

FIRST AMENDMENT TO CONTRACT

The County of San Benito ("COUNTY") and NMK Research & Consulting ("CONTRACTOR") enter into this agreement on the date stated next to the signatures below. In consideration of the mutual promises set forth herein, the parties agree as follows:

1. Existing Contract.

a. Initial Contract.

COUNTY and CONTRACTOR acknowledge that the parties entered into a contract, dated July 1, 2017.

b. Prior Amendments. (Check one.)

☒ The initial contract previously has not been amended.

☐ The initial contract previously has been amended. The date(s) of prior amendments are as follows: _____

c. Incorporation of Original Contract.

The initial contract and any prior amendments to the initial contract (hereafter collectively referred to as the "original contract") are attached to this amendment as Exhibit 1 and made a part of this amended contract.

2. Purpose of this Amendment.

The purpose of this amendment is to change the agreement between the parties in the following particulars:

a. Term of the Contract. (Check one.)

☐ The term of the original contract is not modified.

☒ The term of the original contract (Exhibit 1) is extended from the current expiration date of June 30, 2018, to a new expiration date of June 30, 2021.

b. Scope of Services. (Check one.)

☐ The services specified in the original contract (Exhibit 1) are not modified.

☒ The services specified in the original contract (Exhibit 1) are modified as specified below: (Check one.)

☐ The services specified in the original contract are modified only as specified below:

Modified or New Scope of Services:

(Insert modified or new services.)

☒ The services specified in the original contract are deleted in their entirety and replaced with the following services:

New Scope of Services:

(See REVISED Attachment A.)

B-3. COMPENSATION

COUNTY shall pay to CONTRACTOR: (Check one.)

- ☐ a total lump sum payment of \$ _____, or
☒ a total sum not to exceed \$ 83,640,

for services rendered pursuant to the terms and conditions of the original contract (Exhibit 1) and this amendment, and pursuant to any special compensation terms specified in paragraph B-4.

B-4. SPECIAL COMPENSATION TERMS: (Check one.)

- ☒ There are no additional terms of compensation.
☐ The following specific terms of compensation shall apply:
(Specify)

d. Other Terms. (Check one.)


- ☒ There are no other terms of the original contract that are modified.
☐ Other terms of the original contract are modified only as specified below:

Other Modified or New Terms:
(Insert other modified or new terms.)

3. Other Terms.

All other terms and conditions of the original contract (Exhibit 1) which are not changed by this amendment shall remain the same.

CONTRACTOR



Name/Title: Natasha Kowalski
Public Health Consultant

March 20, 2018

Date

COUNTY

San Benito County Board of Supervisors

_____, Chair

Date

APPROVED AS TO LEGAL FORM:

San Benito County Counsel's Office



3-23-2018

Date

**AMENDMENT NO. 1
ATTACHMENT A
SCOPE OF SERVICES**

Contractor, NMK RESEARCH & CONSULTING will provide evaluation services for the Tobacco Control Program at the San Benito County Public Health Department. The contractor will provide the following services from July, 1 2017 to June 30, 2021:

- 1. Develop and/or modify the following surveys, key informant interview questions, and other evaluation tools:**
 - Post-training surveys regarding flavors for 2 trainings for the Wellness Coalition of San Benito County and 1 training for subcontractors
 - Post-training survey for law enforcement to conduct site inspections of flavored tobacco
 - Post-training survey for the data collection training for the observation of flavored tobacco at retailers in Hollister
 - Observation survey of tobacco retailers in Hollister in the fourth year to assess the availability of flavored tobacco products
 - Key information interview questions regarding the Healthy Stores for a Healthy Community (HSHC) campaign
 - Public intercept survey for HSHC campaign
 - Post-training survey(s) regarding secondhand smoke (SHS) for 1-2 trainings for the Wellness Coalition of San Benito County
 - Post-training survey for the data collection trainings for the observation of outdoor dining
 - Pre- and post-intervention key informant interviews regarding SHS
 - Pre- and post-public intercept surveys with restaurant staff, managers, and owners regarding smoke-free dining
 - Pre- and post-observation survey of outdoor dining in Hollister
 - Public intercept survey regarding SHS
 - Update survey instruments as needed for youth coalition satisfaction survey, post-training surveys for youth, & the youth participation log
 - Create a new post-training survey for the youth peer-to-peer training
- 2. Once San Benito County staff have entered the collected data into Excel or an online database, analyze the data collected and summarize key findings in preliminary reports to be submitted with the biannual progress reports. The evaluation activities to be analyzed and summarized are described in #1 and include:**
 - Post-training surveys for objective 1, 2, and 3
 - Observation survey of flavored products at tobacco retailers in Hollister in the fourth year
 - Key informant interviews for HSHC and SHS campaigns
 - Public intercept surveys for HSHC and SHS campaigns
 - Observation surveys of outdoor dining
 - Youth coalition tracking log
 - Youth coalition satisfaction survey

N/C 3/20/18

3. **Write brief evaluation reports (BERs) for two objectives and a final evaluation report (FER) for the primary objective.**
 - The FER will closely follow the guidelines specified by California Tobacco Control Program (CTCP) and will include: a project abstract, project description, evaluation methods, results, conclusion, and recommendations
 - The BERs and FER will summarize all of the data sources, identifying successes and challenges, and making recommendations for future project interventions
 - Interview the San Benito County staff to obtain their perspective about the program's successes and challenges and include findings in BERs and FER
 - Submit draft report to the Project Coordinator for feedback and make revisions
4. **Develop a comprehensive evaluation plan for both the 2017-2021 and 2021-2024 work plan.**
 - Review California Tobacco Control Program's (CTCP) guidelines
 - Provide an evaluation plan for three objectives that includes process and outcome measures, sample sizes, description of the survey instruments, who to interview, tracking measures, responsible parties, dates to be completed, and evaluation narratives
 - Assist with development of the objectives
 - Review intervention plan and provide feedback
 - Assist with negotiations with CTCP
 - Make revisions based on CTCP's feedback
5. **Provide timeline for the 2017-2021 evaluation plan to help monitor progress towards completing evaluation activities.**
6. **Stay updated by reading weekly Partners postings, Tobacco Control Evaluation Center's newsletters, etc.**
7. **Provide 6-10 hours per year of technical support in the form of phone calls if needed.**

END OF ATTACHMENT A.

7/16
3/20/18

**AMENDMENT NO. 1
TO ATTACHMENT B
Payment Schedule**

B-1. BILLING

Charges for services rendered pursuant to the terms and conditions of this contract shall be invoiced on the following basis: (check one)

- ☒ One month in arrears.
- ☐ Upon the complete performance of the services specified in Attachment A.
- ☐ The basis specified in paragraph B-4.

B-2. PAYMENT

Payment shall be made by COUNTY to CONTRACTOR at the address specified in paragraph 8 of this contract, net thirty (30) days from the invoice date.

B-3. COMPENSATION

COUNTY shall pay to CONTRACTOR: (check one)

- ☐ a total lump sum payment of \$ _____, or
- ☒ a total sum not to exceed \$ 83,640 for services rendered pursuant to the terms and conditions of this contract and pursuant to any special compensation terms specified in this attachment, Attachment B-4.

B-4. SPECIAL COMPENSATION TERMS: (check one)

- ☐ There are no additional terms of compensation.
- ☒ The following specific terms of compensation shall apply: (Specify)

Contractor shall bill the County monthly upon completion of an activity and submission of documentation for items listed in attachment A of this contract at the per hour dollar amounts for each fiscal year as outlined below:

July 1, 2017 through March 30, 2018: 192 hours at \$60 per hour, totaling \$11,520.

April 1, 2018 through June 30, 2018: 200 hours at \$85 per hour, totaling \$17,040.

FY 18/19: 18 hours a month x 12 months x \$85 per hour for contract year 18/19, totaling \$18,360.

FY 19/20: 18 hours a month x 12 months x \$85 per hour for contract year 19/20, totaling \$18,360.

FY 20/21: 18 hours a month x 12 months x \$85 per hour for contract year 20/21, totaling \$18,360.

Totaling: \$83,640

**END OF AMENDMENT NO. 1
TO ATTACHMENT B**

M/C 3/20/18

**EXHIBIT 1
TO AMENDMENT #1**

**ORIGINAL
CONTRACT**

(Please attach the initial contract and any prior amendments, from the most recent to the initial contract, in reverse chronological order.)

C O N T R A C T

The COUNTY OF SAN BENITO ("COUNTY") and NMK RESEARCH & CONSULTING ("CONTRACTOR") enter into this contract which shall be effective on the date stated in Paragraph 1.

1. Duration of Contract.

This contract shall commence on July 1, 2017, and end on June 30, 2018, unless sooner terminated as specified herein.

2. Scope of Services.

CONTRACTOR, for COUNTY's benefit shall perform the services specified on Attachment A to this contract. Attachment A is made a part of this contract.

3. Compensation for Services.

In consideration for CONTRACTOR's performance, COUNTY shall pay compensation to CONTRACTOR according to the terms specified in Attachment B. Attachment B is made a part of this contract.

4. General Terms and Conditions.

The rights and duties of the parties to this contract are governed by the general terms and conditions mutually agreed to and listed in Attachment C. Attachment C is made a part of this contract.

5. Insurance Limits.

CONTRACTOR shall maintain the following insurance policy limits of coverage consistent with the further insurance requirements specified in Attachment C.

- (a) Comprehensive general liability insurance: \$1,000,000
- (b) Professional liability insurance: NA
- (c) Comprehensive motor vehicle liability insurance: California State Minimum

6. Termination.

The number of days of advance written notice required for termination of this contract is
14 (fourteen) days.

7. Specific Terms and Conditions (check one)

- ☐ There are no additional provisions to this contract.
- ☐ The rights and duties of the parties to this contract are additionally governed by the specific, additional terms mutually agreed to and listed in Attachment D. Attachment D is made a part of this contract.
- ☒ The rights and duties of the parties to this contract are additionally governed by the specific, additional terms mutually agreed to and listed in Attachment E. Attachment E is made a part of this contract.

8. Information about Contract Administrators.

The following names, titles, addresses, and telephone numbers are the pertinent information for the respective contract administrators for the parties.

Contract Administrator for COUNTY:

Name: James Rydingsword

Title: HHSA Director

Address: 1111 San Felipe Road, Suite 206

Hollister, California 95023

E-Mail: lmello@cosb.us

Telephone No.: (831) 636-4180

Fax No.: _____

Contract Administrator for CONTRACTOR:

Name: Natasha Kowalski, Owner

Title: N/A

Address: 316 Alta Vista

SANTA CRUZ, CA 95060

E-Mail: _____

Telephone No.: (831) 824-4323

Fax No.: _____

SIGNATURES

APPROVED BY COUNTY:

Name: _____

Chair, San Benito County Board of Supervisors

Date: _____

APPROVED BY CONTRACTOR:

Natasha Kowalski
Name: Natasha Kowalski

Title: Evaluator

Date: June 21, 2017

APPROVED AS TO LEGAL FORM:

Matthew W. Granger, San Benito County Counsel

By: 

Date: 6-28-17

ATTACHMENT A

Scope of Services

Contractor, NMK RESEARCH & CONSULTING will provide evaluation services for the Tobacco Control Program at the San Benito County Public Health Department. The contractor will provide the following services from July, 1 2017 to June 30, 2018:

- 1. Develop and design surveys, key informant interview questions, and other evaluation tools, including the following:**
 - Post-training surveys for 2 trainings for the Wellness Coalition of San Benito
 - Key information interview questions regarding flavored tobacco
 - Public intercept survey regarding secondhand smoking
 - Update survey instruments as needed for youth coalition satisfaction survey, post-training surveys for youth, & the youth participation log
 - Create a new post-training survey for the youth coalition orientation
- 2. Once San Benito County staff have entered the collected data into Excel or an online database, analyze the data collected and summarize key findings in preliminary reports to be submitted with the biannual progress reports. The evaluation activities to be analyzed and summarized include the 2 post-training surveys for the Wellness Coalition, 3-4 post-training surveys for the youth, the youth coalition tracking log, key informant interviews, youth coalition satisfaction survey, and public intercept survey.**
- 3. Develop a comprehensive evaluation plan for the 2017 – 2021 work plan and make revisions if necessary.**
- 4. Provide timeline for the 2017-2018 evaluation plan to help monitor progress towards completing evaluation activities.**
- 5. Stay updated by reading weekly Partners postings, coalition minutes, Tobacco Control Evaluation Center's newsletters, etc.**
- 6. Provide technical support in the form of phone calls or in person if needed.**

END OF ATTACHMENT A.

ATTACHMENT B

Payment Schedule

B-1. BILLING

Charges for services rendered pursuant to the terms and conditions of this contract shall be invoiced on the following basis: (check one)

- ☐ One month in arrears.
- ☐ Upon the complete performance of the services specified in Attachment A.
- ☒ The basis specified in paragraph B-4.

B-2. PAYMENT

Payment shall be made by COUNTY to CONTRACTOR at the address specified in paragraph 8 of this contract, net thirty (30) days from the invoice date.

B-3. COMPENSATION

COUNTY shall pay to CONTRACTOR: (check one)

☐ an hourly rate of \$, or

☒ a total sum not to exceed \$ 11,520, for services rendered pursuant to the terms and conditions of contract and pursuant to any special compensation terms specified in this attachment, Attachment B.

B-4. SPECIAL COMPENSATION TERMS: (check one)

- ☐ There are no additional terms of compensation.
- ☒ The following specific terms of compensation shall apply:

Contractor, NMK RESEARCH & CONSULTING, shall bill the County of San Benito upon completion of an item listed in attachment A of this contract \$60 per hour upon successfully completing the activity and submission of documentation.

July 1, 2017 through June 30, 2018:

14 hours per month for 12 months at \$65 per hour \$11,520.00

END OF ATTACHMENT B.

ATTACHMENT C

General Terms and Conditions

C-1. INDEMNIFICATION.

CONTRACTOR and COUNTY each agree to indemnify, defend and save harmless the other party and the other party's officers and employees, from and against any and all claims and losses whatsoever arising out of, or in any way related to, the indemnifying party's performance under this contract, including, but not limited to, claims for property damage, personal injury, death, and any legal expenses (such as attorneys' fees, court costs, investigation costs, and experts' fees) incurred by the indemnitee in connection with such claims or losses. A party's "performance" includes the party's action or inaction and the action or inaction of that party's officers and employees.

C-2. GENERAL INSURANCE REQUIREMENTS.

Without limiting CONTRACTOR's duty to indemnify COUNTY, CONTRACTOR shall comply with the insurance coverage requirements set forth in the contract and in this attachment. Those insurance policies mandated by Paragraph C-3 shall satisfy the following requirements:

- (a) Each policy shall be issued by a company authorized by law to transact business in the State of California.
- (b) Each policy shall provide that COUNTY shall be given notice in writing at least thirty (30) days in advance of any change, cancellation, or nonrenewal thereof.
- (c) The comprehensive motor vehicle and comprehensive general liability policies shall each provide an endorsement naming the County of San Benito and its officers, agents and employees as additional insureds.
- (d) The required coverage shall be maintained in effect throughout the term of this contract.

CONTRACTOR shall require all subcontractors performing work under this contract to obtain substantially the identical insurance coverage required of CONTRACTOR pursuant to this agreement.

C-3. INSURANCE COVERAGE REQUIREMENTS.

If required by paragraph 5 of the contract, CONTRACTOR shall maintain the following insurance policies in full force and effect during the term of this contract:

- (a) Comprehensive general liability insurance. CONTRACTOR shall maintain comprehensive general liability insurance, covering all of CONTRACTOR's operations with a combined single limit of not less than the amount set out in paragraph 5 of this contract.
- (b) Professional liability insurance. CONTRACTOR shall maintain professional liability insurance with liability limits of not less than the amount set out in paragraph 5 of this contract.

- (c) Comprehensive motor vehicle liability insurance. CONTRACTOR shall maintain comprehensive motor vehicle insurance covering all motor vehicles (including owned, non-owned and hired) used in providing services under this contract, with a combined single limit of not less than the amount set out in Paragraph 5 of this contract.
- (d) Workers' compensation insurance. CONTRACTOR shall maintain a workers' compensation plan covering all of its employees as required by California Labor Code Section 3700, either through workers' compensation insurance issued by an insurance company or through a plan of self-insurance certified by the State Director of Industrial Relations. If CONTRACTOR elects to be self-insured, the certificate of insurance otherwise required by this contract shall be replaced with a consent to self-insure issued by the State Director of Industrial Relations.

C-4. CERTIFICATE OF INSURANCE.

Prior to the commencement of performance of services by CONTRACTOR and prior to any obligations of COUNTY, CONTRACTOR shall file certificates of insurance with COUNTY, showing that CONTRACTOR has in effect the insurance required by this contract. CONTRACTOR shall file a new or amended certificate promptly after any change is made in any insurance policy which would alter the information on the certificate then on file. In lieu of providing proof of insurance, CONTRACTOR may provide proof of self-insurance meeting requirements equivalent to those imposed herein. CONTRACTOR warrants that CONTRACTOR's self-insurance provides substantially the same protection to COUNTY as the insurance required herein. CONTRACTOR further agrees to notify COUNTY in the event any change in self-insurance occurs that would alter the obligations undertaken in this contract within thirty (30) days of such change.

C-5. RECORDS TO BE MAINTAINED.

CONTRACTOR shall keep and maintain accurate records of all costs incurred and all time expended for work under this contract. CONTRACTOR shall contractually require that all of CONTRACTOR's subcontractors performing work called for under this contract also keep and maintain such records. All such records, whether kept by CONTRACTOR or any subcontractor, shall be made available to COUNTY or its authorized representative, or officials of the State of California for review or audit during normal business hours, upon reasonable advance notice given by COUNTY, its authorized representative, or officials of the State of California.

C-6. RETENTION OF RECORDS.

CONTRACTOR shall maintain and preserve all records related to this contract for a period of three years from the close of the fiscal year in which final payment under this contract is made. CONTRACTOR shall also contractually require the maintenance of such records in the possession of any third party performing work related to this contract for the same period of time. Such records shall be retained beyond the three-year period, if any audit involving such records is then pending, until the audit findings are resolved. The obligation to insure the maintenance of the records beyond the initial three year period shall arise only if the COUNTY notifies CONTRACTOR of the commencement of an audit prior to the expiration of the three year period.

C-7. TITLE TO DOCUMENTS; COPYRIGHT.

All reports and other materials collected or produced by the CONTRACTOR or any subcontractor of CONTRACTOR shall, after completion and acceptance of the contract, become the property of COUNTY, and shall not be subject to any copyright claimed by the CONTRACTOR, subcontractor, or their agents or employees. CONTRACTOR may retain copies of all such materials exclusively for administrative purposes. Any use of completed or uncompleted documents for other projects by CONTRACTOR, any subcontractor, or any of their agents or employees, without the prior written consent of COUNTY is prohibited.

C-8. INDEPENDENT CONTRACTOR.

CONTRACTOR and its officers and employees, in the performance of this contract, are independent contractors in relation to COUNTY and not officers or employees of COUNTY. Nothing in this contract shall create any of the rights, powers, privileges or immunities of any officer or employee of COUNTY. CONTRACTOR shall be solely liable for all applicable taxes or benefits, including, but not limited to, federal and state income taxes, Social Security taxes, or ERISA retirement benefits, which taxes or benefits arise out of the performance of this contract. CONTRACTOR further represents to COUNTY that CONTRACTOR has no expectation of receiving any benefits incidental to employment.

C-9. CONFLICT OF INTEREST.

CONTRACTOR covenants that it presently has no interest and shall not acquire any interest, direct or indirect, financial or otherwise, which would conflict in any manner or degree with the performance of the services hereunder. CONTRACTOR further covenants that, in the performance of this contract, no subcontractor or person having such an interest shall be used or employed. CONTRACTOR certifies that no one who has or will have any financial interest under this contract is an officer or employee of COUNTY.

C-10. COMPLIANCE WITH APPLICABLE LAWS.

CONTRACTOR shall comply with all applicable federal, state and local laws now, or hereafter, in force, and with any applicable regulations, in performing the work and providing the services specified in this contract. This obligation includes, without limitation, the acquisition, and maintenance of any permits, licenses, or other entitlements necessary to perform the duties imposed expressly or impliedly under this contract.

C-11. NONDISCRIMINATION.

CONTRACTOR shall not discriminate in the employment of persons necessary to perform this contract on any legally impermissible basis, including on the basis of the race, color, national origin, ancestry, religion, age, sex, or disability of such person.

C-12. BANKRUPTCY.

CONTRACTOR shall immediately notify COUNTY in the event that CONTRACTOR ceases conducting business in the normal manner, becomes insolvent, makes a general assignment for the benefit of creditors, suffers or permits the appointment of a receiver for its business or assets, or avails itself of, or becomes subject to, any proceeding under the Federal Bankruptcy Act or any other statute of any state relating to insolvency or protection of the rights of creditors.

C-13. PROHIBITION AGAINST ASSIGNMENT AND DELEGATION OF DUTIES.

Except as specifically authorized herein, no rights under this contract may be assigned and no duties under this contract may be delegated by CONTRACTOR without the prior written consent of COUNTY, and any attempted assignment or delegation without such consent shall be void.

C-14. NEGOTIATED CONTRACT.

This contract has been arrived at through negotiation between the parties. Neither party is to be deemed the party which prepared this contract within the meaning of California Civil Code Section 1654.

C-15. SEVERABILITY.

Should any provision herein be found or deemed to be invalid, this contract shall be construed as not containing such provision, and all other provisions which are otherwise lawful shall remain in full force and effect. To this end, the provisions of this contract are declared to be severable.

C-16. ENTIRE CONTRACT.

This contract is the entire agreement of the parties. There are no understandings or agreements pertaining to this contract except as are expressly stated in writing in this contract or in any document attached hereto or incorporated herein by reference.

C-17. TIME IS OF THE ESSENCE.

Time is of the essence in the performance of this contract.

C-18. TERMINATION.

Either party may terminate this contract, with or without cause, at any time. In order to terminate this contract, the terminating party shall give advance written notice to the other party. The termination shall be effective no earlier than the expiration of the number of days specified in paragraph 6 of this contract. The termination notice shall be made as specified in paragraph C-19, below. In the event of termination, COUNTY shall pay CONTRACTOR for all work satisfactorily performed prior to the effective date of the termination.

C-19. NOTICES.

Notices to the parties in connection with the administration of this contract shall be given to the parties' contract administrator personally, by regular mail, or by facsimile transmission as more particularly specified in this paragraph. Notices will be deemed given on:

- (a) The day the notice is personally delivered to the contract administrator or the office of the party's contract administrator; or
- (b) Five days after the date the notice is deposited in the United States mail, addressed to a party's contract administrator as indicated in this contract, with first-class postage fully prepaid; or
- (c) On the day that the notice is transmitted by facsimile to a party's facsimile number specified in paragraph 8 of this contract, provided that an original of

such notice is deposited in the United States mail, addressed to a party's contract administrator as indicated in this contract, on the same day as the facsimile transmission is made.

C-20. RESPONSIBILITY OF CONTRACT ADMINISTRATORS.

All matters concerning this contract which are within the responsibility of the parties shall be under the direction of, or shall be submitted to, the respective contract administrators or to the party's employee specified, in writing, by the contract administrator. A party may, in its sole discretion, change its designation of its contract administrator and shall promptly give written notice to the other party of any such change.

C-21. MATERIALITY.

The parties consider each and every term, covenant, and provision of this contract to be material and reasonable.

C-22. WAIVER.

Waiver by either party of a breach of any covenant of this contract will not be construed to be a continuing waiver of any subsequent breach. COUNTY's receipt of consideration with knowledge of CONTRACTOR's violation of a covenant does not waive its right to enforce any covenant of this contract. The parties shall not waive any provisions of this contract unless the waiver is in writing and signed by all parties.

C-23. AUTHORITY AND CAPACITY.

CONTRACTOR and CONTRACTOR's signatory each warrant and represent that each has full authority and capacity to enter into this contract.

C-24. BINDING ON SUCCESSORS.

All of the conditions, covenants and terms herein contained shall apply to, and bind, the heirs, successors, executors, administrators and assigns of CONTRACTOR. CONTRACTOR and all of CONTRACTOR's heirs, successors, executors, administrators, and assigns shall be jointly and severally liable under this contract.

C-25. CUMULATION OF REMEDIES.

All of the various rights, options, elections, powers and remedies of the parties shall be construed as cumulative, and no one of them exclusive of any other or of any other legal or equitable remedy which a party might otherwise have in the event of a breach or default of any condition, covenant or term by the other party. The exercise of any single right, option, election, power or remedy shall not, in any way, impair any other right, option, election, power or remedy until all duties and obligations imposed shall have been fully performed.

C-26. INDEPENDENT ADVICE.

Each party hereby represents and warrants that in executing this contract it does so with full knowledge of the rights and duties it may have with respect to the other. Each party also represents and warrants that it has received independent legal advice from its attorney with

respect to the matters set forth in this contract and the rights and duties arising out of this contract, or that such party willingly foregoes any such consultation.

C-27. NO RELIANCE ON REPRESENTATIONS.

Each party hereby represents and warrants that it is not relying, and has not relied, upon any representation or statement made by the other party with respect to the facts involved or its rights or duties. Each party understands and agrees that the facts relevant, or believed to be relevant to this contract may hereunder turn out to be other than, or different from the facts now known to such party as true, or believed by such party to be true. The parties expressly assume the risk of the facts turning out to be different and agree that this contract shall be effective in all respects and shall not be subject to rescission by reason of any such difference in facts.

C-28. REDUCTION OF CONSIDERATION.

CONTRACTOR agrees that COUNTY shall have the right to deduct from any payments specified in Attachment B any amount owed to COUNTY by CONTRACTOR as a result of any obligation arising prior to the execution of this contract. For purposes of this paragraph, obligations arising prior to the execution of this contract may include, without limitation, any property tax, secured or unsecured, which tax is in arrears. If COUNTY exercises the right to reduce the consideration specified in Attachment B, COUNTY shall give CONTRACTOR notice of the amount of any offset and the reason for the deduction.

C-29. COUNTERPARTS.

This contract may be executed in any number of counterparts, each of which so executed shall be deemed to be an original. The counterparts shall together constitute one contract.

END OF ATTACHMENT C.

**ATTACHMENT E
SAN BENITO COUNTY
BUSINESS ASSOCIATE ADDENDUM**

- (a) Contractor shall comply with, and assist the County in complying with, the privacy requirements of the Health Insurance Portability and Accountability Act (including but not limited to 42 U.S.C. 1320d et seq.; "HIPAA") and its implementing regulations (including but not limited to 45 CFR Parts 142, 160, 162 and 164), hereinafter collectively referred to as the "Privacy Rule." Terms used but not otherwise defined in this Addendum shall have the same meaning as those terms are used in the Privacy Rule.
- (b) Except as otherwise limited in this Addendum, Contractor may use or disclose Protected Health Information to perform functions, activities, or services for or on behalf of the County as specified in this Addendum, provided that such use or disclosure would not violate the Privacy Rule with which the County complies.
- (c) Contractor shall not use or further disclose Protected Health Information other than as permitted or required by this Addendum, or as required by law.
- (d) Contractor shall use appropriate safeguards to prevent use or disclosure of the Protected Health Information other than as provided for by this Addendum.
- (e) Contractor shall report to the County any use or disclosure of the Protected Health Information not provided for by this Addendum.
- (f) Contractor shall mitigate, to the extent practicable, any harmful effect that is known to Contractor as a result of a use or disclosure of Protected Health Information by Contractor which is in violation of the requirements of this Agreement.
- (g) Contractor shall ensure that any agent, including a subcontractor, to whom it provides Protected Health Information received from, created, or received by Contractor on behalf of the County, agrees to the same restrictions and conditions that apply through this Agreement to Contractor with respect to such information.
- (h) Contractor shall provide access, at the request of the County, and in the time and manner designated by the County, to Protected Health Information in a Designated Record Set; this Protected Health Information will be released to the County or, as directed by the County, to an Individual, in order to meet the requirements under 45 CFR Section 164.524.
- (i) Contractor shall make any amendment(s) to Protected Health Information in a Designated Record Set that the County directs, pursuant to 45 CFR Section 164.526, at the request of the County or an Individual, and in the time and manner designated by the County.
- (j) Contractor shall document such disclosures of Protected Health Information and information related to such disclosures as would be required for the County, to respond to a request by an Individual for an accounting of disclosures of Protected Health Information in accordance with 45 CFR Section 164.528.

Natasha Kowalski
(Natasha Kowalski)
May 22, 2017

- (k) Contractor shall provide to the County or an Individual, in the time and manner designated by the County, information collected in accordance with subsection (j), to permit the County to respond to a request by an Individual for an accounting of disclosures of Protected Health Information in accordance with 45 CFR Section 164.528.
- (l) Contractor shall make internal practices, books, and records relating to the use and disclosure of Protected Health Information received from, or created or received by Contractor on behalf of the County, available to the County; or at the request of the County, to the Secretary of the United States Department of Health and Human Services ("Secretary"), in a time and manner designated by the County or the Secretary, for purposes of the Secretary determining the County's compliance with the Privacy Rule.
- (m) A breach by Contractor of any provision of this Addendum, as determined by County, shall constitute a material breach of the contract and shall provide grounds for immediate termination of the Contract by the County.
 - (1) Except as provided in subparagraph (2) of this section, upon termination of this Addendum for any reason, Contractor shall return or destroy all Protected Health Information received from the County, or created or received by Contractor on behalf of the County. This provision shall apply to Protected Health Information that is in the possession of subcontractors or agents of the Contractor. Contractor, its agents and subcontractors shall retain no copies of the Protected Health Information.
 - (2) In the event that Contractor determines that returning or destroying the Protected Health Information is infeasible, Contractor shall provide to the County notification of the conditions that make return or destruction infeasible. Upon mutual agreement of the Parties that return or destruction of Protected Health Information is infeasible, Contractor shall extend the protections of this Addendum to such Protected Health Information and limit further uses and disclosures of such Protected Health Information to those purposes that make the return or destruction infeasible, for so long as Contractor, or any of its agents or subcontractors, maintains such Protected Health Information.
- (n) The Parties agree to take action to amend this Agreement from time to time as is necessary for the County to comply with the requirements for the Privacy Rule or any other requirements of HIPAA and its implementing regulations.

Natasha Kowalski
(Natasha Kowalski)
May 22, 2017