

**AGREEMENT BETWEEN THE COUNTY OF SAN MATEO AND
THE AIDS COMMUNITY RESEARCH CONSORTIUM**

THIS AGREEMENT, entered into this _____ day of _____, 20____, by and between the COUNTY OF SAN MATEO, hereinafter called "County," and THE AIDS COMMUNITY RESEARCH CONSORTIUM, hereinafter called "Contractor";

W I T N E S S E T H:

WHEREAS, pursuant to Government Code, Section 31000, County may contract with independent contractors for the furnishing of such services to or for County or any Department thereof;

WHEREAS, it is necessary and desirable that Contractor be retained for the purpose of performing the professional services hereinafter described for the Health System, Public Health STD/HIV Program.

NOW, THEREFORE, IT IS HEREBY AGREED BY THE PARTIES HERETO AS FOLLOWS:

1. Exhibits and Attachments

The following exhibits and attachments are included hereto and incorporated by reference herein:

Exhibit A—Services

Exhibit B—Payments and rates

Attachment H—HIPAA Business Associate requirements

Attachment I—§ 504 Compliance

2. Services to be performed by Contractor

In consideration of the payments set forth herein and in Exhibit "B," Contractor shall perform services for County in accordance with the terms, conditions and specifications set forth herein and in Exhibit "A."

3. Payments

In consideration of the services provided by Contractor in accordance with all terms, conditions and specifications set forth herein and in Exhibit "A," County shall make payment to Contractor based on the rates and in the manner specified in Exhibit "B." The County reserves the right to withhold payment if the County determines that the quantity or quality of the work performed is unacceptable. In no event shall the County's total fiscal obligation under this Agreement exceed ONE HUNDRED TWENTY THOUSAND DOLLARS (\$120,000).

4. Term and Termination

Subject to compliance with all terms and conditions, the term of this Agreement shall be from March 1, 2010 through February 28, 2011.

This Agreement may be terminated by Contractor, the Chief of the Health System or his/her designee at any time without a requirement of good cause upon thirty (30) days' written notice to the other party.

In the event of termination, all finished or unfinished documents, data, studies, maps, photographs, reports, and materials (hereafter referred to as materials) prepared by Contractor under this Agreement shall become the property of the County and shall be promptly delivered to the County. Upon termination, the Contractor may make and retain a copy of such materials. Subject to availability of funding, Contractor shall be entitled to receive payment for work/services provided prior to termination of the Agreement. Such payment shall be that portion of the full payment which is determined by comparing the work/services completed to the work/services required by the Agreement.

5. Availability of Funds

The County may terminate this Agreement or a portion of the services referenced in the Attachments and Exhibits based upon unavailability of Federal, State, or County funds, by providing written notice to Contractor as soon as is reasonably possible after the County learns of said unavailability of outside funding.

6. Relationship of Parties

Contractor agrees and understands that the work/services performed under this Agreement are performed as an independent Contractor and not as an employee of the County and that Contractor acquires none of the rights, privileges, powers, or advantages of County employees.

7. Hold Harmless

Contractor shall indemnify and save harmless County, its officers, agents, employees, and servants from all claims, suits, or actions of every name, kind, and description, brought for, or on account of: (A) injuries to or death of any person, including Contractor, or (B) damage to any property of any kind whatsoever and to whomsoever belonging, (C) any sanctions, penalties, or claims of damages resulting from Contractor's failure to comply with the requirements set forth in the Health Insurance Portability and Accountability Act of 1996 (HIPAA) and all Federal regulations promulgated thereunder, as amended, or (D) any other loss or cost, including but not limited to that caused by the concurrent active or passive negligence of County, its officers, agents, employees, or servants, resulting from the performance of any work required of Contractor or payments made pursuant to this Agreement, provided that this shall not apply to injuries or damage for which County has been found in a court of competent jurisdiction to be solely liable by reason of its own negligence or willful misconduct.

The duty of Contractor to indemnify and save harmless as set forth herein, shall include the duty to defend as set forth in Section 2778 of the California Civil Code.

8. Assignability and Subcontracting

Contractor shall not assign this Agreement or any portion thereof to a third party or subcontract with a third party to provide services required by contractor under this Agreement without the prior written consent of County. Any such assignment or subcontract without the County's prior written consent shall give County the right to automatically and immediately terminate this Agreement.

9. Insurance

The Contractor shall not commence work or be required to commence work under this Agreement unless and until all insurance required under this paragraph has been obtained and such insurance has been approved by Risk Management, and Contractor shall use diligence to obtain such insurance and to obtain such approval. The Contractor shall furnish the County with certificates of insurance evidencing the required coverage, and there shall be a specific contractual liability endorsement extending the Contractor's coverage to include the contractual liability assumed by the Contractor pursuant to this Agreement. These certificates shall specify or be endorsed to provide that thirty (30) days' notice must be given, in writing, to the County of any pending change in the limits of liability or of any cancellation or modification of the policy.

- (1) **Worker's Compensation and Employer's Liability Insurance** The Contractor shall have in effect during the entire life of this Agreement Workers' Compensation and Employer's Liability Insurance providing full statutory coverage. In signing this Agreement, the Contractor certifies, as required by Section 1861 of the California Labor Code, that it is aware of the provisions of Section 3700 of the California Labor Code which requires every employer to be insured against liability for Worker's Compensation or to undertake self-insurance in accordance with the provisions of the Code, and will comply with such provisions before commencing the performance of the work of this Agreement.
- (2) **Liability Insurance** The Contractor shall take out and maintain during the life of this Agreement such Bodily Injury Liability and Property Damage Liability Insurance as shall protect him/her while performing work covered by this Agreement from any and all claims for damages for bodily injury, including accidental death, as well as any and all claims for property damage which may arise from contractors operations under this Agreement, whether such operations be by himself/herself or by any sub-contractor or by anyone directly or indirectly employed by either of them. Such insurance shall be combined single limit bodily injury and property damage for each occurrence and shall be not less than the amount specified below.

Such insurance shall include:

- (a) Comprehensive General Liability \$1,000,000
 . . .
- (b) Motor Vehicle Liability Insurance \$1,000,000
 . . .
- (c) Professional Liability \$1,000,000
 . . .

County and its officers, agents, employees and servants shall be named as additional insured on any such policies of insurance, which shall also contain a provision that the insurance afforded thereby to the County, its officers, agents, employees and servants shall be primary insurance to the full limits of liability of the policy, and that if the County or its officers and employees have other insurance against the loss covered by such a policy, such other insurance shall be excess insurance only.

In the event of the breach of any provision of this section, or in the event any notice is received which indicates any required insurance coverage will be diminished or canceled, the County of San Mateo at its option, may, notwithstanding any other provision of this Agreement to the contrary, immediately declare a material breach of this Agreement and suspend all further work pursuant to this Agreement.

10. Compliance with laws; payment of Permits/Licenses

All services to be performed by Contractor pursuant to this Agreement shall be performed in accordance with all applicable Federal, State, County, and municipal laws, ordinances and regulations, including, but not limited to, the Health Insurance Portability and Accountability Act of 1996 (HIPAA), and the Federal Regulations promulgated thereunder, as amended, and will comply with the Business Associate requirements set forth in Attachment “H,” and the Americans with Disabilities Act of 1990, as amended, and Section 504 of the Rehabilitation Act of 1973, as amended and attached hereto and incorporated by reference herein as Attachment “I,” which prohibits discrimination on the basis of handicap in programs and activities receiving any Federal or County financial assistance. Such services shall also be performed in accordance with all applicable ordinances and regulations, including, but not limited to, appropriate licensure, certification regulations, provisions pertaining to confidentiality of records, and applicable quality assurance regulations. In the event of a conflict between the terms of this Agreement and State, Federal, County, or municipal law or regulations, the requirements of the applicable law will take precedence over the requirements set forth in this Agreement. Further, Contractor certifies that the Contractor and all of its subcontractors will adhere to all applicable provisions of Chapter 4.106 of the San Mateo County Ordinance Code, which regulates the use of disposable food service ware.

Contractor will timely and accurately complete, sign, and submit all necessary documentation of compliance.

11. Non-Discrimination and Other Requirements

- A. *Section 504 applies only to Contractors who are providing services to members of the public.* Contractor shall comply with § 504 of the Rehabilitation Act of 1973, which provides that no otherwise qualified handicapped individual shall, solely by reason of a disability, be excluded from the participation in, be denied the benefits of, or be subjected to discrimination in the performance of this Agreement.
- B. *General non-discrimination.* No person shall, on the grounds of race, color, religion, ancestry, gender, age (over 40), national origin, medical condition (cancer), physical or mental disability, sexual orientation, pregnancy, childbirth or related medical condition, marital status, or political affiliation be denied any benefits or subject to discrimination under this Agreement.
- C. *Equal employment opportunity.* Contractor shall ensure equal employment opportunity based on objective standards of recruitment, classification, selection, promotion, compensation, performance evaluation, and management relations for all employees under this Agreement. Contractor's equal employment policies shall be made available to County of San Mateo upon request.
- D. *Violation of Non-discrimination provisions.* Violation of the non-discrimination provisions of this Agreement shall be considered a breach of this Agreement and subject the Contractor to penalties, to be determined by the County Manager, including but not limited to
 - i) termination of this Agreement;
 - ii) disqualification of the Contractor from bidding on or being awarded a County contract for a period of up to 3 years;
 - iii) liquidated damages of \$2,500 per violation;
 - iv) imposition of other appropriate contractual and civil remedies and sanctions, as determined by the County Manager.

To effectuate the provisions of this section, the County Manager shall have the authority to examine Contractor's employment records with respect to compliance with this paragraph and/or to set off all or any portion of the amount described in this paragraph against amounts due to Contractor under the Contract or any other Contract between Contractor and County.

Contractor shall report to the County Manager the filing by any person in any court of any complaint of discrimination or the filing by any person of any and all charges with the Equal Employment Opportunity Commission, the Fair Employment and Housing Commission or any other entity charged with the investigation of allegations within 30 days of such filing, provided that within such 30 days such entity has not notified Contractor that such charges are dismissed or otherwise unfounded. Such notification shall include the name of the complainant, a copy of such complaint, and a description of the circumstance. Contractor shall provide County with a copy of their response to the Complaint when filed.

- E. *Compliance with Equal Benefits Ordinance.* With respect to the provision of employee benefits, Contractor shall comply with the County Ordinance which prohibits contractors from discriminating in the provision of employee benefits

between an employee with a domestic partner and an employee with a spouse.
F. The Contractor shall comply fully with the non-discrimination requirements required by 41 CFR 60-741.5(a), which is incorporated herein as if fully set forth.

12. Compliance with Contractor Employee Jury Service Ordinance

Contractor shall comply with the County Ordinance with respect to provision of jury duty pay to employees and have and adhere to a written policy that provides that its employees shall receive from the Contractor, on an annual basis, no less than five days of regular pay for actual jury service in San Mateo County. The policy may provide that employees deposit any fees received for such jury service with the Contractor or that the Contractor deduct from the employees' regular pay the fees received for jury service.

13. Retention of Records, Right to Monitor and Audit

(a) CONTRACTOR shall maintain all required records for three (3) years after the COUNTY makes final payment and all other pending matters are closed, and shall be subject to the examination and/or audit of the County, a Federal grantor agency, and the State of California.

(b) Reporting and Record Keeping: CONTRACTOR shall comply with all program and fiscal reporting requirements set forth by appropriate Federal, State and local agencies, and as required by the COUNTY.

(c) CONTRACTOR agrees to provide to COUNTY, to any Federal or State department having monitoring or review authority, to COUNTY's authorized representatives, and/or their appropriate audit agencies upon reasonable notice, access to and the right to examine all records and documents necessary to determine compliance with relevant Federal, State, and local statutes, rules and regulations, and this Agreement, and to evaluate the quality, appropriateness and timeliness of services performed.

14. Merger Clause

This Agreement, including the Exhibits attached hereto and incorporated herein by reference, constitutes the sole Agreement of the parties hereto and correctly states the rights, duties, and obligations of each party as of this document's date. In the event that any term, condition, provision, requirement or specification set forth in this body of the agreement conflicts with or is inconsistent with any term, condition, provision, requirement or specification in any exhibit and/or attachment to this agreement, the provisions of this body of the agreement shall prevail. Any prior agreement, promises, negotiations, or representations between the parties not expressly stated in this document are not binding. All subsequent modifications shall be in writing and signed by the parties.

15. Controlling Law and Venue

The validity of this Agreement and of its terms or provisions, as well as the rights and duties of the parties hereunder, the interpretation, and performance of this Agreement shall be governed by the laws of the State of California. Any dispute arising out of this

Agreement shall be venued either in the San Mateo County Superior Court or in the United States District Court for the Northern District of California.

16. Notices

Any notice, request, demand, or other communication required or permitted hereunder shall be deemed to be properly given when both (1) transmitted via facsimile to the telephone number listed below and (2) either deposited in the United State mail, postage prepaid, or when deposited for overnight delivery with an established overnight courier that provides a tracking number showing confirmation of receipt, for transmittal, charges prepaid, addressed to:

In the case of County, to:
San Mateo County STD/HIV Program
STD/HIV Program Director
225 37th Avenue
San Mateo, CA 94403

In the case of Contractor, to:
Executive Director
AIDS Community Research Consortium
1048 El Camino Real, Suite B
Redwood City, CA 94063

In the event that the facsimile transmission is not possible, notice shall be given both by United States mail and an overnight courier as outlined above.

IN WITNESS WHEREOF, the parties hereto, by their duly authorized representatives, have affixed their hands.

COUNTY OF SAN MATEO

By: _____
President, Board of Supervisors, San Mateo County

Date: _____

ATTEST:

By: _____
Clerk of Said Board

AIDS COMMUNITY RESEARCH CONSORTIUM

Contractor's Signature

Date: _____

Long Form Agreement/Business Associate v 8/19/08

EXHIBIT "A"
AIDS COMMUNITY RESEARCH CONSORTIUM
MARCH 1, 2010 THROUGH FEBRUARY 28, 2011

In consideration of the payments set forth in Exhibit "B", Contractor shall provide the following services:

I. FOOD SERVICES:

- A. Contractor shall provide food services including grocery bags with nutritional foods and nutritional supplements to people with HIV/AIDS, who live in San Mateo County.
- B. Contractor shall assure quality and safety of food through ongoing evaluation of grocery items and specific food handling training for all staff and volunteers.
- C. Contractor shall ensure that at least one (1) staff member will be trained in food handling and will provide in-services for food program staff.
- D. Contractor shall meet with a nutritionist a minimum of two times per year to obtain guidance and ensure that food items utilized meet the health needs of clients, to develop healthy and nutritional recipes that optimize client utilization of food services and to provide non-HIV identifying recipes in the grocery bags. Information on the dates and outcome of the meetings with the nutritionist shall be submitted with the appropriate quarterly reports.
- E. Contractor shall continue a recipe exchange program designed by a nutritionist to promote client utilization of food services provided; non-HIV identifying recipes will be placed in grocery bags six (6) times per quarter for a total of fifty-four (54) recipes for the contract period.
- F. Contractor shall contact County's Environmental Health Division to schedule a minimum of two (2) inspections of Contractor's facilities during the term of this Agreement.

2. MEASURABLE OBJECTIVES

Contractor shall develop and implement processes to achieve the service and outcome objectives and perform program evaluation.

A. QUALITY ASSURANCE

Contractor shall develop quality assurance activities for the services provided and complete a minimum of one quality assurance process annually, for one of the categories listed below:

1. Appropriateness of the overall service to the target population (e.g. locations, criteria used to evaluate services, times, etc.).
2. Development of role and responsibilities for key quality assurance personnel.
3. Adherence to relevant standards, guidelines and contractual requirements.
4. Ability to track, document and follow-up referrals and linkages.
5. Review and update of written policies, protocols and procedures.
6. Review and update of educational materials developed by the program for clients.
7. Review of client records.
8. Staff training, supervision and consultation plan.
9. Quality Assurance Committee, or Quality Team and/or Advisory Committees.

2. SERVICE OBJECTIVES

- A. Contractor shall provide seven thousand eight hundred thirty-seven units of service (7,837). A unit of service is defined as one bag of groceries, with a minimum size of L14"xW12"xD7". Included in the grocery bags may be nutritional supplements per prescription form an attending physician, with preference being given to clients with disabling HIV/AIDS.
- B. Contractor shall provide services to one hundred eighty-five (185) unduplicated clients.

3. OUTCOME OBJECTIVES

- A. Ninety-seven percent (97%) of clients will report improved nutrition due to receipt of food services rendered.
- B. Ninety-eight percent (98%) of clients shall report overall satisfaction with services of the program.

4. REPORTING

- A. Completed client information on services provided to clients shall be entered into ARIES by the fifteenth (15th) day following the end of the month.

- B. Monthly program invoices specifying cost(s) by budget category and per unit(s) of service(s) are due the fifteenth (15th) day following the end of the month.
- C. Progress Reports detailing program activities, changes, trends, etc., and units of service and number of unduplicated clients served (by funding source), shall be due as follows:
 - 1. September 15, 2010 – this report shall also include the quality assurance process your agency selected for the contract term
 - 2. March 15, 2011 – this report shall also include results of all the outcome objectives (surveys, summary, etc.) and a final program narrative, identifying unmet needs, trends, service gaps, and providing a project self-evaluation.
- D. The federally-required Ryan White HIV/AIDS Program Data Report (RDR) and Ryan White HIV/AIDS Services Summary Report (RSR) are due on July 30, 2010 and January 30, 2011. County, at any point, may request additional reports during the contract year as required by funding sources.

5. GENERAL

- A. Contractor shall provide the services funded by this Agreement by February 28, 2011.
- B. Contractor shall provide a minimum of four (4) HIV/AIDS-related in-service trainings for staff development.
- C. Contractor shall participate in County's "STD/HIV Program County-Wide Client Needs and Satisfaction Survey," if such participation is requested by County.
- D. Contractor shall comply with the annual STD/HIV Program site visit.
- E. Contractor is required to attend all relevant HIV/AIDS meetings (SPAN and Partnership Roundtable) and workshops to provide continuing education for Contractor's staff.
- F. Contractor shall have appropriate procedures to prevent unauthorized disclosure of confidential information. Personally identifying information developed or acquired by Contractor shall be confidential and shall not be disclosed, except as otherwise provided by law for public health purposes by court order, or pursuant to written authorization by the person who is the subject of the record or by his or her guardian or conservator. Contractor is responsible for complying with all applicable state and federal statutes regarding confidentiality and HIV/AIDS, including responsibility for assuring the security and confidentiality of all electronically transmitted patient material.
- G. Contractor agrees to acknowledge in all materials produced pursuant to this Agreement, the contribution in whole or in part, of County, State, and

Federal funding sources as applicable. In addition, any copyrighted or copyrightable works developed under this Agreement shall be subject to royalty free, non-exclusive perpetual and irrevocable license to the government to reproduce, publish or otherwise use them and to authorize others to do so for Federal, State and County government purposes. Income earned from any copyrightable work developed under this grant must be used as program income.

- H. Contractor certifies that to the best of his knowledge and belief i) no County, State or Federal appropriated funds have been paid or will be paid, by or on behalf of the undersigned, to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with the awarding of any federal contract, the making of any federal grant, the making of any federal loan, the entering into of any cooperative Agreement, and the extension, continuation, renewal, amendment, or modification of any federal contract, grant, loan, or cooperative Agreement; ii) If any funds other than County, State or Federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress or an employee of a Member of Congress in connection with this federal contract, grant, loan, or cooperative Agreement, the undersigned shall complete and submit Standard Form-LLL, "Disclosure Form to Report Lobbying," in accordance with its instructions.
- I. By signing the contract, Contractor certifies to the best of his or her knowledge and belief that neither it nor its principals is presently debarred, suspended, proposed for debarment, declared ineligible or voluntarily excluded from participation in this transaction by any federal department or agency. If Contractor is unable to certify to any of the statements in this certification, such prospective participant shall attach an explanation to this agreement. (Required by NNA Amendment 1, Exhibit B, Paragraph 1.)
- J. Contractor shall not claim reimbursement from County or apply sums received from County with respect to that portion of its obligations which has been paid by another source of revenue. Contractor shall not charge County for services which clients were entitled to receive regardless of this Agreement. Contractor shall submit no claim to, demand, or otherwise collect reimbursement from, individuals served under this contract (or persons acting on their behalf) for any services reimbursed in whole or in part under this contract, except to collect co-payment, or share of cost as allowed by regulations specific to funding sources.
- K. Contractor shall make all reasonable efforts to ensure that no conflict of interest exists for its officers, agents, or employees. Contractor shall prevent employees, consultants, or members of governing bodies from using their position for purposes that are or give the appearance of being motivated by a desire for private gain for themselves or others, such as

those with whom they have family business or other ties. If the County determines that a conflict of interest situation exists, any increase in costs associated with the conflict of interest may be disallowed and recovered by the County or the Health System and any such conflict may constitute grounds for immediate termination of this contract for cause.

- L. Contractor agrees to establish and maintain a written Client Grievance Procedure, which is to be submitted to and approved by the County.
- M. Contractor shall retain any property acquired with funds under this Agreement as long as there is a need for the property to accomplish the purpose of the program. For disposition of equipment or furniture with a unit cost of FIVE HUNDRED DOLLARS (\$500) or more and a life expectancy of one or more years, Contractor shall request disposition instructions from County.
- N. Contractor shall annually have its financial records audited by a Certified Public Accountant and a copy of said audit report shall be submitted to County within one hundred eighty (180) days of the end of Contractor's fiscal year. Should Contractor expend a combined total of all federal awards that exceeds THREE HUNDRED THOUSAND DOLLARS (\$300,000) during Contractor's fiscal year, this audit must also meet the requirements of the Federal Single Audit Act and the Federal Office of Management Budget (OMB Circular A-133).
- O. In the event Contractor claims or receives payment from County for a service, reimbursement which is later disallowed by the County, the State of California, or the United States Government, then Contractor shall promptly refund the disallowed amount to County upon request, or, at its option, County may offset the amount disallowed from any payment due or become due to Contractor under this Agreement or any other Agreement.
- P. Contractor certifies that it has appropriate systems and controls in place to ensure that County funds will not be used in performance of this Agreement for the acquisition, operation, or maintenance of computer software in violation of copyright laws.
- Q. Contractor certifies that no funds received under this Agreement will be used to assist, promote or deter union organizing.
- R. Contractor shall maintain all required records for five years after the County makes final payment or after the final audit has been resolved, whichever occurs last; records shall be subject to the examination and/or audit of the County, a Federal grantor agency, and the State of California.

EXHIBIT "B"
AIDS COMMUNITY RESEARCH CONSORTIUM
MARCH 1, 2010 THROUGH FEBRUARY 28, 2011

In consideration of the services provided by Contractor in Exhibit "A", County shall pay Contractor based on the following fee schedule:

PAYMENT

Contractor shall submit monthly invoices and financial statements for services provided for the STD/HIV Program by the fifteenth (15th) day following the end of the invoiced month. Invoices will be based on actual expenditures against line item expenses outlined in the program budget and upon demonstrated progress through required progress reports.

The total amount to be paid for the months of March 1, 2010 through May 31, 2010 shall not exceed TWENTY-FOUR THOUSAND NINE HUNDRED NINETY-NINE DOLLARS AND SEVENTY-FIVE CENTS (\$24,999.75).

The total amount to be paid for the months of June 2009 through February 2011 shall not exceed NINETY-FIVE THOUSAND DOLLARS AND TWENTY-FIVE CENTS (\$95,000.25). Monthly expenditures for this period of services shall not exceed TEN THOUSAND FIVE HUNDRED FIFTY-FIVE DOLLARS AND FIFTY-EIGHT CENTS (\$10,555.58).

The maximum amount that County shall be obligated to pay for services rendered under this Agreement shall not exceed. ONE HUNDRED TWENTY THOUSAND DOLLARS (\$120,000).

