



CONTRACT NO. MA-042-12011613

FOR

AUDIT SERVICES

BETWEEN

**THE COUNTY OF ORANGE
HEALTH CARE AGENCY**

AND

**DAVID L. GRUBER AND ASSOCIATES, INC. DBA GRUBER
AND ASSOCIATES**

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CONTRACT NO. MA-042-12011613**AUDIT SERVICES**

This Contract Number MA-042-12011613 (hereinafter "Contract"), is made and entered into this 15th day of May, 2012 or upon execution of all necessary signatures between David L. Gruber and Associates, Inc. dba Gruber and Associates, (hereinafter "Contractor"), with a place of business at 15151 Springdale, Huntington Beach, CA 92649 and the County of Orange (hereinafter "County"), a political subdivision of the State of California, with a place of business at 200 Santa Ana Blvd., Suite #650, Santa Ana, CA 92701, which are sometimes individually referred to as "party", or collectively referred to as "parties".

RECITALS

WHEREAS, the County issued a Statement of Qualifications (SOQ) for the provision of audit services; and

WHEREAS, the Contractor responded and represented that its proposed services shall meet or exceed the requirements and specifications of the SOQ; and

WHEREAS, the Contractor agrees to render all the necessary skills, knowledge, material and labor to perform the services; and

WHEREAS, the County of Orange Board of Supervisors has authorized the Purchasing Agent or designee to enter into Contract with Contractor for obtaining said services; and

NOW, THEREFORE, the parties mutually agree as follows:

ARTICLES**GENERAL TERMS AND CONDITIONS**

- A. Governing Law and Venue:** This Contract has been negotiated and executed in the State of California and shall be governed by and construed under the laws of the State of California. In the event of any legal action to enforce or interpret this Contract, the sole and exclusive venue shall be a court of competent jurisdiction located in Orange County, California, and the parties hereto agree to and do hereby submit to the jurisdiction of such court, notwithstanding Code of Civil Procedure Section 394. Furthermore, the parties specifically agree to waive any and all rights to request that an action be transferred for trial to another county.
- B. Entire Contract:** This Contract, when accepted by the Contractor either in writing or by commencement of performance hereunder, contains the entire Contract between the parties with respect to the matters herein and there are no restrictions, promises, warranties or undertakings other than those set forth herein or referred to herein. No exceptions, alternatives, substitutes or revisions are valid or binding on County unless authorized by County in writing. Electronic acceptance of any additional terms, conditions or supplemental Contracts by any County employee or agent, including but not limited to installers of software, shall not be valid or binding on County unless accepted in writing by County's Purchasing Agent or designee, hereinafter "Purchasing Agent".
- C. Amendments:** No alteration or variation of the terms of this Contract shall be valid unless made in writing and signed by the parties; no oral understanding or agreement not incorporated herein shall be binding on either of the parties; and no exceptions, alternatives, substitutes or revisions are valid or binding on County unless authorized by County in writing.
- D. Delivery:** Time of delivery of services is of the essence in this Contract. County reserves the right to refuse any services and to cancel all or any part of the services that do not conform to the prescribed Scope of Work. Delivery shall not be deemed to be complete until all services have actually been received and accepted in writing by County.
- E. Acceptance/Payment:** Unless otherwise agreed to in writing by County, 1) acceptance shall not be deemed complete unless in writing and until all the services have actually been received or inspected to the satisfaction of County, and 2) payment shall be made in arrears after satisfactory acceptance.

- F. Warranty:** Contractor expressly warrants that the goods/services covered by this Contract are 1) free of liens or encumbrances, 2) merchantable and good for the ordinary purposes for which they are used, and 3) fit for the particular purpose for which they are intended. Acceptance of this order shall constitute an agreement upon Contractor's part to indemnify, defend and hold County and its indemnities as identified in paragraph "FF" below, and as more fully described in paragraph "FF", harmless from liability, loss, damage and expense, including reasonable counsel fees, incurred or sustained by County by reason of the failure of the services to conform to such warranties, faulty work performance, negligent or unlawful acts, and non-compliance with any applicable state or federal codes, ordinances, orders, or statutes, including the Occupational Safety and Health Act (OSHA) and the California Industrial Safety Act. Such remedies shall be in addition to any other remedies provided by law.
- G. Patent/Copyright Materials/Proprietary Infringement:** Unless otherwise expressly provided in this Contract, Contractor shall be solely responsible for clearing the right to use any patented or copyrighted materials in the performance of this Contract. Contractor warrants that any software as modified through services provided hereunder will not infringe upon or violate any patent, proprietary right, or trade secret right of any third party. Contractor agrees that, in accordance with the more specific requirement contained in paragraph "FF" below, it shall indemnify, defend and hold County and County Indemnitees harmless from any and all such claims and be responsible for payment of all costs, damages, penalties and expenses related to or arising from such claim(s), including, but not limited to, attorney's fees, costs and expenses.
- H. Assignment or Subcontracting:** The terms, covenants, and conditions contained herein shall apply to and bind the heirs, successors, executors, administrators and assigns of the parties. Furthermore, neither the performance of this Contract nor any portion thereof may be assigned or sub-contracted by Contractor without the express written consent of County. Any attempt by Contractor to assign or subcontract the performance or any portion thereof of this Contract without the express written consent of County shall be invalid and shall constitute a breach of this Contract.
- I. Non-Discrimination:** In the performance of this Contract, Contractor agrees that it will comply with the requirements of Section 1735 of the California Labor Code and not engage nor permit any subcontractors to engage in discrimination in employment of persons because of the race, religious creed, color, national origin, ancestry, physical disability, mental disability, medical condition, marital status, or sex of such persons. Contractor acknowledges that a violation of this provision shall subject Contractor to all the penalties imposed for a violation of Section 1720 et seq. of the California Labor Code.
- J. Termination:** In addition to any other remedies or rights it may have by law, County has the right to terminate this Contract without penalty immediately with cause or after thirty (30) days' written notice without cause, unless otherwise specified. Cause shall be defined as any breach of this Contract, or any misrepresentation or fraud on the part of the Contractor. Exercise by County of its right to terminate the Contract shall relieve County of all further obligation.
- K. Consent to Breach Not Waiver:** No term or provision of this Contract shall be deemed waived and no breach excused, unless such waiver or consent shall be in writing and signed by the party claimed to have waived or consented. Any consent by any party to, or waiver of, a breach by the other, whether express or implied, shall not constitute consent to, waiver of, or excuse for any other different or subsequent breach.
- L. Remedies Not Exclusive:** The remedies for breach set forth in this Contract are cumulative as to one another and as to any other provided by law, rather than exclusive; and the expression of certain remedies in this Contract does not preclude resort by either party to any other remedies provided by law.
- M. Independent Contractor:** Contractor shall be considered an independent contractor and neither Contractor, its employees, nor anyone working under Contractor shall be considered an agent or an employee of County. Neither Contractor, its employees, nor anyone working under Contractor, shall qualify for workers' compensation or other fringe benefits of any kind through County.
- N. Performance:** Contractor shall perform all work under this Contract, taking necessary steps and precautions to perform the work to County's satisfaction. Contractor shall be responsible for the

professional quality, technical assurance, timely completion and coordination of all documentation and other services furnished by the Contractor under this Contract. Contractor shall perform all work diligently, carefully, and in a good and workman-like manner; shall furnish all labor, supervision, machinery, equipment, materials, and supplies necessary therefor; shall at its sole expense obtain and maintain all permits and licenses required by public authorities, including those of County required in its governmental capacity, in connection with performance of the work; and, if permitted to subcontract, shall be fully responsible for all work performed by subcontractors.

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

All self-insured retentions (SIRs) and deductibles shall be clearly stated on the Certificate of Insurance. If no SIRs or deductibles apply, indicate this on the Certificate of Insurance with a zero (0) by the appropriate line of coverage. Any self-insured retention (SIR) or deductible in an amount in excess of \$25,000 (\$5,000 for automobile liability), shall specifically be approved by the County Executive Office (CEO)/Office of Risk Management.

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

QUALIFIED INSURER

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

The policy or policies of insurance must be issued by an insurer licensed to do business in the State of California (California Admitted Carrier). If the carrier is a non-admitted carrier in the State of California and does not meet or exceed an A.M. Best rating of A-/VIII, CEO/Office of Risk Management retains the right to approve or reject carrier after a review of the company's performance and financial ratings. If the non-admitted carrier meets or exceeds the minimum A.M. Best rating of A-/VIII, the agency can accept the insurance.

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

<u>Coverage</u>	<u>Minimum Limits</u>
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
Professional Liability Insurance	\$1,000,000 per occurrence

Required Coverage Forms

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

The Business Auto Liability coverage shall be written on ISO form CA 00 01, CA 00 05, CA 0012, CA 00 20, or a substitute form providing coverage at least as broad.

Required Endorsements

The Commercial General Liability policy shall contain the following endorsements, which shall accompany the Certificate of Insurance:

1. An Additional Insured endorsement using ISO form CG 2010 or CG 2033 or a form at least as broad naming the County of Orange, its elected and appointed officials, officers, employees, agents as Additional Insureds.
2. A primary 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.

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

The Workers' Compensation policy shall contain a waiver of subrogation endorsement waiving all rights of subrogation against the County of Orange, and members of the Board of Supervisors, its elected and appointed officials, officers, agents and employees.

All insurance policies required by this Contract shall give the County of Orange thirty (30) days' notice in the event of cancellation and ten (10) days for non-payment of premium. This shall be evidenced by policy provisions or an endorsement separate from the Certificate of Insurance.

If Contractor's Professional Liability policy is a "claims made" policy, Contractor shall agree to maintain Professional Liability coverage for two (2) years following completion of Contract.

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).

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

If the Contractor fails to provide the insurance certificates and endorsements within seven (7) days of notification by County Procurement Office/Purchasing or the agency/department purchasing division, award may be made to the next qualified vendor.

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

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

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

- P. Bill and Liens:** Contractor shall pay promptly all indebtedness for labor, materials and equipment used in performance of the work. Contractor shall not permit any lien or charge to attach to the work or the premises, but if any does so attach, Contractor shall promptly procure its release and, in accordance with the requirements of paragraph "FF" below, indemnify, defend, and hold County harmless and be responsible for payment of all costs, damages, penalties and expenses related to or arising from or related thereto.
- Q. Changes:** Contractor shall make no changes in the work or perform any additional work without the County's specific written approval.
- R. Change of Ownership:** Contractor agrees that if there is a change or transfer in ownership of Contractor's business prior to completion of this Contract, the new owners shall be required under

terms of sale or other transfer to assume Contractor's duties and obligations contained in this Contract and complete them to the satisfaction of County.

- S. **Force Majeure:** Contractor shall not be assessed with liquidated damages or unsatisfactory performance penalties during any delay beyond the time named for the performance of this Contract caused by any act of God, war, civil disorder, employment strike or other cause beyond its reasonable control, provided Contractor gives written notice of the cause of the delay to County within thirty six (36) hours of the start of the delay and Contractor avails itself of any available remedies.
- T. **Confidentiality:** Contractor agrees to maintain the confidentiality of all County and County-related records and information pursuant to all statutory laws relating to privacy and confidentiality that currently exist or exist at any time during the term of this Contract. All such records and information shall be considered confidential and kept confidential by Contractor and Contractor's staff, agents and employees.
- U. **Compliance with Laws:** Contractor represents and warrants that services to be provided under this Contract shall fully comply, at Contractor's expense, with all standards, laws, statutes, restrictions, ordinances, requirements, and regulations (collectively "laws"), including, but not limited to those issued by County in its governmental capacity and all other laws applicable to the services at the time services are provided to and accepted by County. Contractor acknowledges that County is relying on Contractor to ensure such compliance, and pursuant to the requirements of paragraph "FF" below, Contractor agrees that it shall defend, indemnify and hold County and County Indemnitees harmless from all liability, damages, costs and expenses arising from or related to a violation of such laws.
- V. **Pricing:** The Contract amount shall include full compensation for providing all services as specified herein or when applicable, in the Scope of Work attached to this Contract, and no additional compensation shall be allowed therefor, unless otherwise provided for in this Contract.
- W. **Terms and Conditions:** Contractor acknowledges that it has read and agrees to all terms and conditions included in this Contract.
- X. **Headings:** The various headings and numbers herein, the grouping of provisions of this Contract into separate clauses and paragraphs, and the organization hereof are for the purpose of convenience only and shall not limit or otherwise affect the meaning hereof.
- Y. **Severability:** If any term, covenant, condition or provision of this Contract is held by a court of competent jurisdiction to be invalid, void or unenforceable, the remainder of the provisions hereof shall remain in full force and effect and shall in no way be affected, impaired or invalidated thereby.
- Z. **Calendar Days:** Any reference to the word "day" or "days" herein shall mean calendar day or calendar days, respectively, unless otherwise expressly provided.
- AA. **Attorneys Fees:** In any action or proceeding to enforce or interpret any provision of this Contract, or where any provision hereof is validly asserted as a defense, each party shall bear its own attorney's fees, costs and expenses.
- BB. **Interpretation:** This Contract has been negotiated at arm's length and between persons sophisticated and knowledgeable in the matters dealt with in this Contract. In addition, each party has been represented by experienced and knowledgeable independent legal counsel of its own choosing, or has knowingly declined to seek such counsel despite being encouraged and given the opportunity to do so. Each party further acknowledges that it has not been influenced to any extent whatsoever in executing this Contract by any other party hereto or by any person representing either or both of them. Accordingly, any rule of law (including California Civil Code Section 1654) or legal decision that would require interpretation of any ambiguities in this Contract against the party that has drafted it is not applicable and is waived. The provisions of this Contract shall be interpreted in a reasonable manner to effect the purpose of the parties and this Contract.

- CC. Authority:** The parties to this Contract represent and warrant that this Contract has been duly authorized and executed and constitutes the legally binding obligation, enforceable in accordance with its terms.
- DD. Waiver of Jury Trial:** Each party acknowledges that is aware of and has had the opportunity to seek advice of counsel of its choice with respect to its rights to trial by jury and each party, for itself and its successors, creditors, and assigns, does hereby expressly and knowingly waive and release all such rights to trial by jury in any action, proceeding or counterclaim brought by any party hereto against the other (and/or against its officers, directors, employees, agents, or subsidiary or affiliated entities) on or with regard to any matters whatsoever arising out of or in any way connected with this Contract and/or any other claim of injury or damage.
- EE. Employee Eligibility Verification:** The Contractor warrants that it fully complies with all federal and state statutes and regulations regarding the employment of aliens and others and that all its employees performing work under this Contract meet the citizenship or alien status requirement set forth in federal statutes and regulations. The Contractor shall obtain, from all employees performing work hereunder, all verification and other documentation of employment eligibility status required by federal or state statutes and regulations including, but not limited to, the Immigration Reform and Control Act of 1986, 8 U.S.C. §1324 et seq., as they currently exist and as they may be hereafter amended. The Contractor shall retain all such documentation for all covered employees for the period prescribed by the law. The Contractor shall indemnify, defend with counsel approved in writing by County, and hold harmless, the County, its agents, officers, and employees from employer sanctions and any other liability which may be assessed against the Contractor or the County or both in connection with any alleged violation of any federal or state statutes or regulations pertaining to the eligibility for employment of any persons performing work under this Contract.
- FF. Indemnification:** 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 Contract. If judgment is entered against Contractor and County by a court of competent jurisdiction because of the concurrent active negligence of County or County Indemnitees, Contractor and County agree that liability will be apportioned as determined by the court. Neither party shall request a jury apportionment.

ADDITIONAL TERMS AND CONDITIONS

1. **Scope of Contract:** This Contract, together with its Attachments and Exhibits attached hereto and incorporated herein by reference, specifies the contractual terms and conditions by which the County will procure and receive services from Contractor. The detailed Scope of Work (SOW) is fully set forth and incorporated herein as Attachment A.
2. **Term of Contract:** This Contract shall be in effect from May 15, 2012 through and including May 31, 2015, non-renewable. Contract shall be in effect for the time periods specified, unless this Contract is earlier terminated by the parties in accordance with Articles 5, 6, and 7.
3. **Precedence:** The Contract documents consist of this Contract, and its Attachments and Exhibits. In the event of a conflict between the Contract documents, the order of precedence shall be the provisions of the main body of this Contract, i.e., those provisions set forth in the recitals and articles of this Contract, the Attachments and then the Exhibits.
4. **Pricing Structure:** The Contractor agrees that no price/fee increases shall be passed along to the County during the term of this Contract. Contractor may discount said prices anytime during the term of the Contract.
5. **Fiscal Appropriations – Subject to:** This Contract is subject to and contingent upon applicable budgetary appropriations being approved by the County of Orange Board of Supervisors for each fiscal year during the term of this Contract. If such appropriations are not approved, the Contract will be terminated without penalty to the County.

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

7. **Termination**

A. Termination – Default: If Contractor is in default of any of its obligations under this Contract and has not commenced cure within ten (10) days after receipt of a written notice of default from County and cured such default within the time specified in the notice, the County shall immediately be entitled to either commence resolution in accordance with this paragraph or to terminate this Contract by giving written notice to take effect immediately. Default shall include failure to carry out any of the requirements of this Contract, including, but not limited to persistently disregarding laws and or ordinances, not proceeding with the work as agreed to herein, or otherwise substantially violating any provision of this Contract. Upon termination of the Contract with Contractor, the County may begin negotiations with a third-party contractor to provide services as specified in this Contract.

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

B. Termination – Orderly: After receipt of a termination notice from the County, the Contractor shall submit to the County a termination claim, if applicable. Such claim shall be submitted promptly, but in no event later than sixty (60) days from the effective date of the termination, unless one or more extensions in writing are granted by the County upon written request of the Contractor. Upon termination County agrees to pay the Contractor for all services performed prior to termination which meet the requirements of the Contract, provided, however, that such compensation plus previously paid compensation shall not exceed the total compensation set forth in the Contract. Upon termination or other expiration of this Contract, each party shall promptly return to the other party all papers, materials, and other properties of the other held by each for purposes of execution of the Contract. In addition, each party will assist the other party in orderly termination of this Contract and the transfer of all aspects, tangible and intangible, as may be necessary for the orderly, non-disruptive business continuation of each party.

8. **County Project Manager:** The County shall appoint a Project Manager to act as liaison with Contractor during the term of this Contract. The County's Project Manager shall coordinate the activities of the County staff assigned to work with the Contractor.
9. **Contractor Project Manager:** Contractor shall appoint a Project Manager to direct the Contractor's efforts in fulfilling Contractor's obligations under this Contract. The Project Manager shall be subject to approval by the County and shall not be changed without the written consent of the County's Project Manager.

The Contractor's Project Manager shall be assigned to this project for the duration of this Contract and shall diligently pursue all work and services to meet the project time lines. The County's Project Manager shall have the right to require the removal and replacement of the Contractor's Project Manager or any other Contractor's staff providing services to the County under this Contract. The County's Project Manager shall notify the Contractor in writing of such action. The Contractor shall accomplish the removal within three (3) business days after written notice by the County's Project Manager. The County's Project Manager shall review and approve the appointment of the replacement for the Contractor's Project Manager. The County is not required to provide any additional information, reason or rationale in the event it elects to request the removal of Contractor's Project Manager providing services to the County under this Contract.

10. **Breach of Contract:** The failure of the Contractor to comply with any of the provisions, covenants or conditions of this Contract shall be a material breach of this Contract. In such event the County may, and in addition to any other remedies available at law, in equity, or otherwise specified in this Contract:
- a. Afford the Contractor written notice of the breach and ten (10) calendar days or such shorter time that may be specified in this Contract within which to cure the breach;
 - b. Discontinue payment to the Contractor for and during the period in which the Contractor is in breach; and

- c. Offset against any monies billed by the Contractor but yet unpaid by the County those monies disallowed pursuant to the above.

11. County of Orange Child Support Enforcement (Exhibit 5): In order to comply with the child support enforcement requirements of the County of Orange, within ten (10) days of notification of selection of award of Contract but prior to official award of Contract, the selected Contractor agrees to furnish to the contract administrator, the Purchasing Agent, or the agency/department deputy purchasing agent:

- a. In the case of an individual contractor, his/her name, date of birth, social security number, and residence address;
- b. In the case of a contractor doing business in a form other than as an individual, the name, date of birth, social security number, and residence address of each individual who owns an interest of ten (10) percent or more in the contracting entity;
- c. A certification that the contractor has fully complied with all applicable federal and state reporting requirements regarding its employees; and
- c. A certification that the contractor has fully complied with all lawfully served Wage and Earnings Assignment Orders and Notices of Assignment and will continue to so comply.

Failure of the Contractor to timely submit the data and/or certifications required may result in the Contract being awarded to another contractor. In the event a Contract has been issued, failure of the Contractor to comply with all federal, state, and local reporting requirements for child support enforcement or to comply with all lawfully served Wage and Earnings Assignment Orders and Notices of Assignment shall constitute a material breach of the Contract. Failure to cure such breach within sixty (60) calendar days of notice from the County shall constitute grounds for termination of the Contract.

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

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

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

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

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

- a. The Contractor shall submit to the agency/department assigned buyer a written demand for a final decision regarding the disposition of any dispute between the parties arising under,

related to, or involving this Contract, unless the County, on its own initiative, has already rendered such a final decision.

- b. The Contractor's written demand shall be fully supported by factual information, and, if such demand involves a cost adjustment to the Contract, the Contractor shall include with the demand a written statement signed by a senior official indicating that the demand is made in good faith, that the supporting data are accurate and complete, and that the amount requested accurately reflects the Contract adjustment for which the Contractor believes the County is liable.

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

Any final decision of the County shall be expressly identified as such, shall be in writing, and shall be signed by the Purchasing Agent. If the County fails to render a decision within ninety (90) days after receipt of the Contractor's demand, it shall be deemed a final decision adverse to the Contractor's contentions. The County's final decision shall be conclusive and binding regarding the dispute unless the Contractor commences action in a court of competent jurisdiction to contest such decision within ninety (90) days following the date of the County's final decision or one (1) year following the accrual of the cause of action, whichever is later.

- 16. Notices:** Any and all notices, requests, demands, and other communications contemplated, called for, permitted, or required to be given hereunder shall be in writing, except through the course of the parties' routine exchange of information and cooperation during the term of the work and services, and shall be deemed to have been duly given (a) upon actual in-person delivery, if delivery is by direct hand; or (b) upon delivery agreed to as the actual day of receipt or no greater than five (5) calendar days after being mailed (the date of mailing shall count as the first day), whichever occurs first by United States certified or registered mail, return receipt requested, postage prepaid, addressed to the appropriate party at the following address or such other address as the parties hereto may designate by written notice from time to time in the manner aforesaid:

For Contractor:	Name:	David L. Gruber and Associates, Inc. dba Gruber and Associates
	Address:	15151 Springdale Huntington Beach, CA 92649
	Attn:	Ron Lopez
	Phone:	714-901-1760, ext. 22
	Fax:	714-901-1760
	E-mail:	rlopez@gruber-inc.com
For County:	Name:	County of Orange Health Care Agency/Purchasing
	Address:	200 W. Santa Ana Blvd., Suite #650 Santa Ana, CA 92701
	Attn:	Ana Figueroa
	Title:	Deputy Purchasing Agent
	Phone:	714-834-2170
	Fax:	714-834-2657
	E-mail:	afigueroa@ochca.com
CC:	Name:	County of Orange Health Care Agency Contract Development & Management
	Address:	405 W. 5 th Street, Suite 620 Santa Ana, CA 92701
	Attn:	Rebecca Siddiqui
	Title:	County Project Manager
	Phone:	714-834-3678
	Fax:	714-834-4450
	E-mail:	rsiddiqui@ochca.com

17. **Contractor's Records:** Contractor shall provide services and other relevant documents necessary to complete the services and fulfill the requirements as set forth in Attachment A, SOW. The Contractor shall keep true and accurate accounts, records, books and data which shall correctly reflect the business transacted by the Contractor in accordance with generally accepted accounting principles. These records shall be stored in Orange County for a period of seven (7) years after final payment is received from the County. Storage of records in another county will require written approval from the assigned buyer.
18. **Audits/Inspections:** Contractor agrees to permit the County's Auditor-Controller or the Auditor-Controller's authorized representative (including auditors from a private auditing firm hired by the County) access during normal working hours to all books, accounts, records, reports, files, financial records, supporting documentation, including payroll and accounts payable/receivable records, and other papers or property of Contractor for the purpose of auditing or inspecting any aspect of performance under this Contract. The inspection and/or audit will be confined to those matters connected with the performance of the Contract including, but not limited to, the costs of administering the Contract. The County will provide reasonable notice of such an audit or inspection.

The County reserves the right to audit and verify the Contractor's Records before final payment is made.

Contractor agrees to maintain such records for possible audit for a minimum of seven (7) years after final payment, unless a longer period of records retention is stipulated under this Contract or by law. Contractor agrees to allow interviews of any employees or others who might reasonably have information related to such records.

Should the Contractor cease to exist as a legal entity, the Contractor's Records pertaining to this Contract shall be forwarded to the surviving entity in a merger or acquisition or, in the event of liquidation, to the County's Project Manager.
19. **News / Information Release:** The Contractor agrees that it will not issue any news releases or upload County logos or other information onto any website in connection with either the award of this Contract or any subsequent amendment of or effort under this Contract without first obtaining review and written approval from the County through the County's Project Manager. All press releases, including graphic display information to be published in newspapers, magazines, etc., are to be administered only by the County unless otherwise agreed to by both parties.
20. **California Public Records Act:** Contractor and County agree and acknowledge that all information and documents related to the award and performance of this Contract are subject to disclosure pursuant to the California Public Records Act, California Government Code Section 6250 *et seq.*
21. **Validity:** The invalidity in whole or in part of any article or provision of this Contract shall not void or affect validity of any other article or provision of this Contract.
22. **Gratuities:** The Contractor warrants that no gratuities, in the form of entertainment, gifts or otherwise, were offered or given by the Contractor or any agent or representative of the Contractor to any officer or employee of the County with a view toward securing the Contract or securing favorable treatment with respect to any determinations concerning the performance of the Contract. For breach or violation of this warranty, the County shall have the right to terminate the Contract, either in whole or in part, and any loss or damage sustained by the County in procuring on the open market any goods or services which the Contractor agreed to supply shall be borne and paid for by the Contractor. The rights and remedies of the County provided in the clause shall not be exclusive and are in addition to any other rights and remedies provided by law or under the Contract.
23. **Parking:** The County shall not provide free parking.
24. **Amendments – Changes/Extra Work:** The Contractor shall make no changes to this Contract without the County's written consent. In the event that there are new or unforeseen requirements, the County with the Contractor's concurrence has the discretion to request official changes at any time without changing the intent of this Contract.

If County-initiated changes or changes in laws or government regulations affect price, the Contractor's ability to deliver services, or the project schedule, the Contractor shall give the County written notice no later than seven (7) calendar days from the date the law or regulation went into effect or the date the change was proposed by the County and the Contractor was notified of the change. Such changes shall be agreed to in writing and incorporated into a Contract amendment. Said amendment shall be issued by the County-assigned buyer, shall require the mutual consent of all parties, and may be subject to approval by the County Board of Supervisors. Nothing herein shall prohibit the Contractor from proceeding with the work as set forth in this Contract.

25. **Reports/Meetings:** The Contractor shall develop reports and any other relevant documents necessary to complete the services and requirements as set forth in this Contract. The County's Project Manager and the Contractor's Project Manager will meet on reasonable notice to discuss the Contractor's performance and progress under this Contract. If requested, the Contractor's Project Manager and other project personnel shall attend all meetings. The Contractor shall provide such information that is requested by the County for the purpose of monitoring progress under this Contract.
26. **Responsibility of Contractor:** Contractor shall be responsible for the professional quality, technical accuracy, timely completion, and coordination of all services furnished by Contractor under this Contract. Contractor shall perform such audit services and fiscal agent services as may be necessary to accomplish the work required to be performed under this Contract and in accordance with this Contract. Contractor shall provide services and other relevant documents necessary to complete the services and fulfill the requirements as set forth in Attachment A, SOW.
27. **Ownership of Documents:** The County has permanent ownership of all directly connected and derivative materials produced under this Contract by the Contractor. All documents, reports and other incidental or derivative work or materials furnished hereunder shall become and remain the sole property of the County and may be used by the County as it may require without additional cost to the County. None of the documents, reports and other incidental or derivative work or furnished materials shall be used by the Contractor without the express written consent of the County.
28. **EDD Independent Contractor Reporting Requirements:** Effective January 1, 2001, the County of Orange is required to file federal Form 1099-Misc for services received from a "service provider" to whom the County pays \$600 or more or with whom the County enters into a contract for \$600 or more within a single calendar year. The purpose of this reporting requirement is to increase child support collection by helping to locate parents who are delinquent in their child support obligations.

The term "service provider" is defined in California Unemployment Insurance Code Section 1088.8, subparagraph B.2 as "an individual who is not an employee of the service recipient for California purposes and who received compensation or executes a contract for services performed for that service recipient within or without the state." The term is further defined by the California Employment Development Department to refer specifically to independent contractors. An independent contractor is defined as "an individual who is not an employee of the government entity for California purposes and who receives compensation or executes a contract for services performed for that government entity either in or outside of California."

The reporting requirement does not apply to corporations, general partnerships, limited liability partnerships, and limited liability companies.

Additional information on this reporting requirement can be found at the California Employment Development Department web site located at www.edd.ca.gov/txicr.htm.
29. **Debarment:** Contractor shall certify that neither contractor nor its principles are presently debarred, proposed for debarment, declared ineligible or voluntarily excluded from participation in the transaction by any Federal department or agency. Where contractor as the recipient of federal funds, is unable to certify to any of the statements in the certification, contractor must include an explanation with their bid/proposal. Debarment, pending debarment, declared ineligibility or voluntary exclusion from participation by any Federal department or agency may result in the bid/proposal being deemed non-responsible.

30. **Lobbying:** On best information and belief, Contractor certifies no federal appropriated funds have been paid or will be paid by, or on behalf of, the Contractor to any person for influencing or attempting to influence an officer or employee of Congress; or an employee of a member of Congress in connection with the awarding of any federal contract, continuation, renewal, amendment, or modification of any federal contract, grant, loan, or cooperative agreement.
31. **Usage:** No guarantee is given by the County to the contractor regarding usage of this contract. Usage figures, if provided, are approximate, based upon the last usage. The contractor agrees to provide services as requested, as needed by the County of Orange.
32. **Contractor Personnel-Drug Free Workplace:** The Contractor hereby certifies compliance with Government Code Section 8355 in matters relating to providing a drug-free workplace. The Contractor will:
1. Publish a statement notifying employees that unlawful manufacture, distribution, dispensation, possession, or use of a controlled substance is prohibited and specifying actions to be taken against employees for violations, as required by Government Code Section 8355(a).
 2. Establish a drug-free awareness program as required by Government Code Section 8355(b) to inform employees about all of the following:
 - a. The dangers of drug abuse in the workplace;
 - b. The organization's policy of maintaining a drug-free workplace;
 - c. Any available counseling, rehabilitation and employee assistance programs; and
 - d. Penalties that may be imposed upon employees for drug abuse violations.
 3. Provide as required by Government Code Section 8355(c) that every employee who works under this Contract:
 - a. Will receive a copy of the company's drug-free policy statement; and
 - b. Will agree to abide by the terms of the company's statement as a condition of employment under this Contract.

Failure to comply with these requirements may result in suspension of payments under the Contract or termination of the Contract or both, and the Contractor may be ineligible for award of any future County contracts if the County determines that any of the following has occurred:

1. The Contractor has made false certification, or
 2. The Contractor violates the certification by failing to carry out the requirements as noted above.
33. **Cooperative Agreement:** The provisions and pricing of this Contract will be extended to other political sub-divisions and County of Orange agencies/departments. Political sub-divisions and County of Orange agencies/departments wishing to use this Contract will be responsible for issuing their own purchase documents/master agreements, providing for their own acceptance, and making any subsequent payments. These entities will hold harmless the County of Orange from all claims, demands, actions or causes of actions of every kind resulting directly or indirectly, arising out of, or in any way connected with the use of this contract. The cooperative entities are responsible for obtaining all certificates of insurance and bonds required. The Contractor is responsible for providing each cooperative entity a copy of the Contract upon request by the cooperative entity. The County of Orange makes no guarantee of usage by other users of this Contract. The County of Orange may authorize the loading of this agreement into an electronic commerce system.

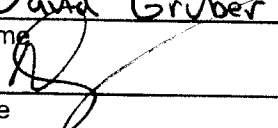
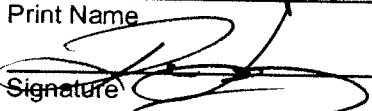
The Contractor shall be required to maintain a list of the cooperatively participating County agencies/departments and other political sub-divisions that have used this Contract. The list shall report dollar volumes spent quarterly and annually and shall be provided on a quarterly basis to the County lead agency.

(SIGNATURE PAGE FOLLOWS)

SIGNATURE PAGE

IN WITNESS WHEREOF, the parties hereto have executed this Contract on the dates shown opposite their respective signatures below.

***Contractor's name: David L. Gruber and Associates, Inc. dba Gruber and Associates**

Print Name	<u>David Gruber</u>	Title	<u>Managing Partner</u>
Signature		Date	<u>3/31/12</u>
Print Name	<u>Ron Lopez</u>	Title	<u>Partner</u>
Signature		Date	<u>3/31/12</u>

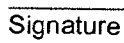
* If the Contractor is a corporation, signatures of two specific corporate officers are required as further set forth.

The first corporate officer signature must be one of the following: 1) the Chairman of the Board; 2) the President; or 3) any Vice President.

The second corporate officer signature must be one of the following: 1) Secretary; 2) Assistant Secretary; 3) Chief Financial Officer; or 4) any Assistant Treasurer.

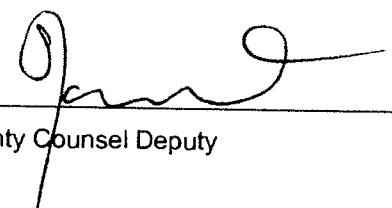
In the alternative, a single corporate signature is acceptable when accompanied by a corporate resolution demonstrating the legal authority of the signature to bind the company.

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

Print Name	<u>Leila Garcia</u>	Title	<u>Administrative Manager I</u>
Signature		Date	<u> </u>

APPROVED AS TO FORM

Office of the County Counsel
 County of Orange, California

County Counsel Deputy		Date	<u>3/26/12</u>
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CONTRACT NO. MA-042-12011613**ATTACHMENT A
SCOPE OF WORK****I. Introduction**

To assist the County's Health Care Agency's (HCA) Contracts Development and Management department in fulfilling its responsibilities to adequately monitor its sub-recipients. The audits to be performed will include examination of each sub-recipients' financial, relevant back up documentation, statistical reports, general ledgers, allocation methodologies and any other documents as deemed necessary to ensure compliance with contract requirements/terms, applicable federal, state and local statutes and regulations.

The Office of Management and Budget (OMB) Circular A-133, "Audits of States, Local Governments, and Non-Profit Organizations," issued pursuant to the Federal Single Audit Act of 1984, and the Single Audit Act amendments of 1996, requires that as a recipient of federal funds, the County perform oversight procedures deemed necessary to monitor the activities of its sub-recipients to ensure compliance with federal, state and funding source laws and regulations in addition to the provisions set forth in County's contracts and its sub-recipients.

This Contract is to engage an independent certified public accountant services to perform independent audits of sub-recipients selected by the HCA in accordance with its internal selection policies and procedures.

II. Contract Process

HCA may request bids from the approved list of pre-qualified vendors for its project specific needs and create an Amendment to the lowest responsive and responsible bidder based on the terms and conditions of this aggregate Contract. Services shall be "project specific" and on an as-needed basis. Usage is not guaranteed. Project specific means that a Contractor shall propose a job classification(s), project cost, and number of hours required in response to the desired outcome of a specific project.

- A. Services: HCA shall submit a specific project and a request for bid to Contractors. Contractors shall provide a price quote to HCA based on the specific project provided. Contractor shall be responsible for obtaining sufficient information from HCA to fulfill the County's requirements.

III. Conditions of the Audits**A. Contractor's Responsibilities**

The examination shall be in accordance with the latest requirements of Government Auditing Standards issued by the Comptroller General of the United States and sections appropriate to the scope of this audit.

The examination shall be in accordance with applicable state and local funding source requirements based on the funding sources identified for the sub-recipients. The Contractor shall complete reviews in accordance with the GAO¹ "Yellow Book" and (AICPA)² Statements on Standards for Accounting and Review Services or any other industry standards that may apply.

The purpose of this audit is to provide the County with verification of reported revenue and expenditure amounts to reflect compliance with contract terms and with other applicable funding source requirements.

The audit plans must be designed based on review needs, appropriateness, however the examination shall include, but not be limited to:

1. Examination and reconciliation of cost/financial reports submitted to the County with the sub-recipient's financial records, when applicable.
2. Review of sub-recipient's allocation methods between various funding sources.
3. Evaluate internal controls.

¹ GAO – The U.S. Government Accountability Office (GAO)

² AICPA - The American Institute of Certified Public Accountants
County of Orange Health Care Agency

4. Specific procedures designated by the Contractor to test for evidence of fraud or misappropriation of contract funds.
5. Verification of units of service provided per contract requirement, if applicable.
6. Review of compliance with previous audit recommendations.
7. Specific procedures designated by the Contractor to test for evidence of financial difficulty or instability on the part of the sub-recipient.
8. The Contractor shall review appropriate information relevant to determining the sub-recipients OMB Circular A-133 obligation and report the sub-recipient's compliance status, when appropriate.
9. If a Single Audit has been performed by the sub-recipients, the Contractor shall become familiar with the findings and issues noted in that Single Audit report and utilize the information to focus their efforts.
10. If a prior HCA audit has been performed of the sub-recipients, HCA shall provide a copy of the audit and the Contractor shall become familiar with the findings and issues noted in the audit report and use that information to focus their efforts on areas particularly susceptible to audit, including internal controls, going concerns and compliance risk.
11. If conditions are discovered which lead to the belief that material errors, fraud, or other irregularities may exist, or if any other circumstances are encountered that require extended services, the Contracted auditor shall immediately inform the HCA Project Manager in writing. No extended services shall be performed unless prior authorization has been obtained in writing from the assigned buyer and appropriate Contract modifications have been entered into. These modifications shall be issued by the assigned buyer.

IV. Audit Communication and Reporting

HCA project manager shall be responsible to communicate upcoming audits to its sub-recipients and introduce the contracted auditor.

Contractor shall schedule Entrance and Exit conferences with the sub-recipients in advance to ensure proper communication.

Contractor shall be responsible to ensure all field work is completed in a timely manner with the least amount of disruption to the sub-recipients.

Contractor shall be responsible to keep audit status log updated on an on-going basis to keep clear communication with the HCA project manager.

Contractor shall be expected to use appropriate level of judgment to escalate issues to HCA project manager to ensure appropriate resolution takes place.

Contractor shall be expected to provide clear and concise audit reports that shall furnish HCA with relevant and appropriate details to address any deficiencies and shall make recommendations when appropriate. If any issues are to be noted not concerning the contracted providers, the Contractor shall issue a management report noting appropriate level of details that will allow HCA to determine appropriate level of response.

Contractor's reports shall include the following but not be limited to:

1. Statement of independent auditor's report.
2. Statement of status of funds expended and reimbursed by County.
3. Statement of expenditures by line item, if applicable.
4. Statement of revenues, indicating sources and amounts.
5. Statement of net expenses, allocated to County, i.e., line item comparison of budget to expenditure and reimbursements by County, taking into account revenue received from other sources.
6. Statement of contract compliance with state and federal requirements for the timely and accurate submission of payroll taxes and withholdings.
7. Report on compliance with requirements applicable to the program and on the internal control over Compliance in accordance with the Program Specific Audit Option under OMB circular A-133, when appropriate.
8. Statement of units of services, if applicable, indicating actual rates and total amounts paid by County.
9. Statement on sub-recipient's Single Audit Obligation when applicable.

10. Statement of allocation amounts and formula used to distribute costs across multiple programs, if applicable.
11. Schedule of findings, recommendations, and sub-recipients responses.
12. Status of prior year audit findings.
13. Reporting of evidence noted in audits as to any financial difficulty on the part of the sub-recipients.
14. Reporting of evidence noted in audits as to any financial difficulty on the part of the sub-recipients.
15. Reporting of any non-compliance with federal, state and county funding source requirements.
16. Reporting of any non-compliance to county contract requirements.

V. Explanatory Footnotes

Each report shall include such explanatory footnotes as considered necessary.

All information presented in the reports must be clear and concise in addition to providing references as needed.

VI. Copies of Audit Reports

One (1) electronic draft report shall be provided for each contract audited by the date specified in the bid.

One (1) bound hard copy and an electronic copy of FINAL report shall be submitted for each contract audited by the date specified on each bid.

All reports shall be prepared and addressed to:

County of Orange Health Care Agency
 Contract Development and Management Services
 Attn: Rebecca Siddiqui, HCA Project Manager
 405 W. 5th Street, Suite 600
 Santa Ana, CA 92701-4637

VII. Project Milestones

Audit reports must be completed and delivered to HCA's Project Manager by the following dates:

1. All audit fieldwork must be completed by the date specified in the bid.
2. All draft reports must be submitted by the date specified in the bid.
3. Final reports must be completed accurately and submitted to the county's project manager by the date specified in the bid.

Contractor shall agree to give depositions or provide court testimony concerning audits conducted under this Contract should the need arise.

VIII. Working Paper Retention and Access to Working Papers

All working papers and reports must be retained, at the auditor's expense, for a minimum of seven (7) years after the report is issued, unless the firm is notified in writing by HCA of the need to extend the retention period. The Contractor will be required to make working papers available, upon request, to HCA.

In addition, the Contractor shall respond to the reasonable inquiries of successor auditors and allow successor auditors to review working papers relating to matters of continuing accounting significance.

IX. Nature of the Sub-recipients to be Audited

No. Contracts To Be Audited	Service Description
1	Agreement for Provision of Adult Mental Health Outreach and Engagement Services
1	Agreement for Provision of Adult Mental Health Services
2	Agreement for Provision of Alcohol and Drug Abuse Adolescent Residential Recovery Services
1	Agreement for Provision of Alcohol and Drug Abuse Residential Recovery and Detoxification Services
1	Agreement for Provision of Alcohol and Drug Abuse Residential Treatment Services
4	Agreement for Provision of Behavioral Health California Work Opportunity and Responsibility to Kids (CaWORKs) Services
1	Agreement for Provision of Behavioral Health Outpatient and Primary Prevention Services
1	Agreement for Provision of Behavioral Health Outpatient Services
1	Agreement for Provision of Children and Transitional Age Youth Full Service/Wraparound Services
1	Agreement for Provision of Children and Transitional Age Youth Mentoring Services
1	Agreement for Provision of Children's Full Service/Wraparound Services
1	Agreement for Provision of Children's In-Home Crisis Stabilization Services
1	Agreement for Provision of Collaborative Courts Full Service Partnership/Wraparound Service
1	Agreement for Provision of Conditional Release Program (CONREP) Supplemental Rate Housing Services
1	Agreement for Provision of Full Service Partnership Services
1	Agreement for Provision of Full Service Partnership Services for Older Adults
6	Agreement for Provision of Human Immunodeficiency Virus (HIV) Health Care Services
1	Agreement for Provision of HIV Minority AIDS Initiative(MAI) Medical Case Management Services
1	Agreement for Provision of HIV Residential Alcohol and Drug Abuse Treatment Services
1	Agreement for Provision of HIV Services
1	Agreement for Provision of HIV Transitional Housing Services
4	Agreement for Provision of Mental Health Outpatient Services

No. Contracts To Be Audited	Service Description
1	Agreement for Provision of Mental Health Peer Support and Wellness Center Services
1	Agreement for Provision of Mental Health Representative Payee Services
1	Agreement for Provision of Narcotic Replacement Therapy Treatment Services
2	Agreement for Provision of Network for a Healthy California - Latino Campaign Services
1	Agreement for Provision of Network for a Healthy California-Children's Power Play
2	Agreement for Provision of Parolee Services Network Outpatient Services
1	Agreement for Provision of Peer Mentoring Services for Adults and Older Adults
4	Agreement for Provision of Penal Code 1210 Services
1	Agreement for Provision of Perinatal Substance Abuse Residential Treatment Services
1	Agreement for Provision of Physician Services
1	Agreement for Provision of Post Custody Re-Entry Services
1	Agreement for Provision of Supported Employment Services
1	Agreement for Provision of Tobacco Cessation Services
52	

The number of contracts to be audited may be increased or decreased at any given time during the term of the Contract or specific project.

ATTACHMENT B

COMPENSATION AND INVOICING

I. COMPENSATION

This is a fixed price Contract not to exceed the aggregate amount of \$439,500 for the term of the Contract between the County and Contractor.

The Contractor agrees to accept the specified compensation as full remuneration for performing all services and furnishing all staffing and materials called for; for any reasonably foreseen difficulties under the responsibility of the Contractor which may arise or be encountered in the execution of the services until their acceptance; for risks connected with the services; and for performance by the Contractor of all of its duties and obligations hereunder. The fixed price shall include the fee and all expenses related to the performance of work and services required to meet the tasks and deliverables in the SOW, set forth more fully in Attachment A and subsequent Amendments of this Contract .

II. PAYMENT TERMS

A. Terms

Invoices are to be submitted in arrears to the address listed below. Payment of invoices, excluding 20% retention, will be net thirty (30) days after the receipt of an acceptable invoice for draft audit reports submitted in accordance with the terms set forth herein. The invoice must be verified and approved by the County's Project Manager and is subject to routine processing requirements of the County. Invoices will not be paid if draft audit reports have not been appropriately delivered as determined by County Project Manager.

Billing shall cover only those services not previously invoiced. The Contractor shall reimburse the County for any monies paid to the Contractor for goods and/or services not provided or when goods and/or services do not meet the Contract requirements.

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

B. Retention

The total 20% retention amount due the Contractor shall be payable upon final project completion and acceptance of all deliverables/milestones as set forth in Attachment A, SOW.

C. Invoicing Instructions

1. Invoices and all supporting documentation shall be submitted to County's Project Manager as follows:

County of Orange
HCA/ Accounts Payable
PO Box 689
Santa Ana, CA 92702

2. Acceptable Invoicing Format: Contractor may bill on any standard invoice form, but the following references must be made:
 - a. County Contract Number;
 - b. Contractor's Federal I.D. Number and California Board of Equalization Permit Number;
 - c. Description of Services (contract provider name, program and fiscal year of audit);
 - d. Draft or Final Audit Report
 - e. Date(s) of Performance of Service
 - f. Amount of Payment Requested;
 - g. Remittance Address

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

ATTACHMENT C

HIPAA – BUSINESS ASSOCIATES

A. GENERAL PROVISIONS AND RECITALS

1. The parties agree that the terms used, but not otherwise defined below, shall have the same meaning as those terms in the Health Insurance Portability and Accountability Act of 1996 (HIPAA) as it may exist now or be hereafter amended.
2. It is agreed by both parties that Contractor is a Business Associate of County for the purposes of this Contract.
3. It is understood by both parties that the HIPAA Security and Privacy Rules apply to the Contractor in the same manner as they apply to the covered entity (County). Contractor shall therefore at all times be in compliance with the applicable provisions of both the Privacy and the Security Rules as are described in Sections B.4 and B.5. below, and is responsible for complying with the issued regulations for said rules, as they currently exist or are hereafter amended, for purposes of safeguarding any Protected Health Information (PHI) used or generated by Contractor consistent with the terms of this Contract.
4. It is understood by both parties that the Privacy Rule does not pre-empt any state statutes, rules or regulations that impose more stringent requirements with respect to confidentiality of PHI.
5. County wishes to disclose certain information to Contractor pursuant to the terms of this Contract, some of which may constitute PHI as defined in Section B.6. below.
6. County and Contractor intend to protect the privacy and provide for the security of PHI disclosed to the Contractor pursuant to this Contract, in compliance with HIPAA and the regulations promulgated thereunder by the U.S. Department of Health and Human Services as they may now exist or be hereafter amended.

B. DEFINITIONS

1. "Breach" means the acquisition, access, use, or disclosure of PHI in a manner not permitted under the HIPAA Privacy Rule which compromises the security or privacy of the PHI.
 - a. For purposes of this definition, compromises the security or privacy of the PHI means, poses a significant risk of financial, reputational, or other harm to the Individual.
 - b. A use or disclosure of PHI that does not include the identifiers listed at §164.514 (e) (2), date of birth, and zip code does not compromise the security or privacy of PHI.
 - c. Breach excludes:
 - 1) Any unintentional acquisition, access, or use of PHI by a workforce member or person acting under the authority of a covered entity or a Business Associate, if such acquisition, access, or use was made in good faith and within the scope of authority and does not result in further use or disclosure in a manner not permitted under the Privacy Rule.
 - 2) Any inadvertent disclosure by a person who is authorized to access PHI at a covered entity or Business Associate to another person authorized to access PHI at the same covered entity or Business Associate, or organized health care arrangement in which the covered entity participates, and the information received as a result of such disclosure is not further used or disclosed in a manner not permitted under the Privacy Rule.
 - 3) A disclosure of PHI where a covered entity or business associate has a good faith belief that an unauthorized person to whom the disclosure was made would not reasonably have been able to retain such information.
2. "Designated Record Set" shall have the meaning given to such term under the Privacy Rule, including, but not limited to, 45 CFR Section 164.501.
3. "Individual" shall have the meaning given to such term under the Privacy Rule, including, but not limited to, 45 CFR Section 160.103 and shall include a person who qualifies as a personal representative in accordance with 45 CFR Section 164.502(g).
4. "Privacy Rule" shall mean the Standards for Privacy of Individually Identifiable Health Information at 45 CFR Part 160 and Part 164, Subparts A and E.
5. "Security Rule" shall mean the Security Standards for the Protection of Electronic PHI at 45 CFR Part 160, Part 162, and Part 164, Subparts A and C."
6. "Protected Health Information" or "PHI" shall have the meaning given to such term under the Privacy Rule, including, but not limited to, 45 CFR Section 160.103, as applied to the information created or received by Business Associate from or on behalf of Covered Entity.
7. "Required by Law" shall have the meaning given to such term under the Privacy Rule, including, but

not limited to, 45 CFR Section 164.103.

8. "Secretary" shall mean the Secretary of the Department of Health and Human Services or his or her designee.
9. "Unsecured Protected Health Information" means Protected Health Information that is not rendered unusable, unreadable, or indecipherable to unauthorized individuals through the use of a technology or methodology specified by the Secretary of Health and Human Services in the guidance issued on the HHS Web site.

C. OBLIGATIONS AND ACTIVITIES OF CONTRACTOR AS BUSINESS ASSOCIATE:

1. Contractor agrees not to use or disclose PHI other than as permitted or required by this Contract or as required by law.
2. Contractor agrees to use appropriate safeguards to prevent use or disclosure of PHI other than as provided for by this Contract.
3. Contractor agrees to mitigate, to the extent practicable, any harmful effect that is known to Contractor of a use or disclosure of PHI by Contractor in violation of the requirements of this Contract.
4. Contractor agrees to report to County within five (5) business days any use or disclosure of PHI not provided for by this Contract of which Contractor becomes aware.
5. Contractor agrees to ensure that any agent, including a subcontractor, to whom it provides PHI received from County, or created or received by Contractor on behalf of County, agrees to the same restrictions and conditions that apply through this Contract to Contractor with respect to such information.
6. Contractor agrees to provide access, within fifteen (15) calendar days of receipt of a written request by County, to PHI in a Designated Record Set, to County or, as directed by County, to an Individual in order to meet the requirements under 45 CFR Section 164.524.
7. Contractor agrees to make any amendment(s) to PHI in a Designated Record Set that County directs or agrees to pursuant to 45 CFR Section 164.526 at the request of County or an Individual, within thirty (30) calendar days of receipt of said request by County. Contractor agrees to notify County in writing no later than ten (10) calendar days after said amendment is completed.
8. Contractor agrees to make internal practices, books, and records, including policies and procedures and PHI, relating to the use and disclosure of PHI received from, or created or received by Contractor on behalf of County, available to County and the Secretary, in a time and manner as determined by County, or as designated by the Secretary, for purposes of the Secretary determining County's compliance with the Privacy Rule.
9. Contractor agrees to document any disclosures of PHI and to make information related to such disclosures available as would be required for County to respond to a request by an Individual for an accounting of disclosures of PHI in accordance with 45 CFR Section 164.528.
10. Contractor agrees to provide County or an Individual, as directed by County, in a time and manner to be determined by County, that information collected in accordance with this Contract, in order to permit County to respond to a request by an Individual for an accounting of disclosures of PHI in accordance with 45 CFR Section 164.528.
11. Contractor shall work with County upon notification by Contractor to County of a Breach to properly determine if any Breach exclusions exist as defined in Section B.1.c. above.

D. SECURITY RULE

1. Security. Contractor shall establish and maintain appropriate administrative, physical and technical safeguards that reasonably and appropriately protect the confidentiality, integrity and availability of electronic PHI. Contractor shall follow generally accepted system security principles and the requirements of the final HIPAA rule pertaining to the security of PHI.
2. Agents and Subcontractors. Contractor shall ensure that any agent, including a subcontractor, to whom it provides electronic PHI, agrees to implement reasonable and appropriate safeguards to protect the PHI.
3. Security Incidents. Contractor shall report any "security incident" of which it becomes aware to County. For purposes of this Contract, a security incident means the attempted or successful unauthorized access, use, disclosure, modification, or destruction of information or interference with system operations. This does not include trivial incidents that occur on a daily basis, such as scans, "pings", or unsuccessful attempts to penetrate computer networks or servers maintained by Contractor.

E. BREACH DISCOVERY AND NOTIFICATION

1. Following the discovery of a Breach of Unsecured Protected Health Information, Contractor shall notify County of such Breach, however both parties agree to a delay in the notification if so advised by a law enforcement official, pursuant to 45 CFR 164.412.
2. A Breach shall be treated as discovered by Contractor as of the first day on which the Breach is known to the Contractor, or by exercising reasonable diligence, would have been known to Contractor.
3. Contractor shall be deemed to have knowledge of a Breach if the Breach is known, or by exercising reasonable diligence would have known, to any person who is an employee, officer, or other agent of the Contractor, as determined by federal common law of agency.
4. Contractor shall provide the notification of the Breach without unreasonable delay, and in no case later than five (5) business days after a Breach.
5. Contractor's notification may be oral, but shall be followed by written notification within 24 hours of the oral notification. Thereafter, Contractor shall provide written notification containing the contents stated below, within five (5) business days. Contractor shall be required to provide any other information relevant to the Breach in writing, as soon as discovered, or as soon as the information is available.
6. Contractor's notification shall include, to the extent possible:
 - a. The identification of each Individual whose Unsecured Protected Health Information has been, or is reasonably believed by Contractor to have been, accessed, acquired, used, or disclosed during the Breach,
 - b. Any other information that County is required to include in the notification to Individual it must provide pursuant to 45 CFR §164.404 (c), at the time Contractor is required to notify County, or promptly thereafter as this information becomes available, even after the regulatory sixty (60) day period set forth in 45 CFR § 164.410 (b) has elapsed, including:
 - 1) A brief description of what happened, including the date of the Breach and the date of the discovery of the Breach, if known;
 - 2) A description of the types of Unsecured Protected Health Information that were involved in the Breach (such as whether full name, social security number, date of birth, home address, account number, diagnosis, disability code, or other types of information were involved);
 - 3) Any steps Individuals should take to protect themselves from potential harm resulting from the Breach;
 - 4) A brief description of what Contractor is doing to investigate the Breach, to mitigate harm to Individuals, and to protect against any future Breaches; and
 - 5) Contact procedures for Individuals to ask questions or learn additional information, which shall include a toll-free telephone number, an e-mail address, Web site, or postal address.
7. County may require Contractor to provide notice to the Individual as required in 45 CFR § 164.404 if it is reasonable to do so under the circumstances, at the sole discretion of the County.
8. In the event that Contractor is responsible for, or suffers a Breach of Unsecured Protected Health Information, in violation of the Privacy Rule, Contractor shall have the burden of demonstrating that Contractor made all notifications to County as required by the Breach Notification regulations, or in the alternative, that the use or disclosure did not constitute a Breach as defined in 45 CFR § 164.402.
9. Contractor shall maintain documentation of all required notifications required pursuant to this Contract in the event of an impermissible use or disclosure of Unsecured Protected Health Information, or its risk assessment of the application of an exception to demonstrate that the notification was not required.
10. Contractor shall provide to County all specific and pertinent information about the Breach to permit County to meet its notification obligations under the HITECH Act, as soon as practicable, but in no event later than fifteen (15) calendar days after reporting the initial Breach to the County.
11. Contractor shall continue to provide all additional pertinent information about the Breach to County as it may become available, in reporting increments of fifteen (15) calendar days after the last report to County. Contractor shall also respond in good faith to any reasonable requests for further information, or follow-up information after report to County, when such request is made by County.
12. Contractor shall bear all expense or other costs associated with the Breach, and shall reimburse County for all expenses County incurs in addressing the Breach and consequences thereof, including costs of investigation, notification, remediation, documentation or other costs associated with addressing the Breach.

F. PERMITTED USES AND DISCLOSURES BY CONTRACTOR

1. Except as otherwise limited in this Contract, Contractor may use or disclose PHI to perform functions,

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Audit Services

activities, or services for, or on behalf of, County as specified in this Contract, provided that such use or disclosure would not violate the Privacy Rule if done by County or the minimum necessary policies and procedures of County.

2. Contractor is permitted to use PHI as necessary for the proper management and administration of Contractor or to carry out legal responsibilities of Contractor. (ref. 45 C.F.R. 164.504(e)(4)(i)(A-B)).
3. Contractor is permitted to disclose PHI received from County for the proper management and administration of Contractor or to carry out legal responsibilities of Contractor, provided:
 - a. The disclosure is required by law; or
 - b. Contractor obtains reasonable assurances from the person to whom the PHI is disclosed that it will be held confidentially and used or further disclosed only as required by law or for the purposes for which it was disclosed to the person, the person will use appropriate safeguards to prevent unauthorized use or disclosure of the PHI, and the person immediately notifies Contractor of any instance of which it is aware in which the confidentiality of the Information has been Breached. (ref. 45 C.F.R. 164.504(e)(4)(ii)).
4. Contractor is also permitted to use or disclose PHI to provide data aggregation services, as that term is defined by 45 C.F.R. 164.501, relating to the health care operations of County.

G. OBLIGATIONS OF COUNTY

1. County shall notify Contractor of any limitation(s) in County's notice of privacy practices in accordance with 45 CFR Section 164.520, to the extent that such limitation may affect Contractor's use or disclosure of PHI.
2. County shall notify Contractor of any changes in, or revocation of, permission by an Individual to use or disclose PHI, to the extent that such changes may affect Contractor's use or disclosure of PHI.
3. County shall notify Contractor of any restriction to the use or disclosure of PHI that County has agreed to in accordance with 45 CFR Section 164.522, to the extent that such restriction may affect Contractor's use or disclosure of PHI.
4. County shall not request Contractor to use or disclose PHI in any manner that would not be permissible under the Privacy Rule if done by County.

H. BUSINESS ASSOCIATE TERMINATION

1. Notwithstanding the Termination provisions set forth in this Contract, the Contract shall only terminate when all of the PHI provided by County to Contractor, or created or received by Contractor on behalf of County, is destroyed or returned to County, or if infeasible to return or destroy PHI, protections are extended to such information, in accordance with the Termination provisions of this Section.
2. In addition to the rights and remedies provided in the Termination paragraph of this Contract, upon County's knowledge of a material breach by Contractor of the requirements of this paragraph, County shall either:
 - a. Provide an opportunity for Contractor to cure the material breach or end the violation and terminate this Contract if Contractor does not cure the material breach or end the violation within thirty (30) business days; or
 - b. Immediately terminate this Contract if Contractor has breached a material term of this Contract and cure is not possible; or
 - c. If neither termination nor cure is feasible, County shall report the violation to the Secretary of the Department of Health and Human Services.
3. Upon termination of this Contract, all PHI provided by County to Contractor, or created or received by Contractor on behalf of County, shall either be destroyed or returned to County as provided in the Termination paragraph of this Contract, and in conformity with the Privacy Rule.
 - a. This provision shall apply to PHI that is in the possession of subcontractors or agents of Contractor.
 - b. Contractor shall retain no copies of the PHI.
 - c. In the event that Contractor determines that returning or destroying the PHI is infeasible, Contractor shall provide to County notification of the conditions that make return or destruction infeasible. Upon determination by County that return or destruction of PHI is infeasible, Contractor shall extend the protections of this Contract to such PHI and limit further uses and disclosures of such PHI to those purposes that make the return or destruction infeasible, for so long as Contractor maintains such PHI.

EXHIBIT 1

SAMPLE AUDIT SERVICES REQUEST

TO: (Contractor's Name)

DATE:

FROM: [Deputy Purchasing Agent's (DPA) Name]

AGENCY: (DPA Agency/Department Name)

PROJECT NAME:

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INTRODUCTION

Per Contract Number MA-042-12011613, HCA is requesting bids for Audit Services. A detailed Scope of Work (specific project) is attached. If you have questions or need clarification, please contact me at the phone number or email address below.

INSTRUCTIONS

If you are interested in participating on this project, please complete the information requested on the Exhibits three (3) and four (4) and return them to my attention via bidsync.com internet site or to the address listed below. The award for this project will be made to the lowest responsive and responsible bidder.

- Qualifications of Key personnel Proposed for the Project
- Adequate Staff and Availability to Perform Project
- Pricing

Your best and final offer should be submitted. All bids are due by date/time (equal to a minimum of five (5) working days from notification) and are to be via Bidsync.com internet site or in a sealed envelope. The outside of the envelope must be marked with the Bid number of the requesting agency.

We thank you for your interest in doing business with the County of Orange.

Ana Figueroa, Assigned Buyer
HCA/Purchasing
200 W. Santa Ana Blvd., Suite #650
Santa Ana, CA 92701
714-834-2170
afigueroa@ochca.com

EXHIBIT 2
SAMPLE SCOPE OF WORK (Specific Project)

PROJECT NAME (brief description of the required services):

PROJECT NO:

I. Provide a detailed description of the project:

In addition to detailed description of the project (list of contract and sub-recipients to be audited), include term of project.

II. Any other information related to the project

EXHIBIT 3**SAMPLE BID RESPONSE – COST SUMMARY/PRICING**

Bidders are to quote their most competitive fees on all items in the format shown below.

The rate shall include all administrative overhead costs, including supervision, labor, tools, equipment (e.g. pagers, radios, telephones, etc.), transportation (e.g., vehicles, mileage, etc.), profit, and all other costs related to providing the services described herein.

LIST OF CONTRACT PROVIDERS TO BE AUDITED

No.	Division Name	Sub-Recipient Legal Name	Services	Bid Amount

Total Hours		Total Cost for Project	\$
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SIGNATURE: _____ **DATE:** _____

COMPANY NAME: _____

EXHIBIT 4**SAMPLE CONTRACTOR'S PERSONNEL ASSIGNED TO PROJECT**

All contractors must meet the minimum qualification requirements set forth in this IFB. Contractors responding to this Bid shall further certify that they meet all requirements set forth, including the minimum qualification:

- A. Journeyman: Auditors must be journeyman level or above. No novice or trainee level auditors can be used. County will not accept such staff.
- B. List of Auditors: Provide a list of auditing staff to be assigned to this Contract below. Include resumes that clearly identify their background, experience, and length of employment with the Contractor.

The Contractor anticipates that the following personnel will be involved with this project:

Classification Titles	Name	Proposed Hours	Role	Experience

The Contractor reserves the right to involve other people as their services are required. The specific individual shall be assigned based on the need and timing of the task. Assignment of additional key personnel shall be subject to County approval. The substitution of other individuals in any given category or classification shall be permitted only with prior written approval of the County, which shall not be unreasonably withheld.

EXHIBIT 5
COUNTY OF ORANGE CHILD SUPPORT ENFORCEMENT
CERTIFICATION REQUIREMENTS

In order to enhance the child support collection efforts of the County of Orange Family Support Enforcement, all Contractors are required to provide the following information as listed on the attached form:

- If the Contractor is an individual contractor: Name, date of birth, social security number, and residence address.
- If Contractor is doing business in a form other than as an individual: Name, date of birth, social security number, and residence address of *each* individual who owns an interest of ten (10) percent or more in the contracting entity.

In addition, all Contractors must provide:

- A certification that the Contractor has fully complied with all applicable federal and state reporting requirements regarding its employees, and
- A certification that the Contractor has fully complied with all lawfully served Wage and Earnings Assignment Orders and Notices of Assignment and will continue to so comply.

In order to comply with child support enforcement requirements of the County of Orange, within thirty (30) days of award of Contract, the Contractor agrees to furnish the required contractor data and certifications to the Deputy Purchasing Agent.

Failure of the Contractor to timely submit the data and/or certifications required above or to comply with all federal and state reporting requirements for child support enforcement or to comply with all lawfully served Wage and Earnings Assignment Orders and Notices of Assignment shall constitute a material breach of the contract. Failure to cure such breach within sixty (60) calendar days of notice from the County shall constitute grounds for termination of the Contract.

EXHIBIT 5 (cont.)

**COUNTY OF ORANGE CHILD SUPPORT ENFORCEMENT
CERTIFICATION REQUIREMENTS**

- A. In the case of an individual contractor, his/her name, date of birth, social security number, and residence address:

Name: _____

DOB: _____

Social Security No.: _____

Residence Address: _____

- B. In the case of a contractor doing business in a form other than as an individual, the name, date of birth, social security number, and residence address of each individual who owns an interest of 10 percent or more in the contracting entity:

Name: _____

DOB: _____

Social Security No.: _____

Residence Address: _____

Name: _____

DOB: _____

Social Security No.: _____

Residence Address: _____

(Additional sheets may be used if necessary)

EXHIBIT 5 (cont.)**COUNTY OF ORANGE CHILD SUPPORT ENFORCEMENT CERTIFICATION
REQUIREMENTS**

"I certify that David L. Gruber and Associates, Inc. dba Gruber and Associates is in full compliance with all applicable federal and state reporting requirements regarding its employees and with all lawfully served Wage and Earnings Assignment Orders and Notices of Assignments and will continue to be in compliance throughout the term of Contract MA-042-12011613 with the County of Orange. I understand that failure to comply shall constitute a material breach of the Contract and that failure to cure such breach within sixty (60) calendar days of notice from County shall constitute grounds for termination of the Contract."

*Signature**_____
*Name (Please Print)*_____
*Title*_____
*Date*_____
*Company Name*_____
*Contract Number*_____
*Signature**_____
*Name (Please Print)*_____
*Title*_____
*Date*_____
*Company Name*_____
Contract Number

***Two signatures required if a corporation.**