sexual orientation, medical condition, or physical or mental disability in accordance with
14 Title IX of the Education Amendments of 1972; Title VI of the Civil Rights Act of 1964
15 (42 U.S.C.A. §2000d); the Age Discrimination Act of 1975 (42 U.S.C.A. §6101); and Title 9,
16 Division 4, Chapter 6, Article 1 (§10800, et seq.) of the California Code of Regulations, and all other
17 pertinent rules and regulations promulgated pursuant thereto, and as otherwise provided by state law and
18 regulations, as all may now exist or be hereafter amended or changed.

19 1. For the purpose of this subparagraph B., "discrimination" includes, but is not limited to the
20 following based on one or more of the factors identified above:

- 21 a. Denying a participant or potential participant any service, benefit, or accommodation.
- 22 b. Providing any service or benefit to a participant which is different or is provided in a
23 different manner or at a different time from that provided to other participants.
- 24 c. Restricting a participant in any way in the enjoyment of any advantage or privilege
25 enjoyed by others receiving any service or benefit.
- 26 d. Treating a participant differently from others in satisfying any admission requirement or
27 condition, or eligibility requirement or condition, which individuals must meet in order to be provided
28 any service or benefit.
- 29 e. Assignment of times or places for the provision of services.

30 2. Complaint Process - CONTRACTOR shall establish procedures for advising all clients
31 through a written statement that CONTRACTOR's clients may file all complaints alleging
32 discrimination in the delivery of services with CONTRACTOR, ADMINISTRATOR, or the
33 U.S. Department of Health and Human Services' Office for Civil Rights. CONTRACTOR's statement
34 shall advise clients of the following:

- 35 a. In those cases where the client's complaint is filed initially with the Office for Civil
36 Rights (Office), the Office may proceed to investigate the client's complaint, or the Office may request
37 COUNTY to conduct the investigation.

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

4 C. PERSONS WITH DISABILITIES - CONTRACTOR agrees to comply with the provisions of
5 Section 504 of the Rehabilitation Act of 1973 (29 U.S.C.A. 794 et seq., as implemented in 45 CFR 84.1
6 et seq.), and the Americans with Disabilities Act of 1990 (42 U.S.C.A. 12101, et seq.), pertaining to the
7 prohibition of discrimination against qualified persons with disabilities in all programs or activities, as
8 they exist now or may be hereafter amended together with succeeding legislation.

9 D. RETALIATION - Neither CONTRACTOR, nor its employees or agents shall intimidate, coerce
10 or take adverse action against any person for the purpose of interfering with rights secured by federal or
11 state laws, or because such person has filed a complaint, certified, assisted or otherwise participated in
12 an investigation, proceeding, hearing or any other activity undertaken to enforce rights secured by
13 federal or state law.

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

17
18 **XVI. NOTICES**

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

21 1. When written and deposited in the United States mail, first class postage prepaid and
22 addressed as specified on Page 4 of this Agreement or as otherwise directed by ADMINISTRATOR;

23 2. When faxed, transmission confirmed;

24 3. When sent by electronic mail; or

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

27 B. Termination Notices shall be addressed as specified on Page 4 of this Agreement or as
28 otherwise directed by ADMINISTRATOR and shall be effective when faxed, transmission confirmed, or
29 when accepted by U.S. Postal Service Express Mail, Federal Express, United Parcel Service, or other
30 expedited delivery service.

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

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

37 //

1 **XVII. NOTIFICATION OF PUBLIC EVENTS AND MEETINGS**

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

5 B. CONTRACTOR shall notify ADMINISTRATOR at least ten (10) business days in advance of
6 any applicable public event or meeting. The notification must include the date, time, duration, location
7 and purpose of public event or meeting. Any promotional materials or event related flyers must be
8 approved by ADMINISTRATOR prior to distribution.

9
10 **XVIII. RECORDS MANAGEMENT AND MAINTENANCE**

11 A. CONTRACTOR, its officers, agents, employees and subcontractors shall, throughout the term
12 of this Agreement, prepare, maintain and manage records appropriate to the services provided and in
13 accordance with this Agreement and all applicable requirements, which include, but are not limited to:

- 14 1. State of California, Health and Safety Code §123145.
15 2. 45 CFR, §164.501; §164.524; §164.526; §164.530(c) and (j).

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

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

21 D. CONTRACTOR shall retain all financial records for a minimum of five (5) years from the
22 commencement of the contract, unless a longer period is required due to legal proceedings such as
23 litigations and/or settlement of claims.

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

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

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

31 H. CONTRACTOR shall notify ADMINISTRATOR of any Public Record Act (PRA) request
32 within twenty-four (24) hours. CONTRACTOR shall provide ADMINISTRATOR all information that
33 is requested by the PRA request.

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1 **XIX. SEVERABILITY**

2 If a court of competent jurisdiction declares any provision of this Agreement or application thereof
3 to any person or circumstances to be invalid or if any provision of this Agreement contravenes any
4 federal, state or county statute, ordinance, or regulation, the remaining provisions of this Agreement or
5 the application thereof shall remain valid, and the remaining provisions of this Agreement shall remain
6 in full force and effect, and to that extent the provisions of this Agreement are severable.

7
8 **XX. SPECIAL PROVISIONS**

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

11 1. Purchasing or improving land, including constructing or permanently improving any
12 building or facility, except for tenant improvements.

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

15 3. Making cash payments to intended recipients of services through this Agreement.

16 4. Contracting or subcontracting with any entity other than a public or nonprofit private entity.

17 5. Lobbying any governmental agency or official. CONTRACTOR shall file all certifications
18 and reports in compliance with this requirement pursuant to Title 31, U.S.C.A, Section 1352
19 (e.g., limitation on use of appropriated funds to influence certain federal contracting and financial
20 transactions).

21 6. Paying an individual salary or compensation for services at a rate in excess of the salary
22 schedule specified by the U.S. Office of Personnel Management, or specified by ADMINISTRATOR
23 per the Agreement's funding source.

24 7. Supplanting current funding for existing services.

25 8. Fundraising.

26 9. Purchase of gifts, meals, entertainment, awards, or other personal expenses for
27 CONTRACTOR's staff or members of the Board of Directors.

28 10. Making personal loans to CONTRACTOR's staff, volunteers, interns consultants,
29 subcontractors, and members of the Board of Directors or its designee or authorized agent, or making
30 salary advances or giving bonuses to CONTRACTOR's staff.

31 11. Reimbursement of CONTRACTOR's members of the Board of Directors for expenses or
32 services.

33 12. Producing any information that promotes responsible use, if the use is unlawful, of drugs or
34 alcohol.

35 13. Promoting the legalization of any drug or other substance included in Schedule 1 of
36 Section 202 of the Controlled Substance Act (21 USC 812).

37 //

1 14. Distributing or aiding in the distributing of sterile needles or syringes for the hypodermic
2 injection of any illegal drug.

3 15. Assisting, promoting, or deterring union organizing.

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

6 1. Purchase of gifts, meals, entertainment, awards, or other personal expenses for
7 CONTRACTOR's participants.

8 2. Funding travel or training (excluding mileage or parking) not approved by
9 ADMINISTRATOR.

10 3. Making phone calls outside of the local area unless documented to be directly related to
11 services pursuant to this Agreement.

12 4. Payment for grant writing, consultants, Certified Public Accounting, or legal services not
13 approved in advance by ADMINISTRATOR.

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

16 C. Neither party shall be responsible for delays or failures in performance resulting from acts
17 beyond control of the offending party. Such acts shall include, but not be limited to, acts of God, fire,
18 flood, earthquake, other natural disaster, nuclear accident, strike, lockout, riot, freight, embargo, public
19 related utility, or governmental statutes or regulations super-imposed after the fact.

20
21 **XXI. STATUS OF CONTRACTOR**

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

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1 **XXII. TERM**

2 The term of this Agreement shall commence and terminate as specified on Page 4 of this
3 Agreement, unless otherwise sooner terminated as provided in this Agreement; provided, however,
4 CONTRACTOR shall be obligated to perform such duties as would normally extend beyond this term,
5 including but not limited to, obligations with respect to confidentiality, indemnification, audits, reporting
6 and accounting.

7 **XXIII. TERMINATION**

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

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

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

- 16 1. The loss by CONTRACTOR of legal capacity.
- 17 2. Cessation of services.
- 18 3. The delegation or assignment of CONTRACTOR's services, operation or administration to
19 another entity without the prior written consent of COUNTY.

20 D. CONTINGENT FUNDING

- 21 1. Any obligation of COUNTY under this Agreement is contingent upon the following:
 - 22 a. The continued availability of federal, state and county funds for reimbursement of
23 COUNTY's expenditures, and
 - 24 b. Inclusion of sufficient funding for the services hereunder in the applicable budget
25 approved by the Board of Supervisors.
- 26 2. In the event such funding is subsequently reduced or terminated, COUNTY may terminate
27 or renegotiate this Agreement upon thirty (30) calendar days written notice given CONTRACTOR.

28 E. In the event this Agreement is terminated prior to the completion of the term as specified on
29 Page 4 of the Agreement, ADMINISTRATOR may, at its sole discretion, reduce the Maximum
30 Obligation of this Agreement in an amount consistent with the reduced term of the Agreement.

31 F. In the event this Agreement is terminated by either party, after receiving a Notice of
32 Termination CONTRACTOR shall do the following:

- 33 1. Comply with termination instructions provided by ADMINISTRATOR in a manner which
34 is consistent with recognized standards of quality care and prudent business practice.
- 35 2. Obtain immediate clarification from ADMINISTRATOR of any unsettled issues of contract
36 performance during the remaining contract term.

37 //

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

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

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

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

13
14 **XXIV. THIRD PARTY BENEFICIARY**

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

17
18 **XXV. WAIVER OF DEFAULT OR BREACH**

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

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

3
4 NHAN HOA COMPREHENSIVE HEALTH CARE CLINIC

5
6 BY: _____ DATED: _____

7
8 TITLE: _____

9
10 BY: _____ DATED: _____

11
12 TITLE: _____

13
14 COUNTY OF ORANGE

15
16 BY: _____ DATED: _____

17 CHAIR OF THE BOARD OF SUPERVISORS

18
19 SIGNED AND CERTIFIED THAT A COPY
20 OF THIS DOCUMENT HAS BEEN DELIVERED
21 TO THE CHAIR OF THE BOARD PER G.C. SEC. 25103, RESO 79-1535
22 ATTEST:

23
24 _____ DATED: _____

25 DARLENE J. BLOOM
26 Clerk of the Board of Supervisors
27 Orange County, California

28 APPROVED AS TO FORM
29 OFFICE OF THE COUNTY COUNSEL
30 ORANGE COUNTY, CALIFORNIA

31
32 BY: _____ DATED: _____

33 DEPUTY

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

EXHIBIT A
 TO AGREEMENT WITH
 NHAN HOA COMPREHENSIVE HEALTH CARE CLINIC
 TOBACCO CESSATION SERVICES
 JULY 1, 2010 THROUGH JUNE 30, 2011

I. SERVICE AREA IDENTIFICATION

CONTRACTOR agrees to provide Tobacco Cessation Services in the West/Central Region (Region) of Orange County, California. The West/Central Region is defined in the TUPP Cessation Provider Manual.

II. BUDGET

A. The following budget is set forth for informational purposes only and may be adjusted by mutual agreement, in writing, by ADMINISTRATOR and CONTRACTOR.

ADMINISTRATIVE COST		
Salaries	\$ 12,786	\$ 13,910
Benefits	1,918	2,087
Services and Supplies	4,982	4,982
SUBTOTAL ADMINISTRATIVE COST	<u>\$ 19,686</u>	\$ 20,979
 PROGRAM COST		
Salaries	\$94,558	\$ 83,466
Benefits	14,184	12,520
Services and Supplies	48,572	40,035
SUBTOTAL PROGRAM COST	<u>\$157,314</u>	\$136,021
 TOTAL COST	<u>\$177,000</u>	\$157,000

B. CONTRACTOR shall provide a written narrative justifying each budget line item and for any budget revisions hereafter. The narrative budget justification shall include all pertinent information as required by ADMINISTRATOR.

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1 **III. DEFINITIONS**

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

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

7 B. TUPP means Tobacco Use Prevention Program.

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

11
12 **IV. PAYMENTS**

13 A. BASIS FOR REIMBURSEMENT – COUNTY shall pay CONTRACTOR for the actual costs
14 of providing the services described hereunder, less revenues which are actually received by
15 CONTRACTOR; provided, however, that CONTRACTOR’s costs are allowable pursuant to county,
16 state, and federal regulations.

17 B. PAYMENT METHOD – COUNTY shall pay CONTRACTOR monthly in arrears the actual
18 cost of the services, less revenues that are actually received by CONTRACTOR provided, however, that
19 the total of such payments shall not exceed the COUNTY’s Maximum Obligation. CONTRACTOR’s
20 billings shall be on a form approved or provided by ADMINISTRATOR and shall provide such
21 information as is required by ADMINISTRATOR. Billings are due by the tenth (10th) calendar day of
22 each month, and payments to CONTRACTOR should be released by COUNTY no later than
23 twenty-one (21) calendar days after receipt of the correctly completed billing form.

24 C. Monthly payments are interim payments only, and subject to final settlement in accordance with
25 the Cost Report paragraph of this Agreement.

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

29 E. No single monthly payment to CONTRACTOR shall exceed ten percent (10%) of COUNTY’s
30 Total Maximum Obligation as set forth on Page 4 of this Agreement, unless approved in writing by
31 ADMINISTRATOR.

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

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

36 //

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V. REPORTS

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

9 B. EXPENDITURE-REVENUE REPORTS – CONTRACTOR shall submit expenditure and
10 revenue reports to ADMINISTRATOR in support of the monthly invoice. These reports shall be on a
11 form approved or provided by ADMINISTRATOR, and shall report actual costs and revenues for each
12 of the CONTRACTOR’s program(s) or cost center(s) described in the Services paragraph of Exhibit A
13 to this Agreement. These reports are due to ADMINISTRATOR by the tenth (10th) calendar day of
14 each month following the end of the month being reported.

15 C. MONTHLY ACTIVITY PLAN (MAP) – CONTRACTOR shall submit on a format provided by
16 ADMINISTRATOR, a monthly report documenting progress toward Tobacco Cessation project
17 performance outcomes. These reports are due to ADMINISTRATOR by the tenth (10th) calendar day of
18 the month following the report month.

19 D. MONTHLY NARRATIVE REPORTS – CONTRACTOR shall submit a monthly narrative
20 report documenting progress toward project performance outcomes set forth in the TUPP Provider
21 Manual, project successes, and plans for the following month. These reports are due to
22 ADMINISTRATOR by the fifth (5th) calendar day of each month following the end of the month being
23 reported. CONTRACTOR shall use the monthly Tobacco Settlement Revenue narrative format
24 provided by ADMINISTRATOR. The first monthly narrative report is due to ADMINISTRATOR by
25 August 5, 2010.

26 E. PROJECTION REPORTS – CONTRACTOR shall submit quarterly projection reports to
27 ADMINISTRATOR. These reports shall be on a form approved or provided by ADMINISTRATOR,
28 and shall include actual costs and anticipated year-end costs for each of the CONTRACTOR's
29 program(s) or cost center(s) described in the Services paragraph of Exhibit A to this Agreement. These
30 reports are due to ADMINISTRATOR by October 10, 2010, January 10, 2011, and April 10, 2011,
31 unless otherwise agreed to in writing by ADMINISTRATOR.

32 F. STAFFING REPORTS – CONTRACTOR shall submit staffing reports to ADMINISTRATOR
33 in support of the monthly invoice. These reports shall be on a form provided by ADMINISTRATOR,
34 and shall include actual hours worked by each staff member. These reports shall also identify staff
35 member(s) who have taken Compliance Training in accordance with the Compliance paragraph of this
36 Agreement. These reports are due to ADMINISTRATOR by the tenth (10th) calendar day of each month
37 following the end of the month being reported.

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

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

10 I. All reports, drawings, specifications, data, and other incidental work or materials furnished by
11 CONTRACTOR hereunder shall become and remain the property of COUNTY, and may be used by
12 COUNTY as it may require, without any additional cost to COUNTY.

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

17 K. EVALUATION TOOLS - CONTRACTOR shall develop and submit for approval by
18 ADMINISTRATOR, tools to evaluate the various aspects of the services provided pursuant to this
19 Agreement.

20 L. CONTRACTOR and ADMINISTRATOR may mutually agree, in writing, to modify due dates
21 specified in subparagraphs A. through G. above.

22
23 **VI. SERVICES**

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

29 B. PERFORMANCE OBJECTIVES - CONTRACTOR shall meet the following performance
30 objectives and complete the detailed activities specified in the TUPP Provider Manual for prevention
31 services. By June 30, 2011, CONTRACTOR shall:

32 1. Adult Services

33 a. Provide one (1) hour of individual counseling or structured telephone counseling to at
34 least one hundred seventy (170) adult tobacco users. CONTRACTOR shall complete thirty (30) day and
35 ninety (90) day follow-up surveys.

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1 b. Provide a ninety (90) minute cessation counseling seminar to at least one hundred (100)
2 adult tobacco users. CONTRACTOR shall complete thirty (30) day and ninety (90) day follow-up
3 surveys.

4 c. Provide a series of five (5), forty-five (45) minute cessation classes to at least one
5 hundred forty (140) ~~one hundred ten (110)~~ adult tobacco users. An individual must attend at least three
6 (3) cessation classes to be counted as a participant. CONTRACTOR shall complete thirty (30) day and
7 ninety (90) day follow-up surveys.

8 d. Provide a one (1) hour counseling session to at least eighty (82) young adult tobacco
9 users, age eighteen (18) to twenty-four (24) years old, after they have been given “quit kits” to assist
10 them in quitting smoking. CONTRACTOR shall complete thirty (30) day and ninety (90) day follow-up
11 surveys.

12 2. Youth Services

13 a. Provide a series of at five (5) forty-five (45) minute cessation sessions to at least ninety
14 (90) youth tobacco users. An individual must attend at least three (3) cessation classes to be counted as
15 a participant. CONTRACTOR shall complete thirty (30) day and ninety (90) day follow-up surveys.

16 b. Provide a sixty (60) minute cessation counseling seminar to at least forty-five (45)
17 youth tobacco users. CONTRACTOR shall complete thirty (30) day and ninety (90) day follow-up
18 surveys.

19 c. Recruit one hundred (100) health care professionals and/or allied health care
20 professionals (e.g., doctors, dentists, therapists, pharmacists, chiropractors, and acupuncturists) to
21 provide their patients with cessation materials and/or referrals to 1-866-NEW-LUNG line. At least
22 twenty-five percent (25%) of the health care professionals shall be dental, orthodontic, periodontal, or
23 endodontic practitioners.

24 d. Promote the 1-866-NEW-LUNG line and free cessation services to businesses,
25 community organizations, and medical facilities that provide services to mothers and/or expectant
26 mothers who use tobacco. Venues may be Ob-gyn clinics; pediatric clinics; Women, Infants and
27 Children clinics; Head Start programs; women’s shelters; child care facilities; and teen parenting
28 programs.

29 e. Conduct a mass media cessation promotion in the Region and surrounding areas such as
30 schools, colleges, businesses, and medical facilities, to promote the 1-866-NEW-LUNG line and
31 cessation services. CONTRACTOR shall place media ads in at least eight (8) large media outlets (e.g.
32 newspaper, TV, radio, billboards, movie slides, bus shelters, car wash places, newsletters, or malls).

33 C. CONTRACTOR and ADMINISTRATOR may mutually agree to adjust the number of
34 deliverables specified above in subparagraph B. above in writing.

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1 D. MEETINGS

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

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

7 3. CONTRACTOR's Executive Director, Project Coordinator, or designee who has authority
8 to make decisions, shall participate in meetings related to the provision of services pursuant to this
9 Agreement, when requested by ADMINISTRATOR.

10 E. REQUIRED APPROVALS

11 1. CONTRACTOR shall obtain written pre-approval from ADMINISTRATOR for any
12 training within the County of Orange for which a fee is charged, and for all trainings outside the County
13 of Orange, whether or not a fee is charged.

14 2. CONTRACTOR shall obtain written pre-approval from ADMINISTRATOR prior to the
15 development of promotional and incentive items, educational materials, contents of packets,
16 presentations, printed media, documents, advertisements, and any reports written for audiences other
17 than TUPP, including data obtained for the purpose of producing reports that are utilized as
18 interventions for tobacco prevention.

19 F. PATENTS AND COPYRIGHT MATERIALS

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

23 2. CONTRACTOR agrees that any and all "works of authorship," as defined in 17 United
24 States Code Annotated (U.S.C.A.), Section 102(a) which are created, produced, developed, or delivered
25 as part of this Agreement, whether or not published, which can be considered "works made for hire" per
26 17 U.S.C.A., Section 101, shall be considered works made for hire. CONTRACTOR also agrees that
27 the copyright to any and all such works made for hire under this Agreement, whether published or
28 unpublished, belongs to COUNTY from the moment of creation as that term is defined in 17 U.S.C.A.,
29 Section 101. CONTRACTOR agrees that COUNTY shall have a royalty-free, non-exclusive right to
30 use, reproduce, and disseminate all such material.

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

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

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

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

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

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

20 I. CONTRACTOR shall not conduct any proselytizing activities, regardless of funding sources,
21 with respect to any person who has been referred to CONTRACTOR by COUNTY under the terms of
22 this Agreement. Further, CONTRACTOR agrees that the funds provided hereunder shall not be used to
23 promote, directly or indirectly, any religion, religious creed or cult, denomination or sectarian institution,
24 or religious belief.

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26 **VII. STAFFING**

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

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

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

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

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

3 4. No person shall be on parole or probation.

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

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

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

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

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

<u>POSITION</u>	<u>FTEs</u>	
ADMINISTRATIVE STAFF		
Project Director/Evaluator	<u>0.250</u>	0.25
ADMINISTRATIVE SUBTOTAL FTEs	<u>0.250</u>	0.25
PROGRAM STAFF		
Program Coordinator	<u>1.000</u>	1.00
Cessation Counselor	<u>0.750</u>	1.00
Health Education Assistant	<u>0.750</u>	0.50
PROGRAM SUBTOTAL FTEs	<u>2.625</u>	2.50
TOTAL FTEs	<u>2.875</u>	2.75

17 H. CONTRACTOR and ADMINISTRATOR may mutually agree, in writing, to modify the
 18 staffing set forth in subparagraph G., above.

19 I. CONTRACTOR shall submit a staff vacancy report to ADMINISTRATOR within five (5)
 20 business days following the termination, resignation, or notice of resignation of any employee. The
 21 report shall include the employee's name, position title, date of resignation, and a description of the
 22 recruitment activity to replace the employee.

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

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

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