



WORKERS' COMPENSATION SERVICE AGREEMENT

This Agreement is entered into by and between **County of San Mateo** (Employer) and **Athens Administrators** ("Administrator") this 1st day of July 2017.

RECITALS

WHEREAS, Administrator provides claims administration services to California employers subject to the California Workers' Compensation Laws; and

WHEREAS, Employer desires to purchase Claims Administration Services from Administrator;

NOW THEREFORE, it is agreed:

This Agreement is between the Employer and the Administrator to provide third party workers' compensation claim administration services for Employer in the State of California, subject to the terms stated below:

I. TERM AND TERMINATION

1.1 Term:

The term of this agreement shall consist of an initial three years commencing July 1, 2017 with two individual one-year amendments for a total of five years.

1.2 Termination:

- a. Either party may terminate this Agreement, with or without cause and without penalty, upon sixty (60) days prior written notice.
- b. Upon termination of this Agreement for any reason, a final accounting agreeable to both parties will be made of fees payable to Administrator and a final accounting of any funds belonging to Employer then in the possession of Administrator, and any balance due either party will be promptly paid over to the party entitled thereto.
- c. All claim files, records, reports and other material pertaining to the employee claims subject to this Agreement shall be the property of Employer and shall be made available promptly to Employer upon termination of this Agreement.
- d. Upon the effective date of any termination of this Agreement, all rights and obligations of the parties under this Agreement shall cease except with respect to rights and obligations, which have accrued or expressly survive termination.

II. SERVICE FEES

2.1. Employer agrees to pay to Administrator Service Fees as follows:

| Original Contract Period | Total Annual |
|------------------------------------|---------------------|
| July 1, 2017 through June 30, 2018 | \$817,000 |
| July 1, 2018 through June 30, 2019 | \$847,638 |
| July 1, 2019 through June 30, 2020 | \$879,424 |
| Optional Contract Periods | Total Annual |
| July 1, 2020 through June 30, 2021 | \$912,402 |
| July 1, 2021 through June 30, 2022 | \$946,617 |

Employer's fee will be invoiced monthly and will be due and payable at the end of each month during the period this Agreement is in force.

2.2. Employer agrees to pay to Administrator Managed Care Service Fees as follows:

| Medical Bill Review | |
|--|----------------------------|
| Pricing | |
| Medical Fee Schedule Reduction (OMFS) <i>(Includes: Medical, Pharmacy and Supplies)</i> | \$7.50 Per Bill |
| Hospital In and Out Patient Fee Schedule Reductions | \$600 Per Bill |
| PPO Network (after OMFS reduction) & Specialty Bill Negotiations | 23.00% Of Savings |
| Duplicate Bills and Line Items | No Charge |
| Utilization Review , Case Management and Physician Review | |
| Pricing | |
| Utilization Review | |
| Concurrent, Prospective and Retrospective review | \$145 Flat Fee |
| UR appeals; Peer to Peer | \$300 Per Hour |
| Authorization Only | \$25 Flat Rate |
| Case Management | |
| Telephonic Nurse Case Management | \$115 Per Hour |
| Field Case Management | \$125 + Travel and Mileage |
| Catastrophic Case Management | \$140 + Travel and Mileage |
| Peer Review | |
| Physician Peer Review | \$300 Flat Fee |
| Records Review | \$250 Per Hour |
| Other | |
| Investigations | Typically, \$95 Per Hour |
| Pharmacy Benefits Management (PBM) | \$5 Per Bill |
| Pharmacy Drug Review | \$125 Per Hour |
| Central Index Bureau & First and Subsequent Report | \$18 Per |
| Predictive Modeling | Included |
| Custom Reports | Included |
| Subrogation Recovery | 15% of Gross Recovery |
| MPN (Blue Cross) if utilized | \$4 Per Bill |
| Nurse Triage if utilized | \$150 Per Claim |

2.03 Employer agrees to pay an Annual Administration Fee of \$5,000 which will be billed in full in the first installment. Included is:

Bank Administration -includes mgmt. of (1) bank account

Data Management

Account Management

Claim Reporting

Dash Board

Risk Management Web Site

Web Site Access

Annual Stewardship Report

Electronic Delivery of Monthly Loss Runs

III. ADMINISTRATOR DUTIES AND SERVICES

3.1 Administrator agrees to meet on a regular basis with Employer to:

- a. Develop procedures, forms, instructions, schedules and other materials related to claim management, including a procedure manual for Employer's use, within thirty (30) days of the effective date of this Agreement and update such materials as needed.
- b. Provide claim reporting kits including, but not limited to, claim and accident report forms, required notices, and procedural instructions, for distribution by Employer to Employer's staff on or before the effective date of this Agreement, and as needed thereafter.
- c. Provide group education for Employer's management personnel regarding claim management as requested.
- d. Assist Employer's personnel in the development of directives, notices, and other program communication to employees as requested or needed based on Administrator's expertise and suggestion.
- e. Provide all forms and supplies necessary for the efficient operation of the Workers' Compensation insurance program, including customized benefit checks bearing Employer's name and logo, and to prepare all legally required forms and documents including but not limited to, 1099 reports to the I.R.S. and any and all other documents and reports now or in the future required by the state or federal government or any other agency associated with Employer's Workers' Compensation program.
- f. Work with County Controller's Office and bank to establish controls.

3.2. Administrator agrees to administer all claims as follows:

- a. Establish and maintain a claim file, with a diary date not to exceed thirty (30) days, on each active claim upon which indemnity benefits are being paid; A diary system not to exceed sixty (60) days on all other open, active Indemnity claims; and a supervisory review diary not to exceed one-hundred-twenty (120) days, or more often when needed.
- b. Manage timely receipt of all pertinent claim information from Employer providers and other

sources.

- c. Determine, on behalf of Employer for each reported employee injury or illness, those benefits, if any that should be paid or rendered under the California Workers' Compensation Laws. Such determination shall include an estimate of future claim payment. Retain outside services with prior approval of Employer, for the investigation and management of the claims. Outside services include but are not limited to:
 - AOE/COE Investigators
 - Activities Check/Sub-rosa Investigator;
 - Medical Case Management and Rehabilitation Nurses/Consultants
 - Subrogation Investigators and Experts
- d. Exhibit in each Indemnity claim file good faith efforts to contact all injured workers by telephone within at least twenty-four hours of receipt of claim, and in no event any later than forty-eight hours of receipt of claim, excluding weekends and holidays. Establish phone contact with appropriate Employer department for initial discussion of claims, as needed, within three (3) working days of receipt of claim.
- e. Initiate investigations, subject to approval by Employer, to determine compensability of reported and actual claim status. Employer shall have prior approval of the selection of any investigator used to investigate Employer's claims of industrial injury or illness. Take necessary statements and investigate facts of the case within thirty (30) days receipt of claim, when warranted.
- f. Prepare documentation of cases for litigation and continue to monitor legal counsel representing Employer in legal action(s) and assist counsel as necessary in preparation of litigation. Employer shall select and approve counsel prior to each referral. In addition, Administrator shall promptly provide Employer with copies of all correspondence generated on those claim files which are litigated and shall immediately notify Employer in writing and shall keep Employer closely informed on those claims involving allegations of Serious and Willful Misconduct or alleged violation(s) of California Labor Code Section 132(a). At time of case referral to defense counsel administrator shall prepare a letter of direction to defense counsel outlining work to be done, by whom, and in what time frame. All assignments, instructions and communication with defense counsel must be documented in the claim file and computer note pads. Administrator shall manage defense counsel on an ongoing basis and obtain status reports from defense counsel every sixty (60) days. Administrator shall actively manage litigated files and not perform functions and shall not require defense counsel to perform activities which can be accomplished effectively by claims staff. Examples of required examiner activity on litigated files include by are not limited to:
 - Scheduling medical appointments
 - Writing cover letters to doctors
 - Subpoenaing medical records
 - Answering applications
 - Filing and serving requisite documents

Administrator shall obtain defense counsels' written evaluation within five (5) working days of date of deposition, including evaluation of liability, verdict potential, settlement value, and case strategy.

- g. Disburse payment on behalf of Employer out of the bank trust account funded by Employer, all "Allocated Loss Expenses", which is defined to include all costs incurred on behalf of Employer specifically related to an individual claim, including but not limited to, attorneys, independent adjusters or investigators, expert witnesses, copying records or transcripts, court costs or Appeals Board fees or other costs deemed proper and necessary to represent Employer.
- h. Examine on behalf of Employer all reports of industrial injury or illness relating to Employer's employees or former employees and reported to Administrator and to conduct investigations on such cases by Administrator's salaried employees as in Administrator's judgment is deemed necessary.
- i. Pay compensation, medical expense, "Allocated Loss Expense", and all other benefits as prescribed by law out of funds provided by Employer. Payments made by Administrator without Employer approval, where approval is required elsewhere in this Agreement, shall be the responsibility of the Administrator.
- j. Maintain a claim file on each reported claim which shall be available to Employer at all times for inspection and to conduct, at a time and frequency to be determined by Employer, claim file reviews with Employer at either Employer's or Administrator's offices.
- k. Index Bureau System. On the Employer's behalf, Athens shall subscribe and report to the Index Bureau System related to each claim. The costs of such reports will be allocated to each individual claim file.
- l. Create, reserve and enter required claim data into Administrator's computer system within five (5) working days of receipt of notice of claim from Employer. Enter all payments, reserved revisions, and file closings into the information system within three (3) working days. Administrator will work with employer to maintain proper file reserve.
- m. Review Employer's medical bills and other medical charges and treatment relating to Employer's claims of industrial injury or illness, for causal relationship to all claims of injuries/illness, and reasonableness of treatment prior to payment. Solicit all medical bills, medical reports and records, and documentation of alleged wage loss prior to settlement negotiations.
- n. Make all disability payments and send all notices in a timely manner, abiding by all applicable provisions of the California Labor Code and California Workers' Compensation Laws, Rules and Regulations.
- o. Make payments of bills within thirty (30) days of receipt, and assure timely review and payment of all medical bills in accordance with statutory deadlines and requirements.
- p. Acknowledge to Employer all claims reported to Administrator within three (3) working days of receipt of the notice of claim and to notify Employer and injured workers within five (5) working days of the notice of claim to Employer, whether the claim has been accepted, delayed for further investigation, or denied.

- q. Convert all Medical Only Claims to Indemnity Claims status when the paid amount reaches five-thousand (\$5,000) dollars or when the claim remains open in excess of one (1) year.
- r. Recognize and where appropriate investigate all subrogation and/or contribution possibilities, preserving evidence and utilizing appropriate investigators and experts, as needed, after first obtaining Employers permission to engage such investigators/experts. As respects subrogation and contribution cases, any compromise settlements or lien reductions will be discussed with the Employer.
- s. Administrator may receive compensation in connection with outsourced services, either by retaining a portion of expenses charged to the Account, or by receiving fees from preferred providers. The amount that Administrator receives will vary depending upon the preferred provider, and may be calculated based on percentage of savings, percentage of revenue to the provider or Administrators mark-up of provider fees. The amounts retained or received by Administrator in connection with outsourced services are in addition to the basic fees, reimbursable expenses, additional service fees, and the taxes paid to Athens by Company.
- t. MSA Allocations/SCHIP Reporting – Athens has contracted with third party Franco Signor for Medicare Set Aside allocations and State Children Health Insurance Program (“SCHIP”) reporting efforts. Athens may exclusively utilize the services of Franco Signor for MSA allocations and SCHIP reporting requirements unless otherwise requested in writing by Employer.
- u. Inflation Protection Clause – In the event that the annual average All Items Consumer Price Index for All Urban Consumers (CPI-U) as published by the Bureau of Labor and Statistics is subject to an inflation rate of greater than 10% above the rate which is published as of the effective date of this agreement the Administrator has the ability to make reasonable adjustments to the fees which are detailed in Section II of this agreement so as to equitably share the effect of inflation between Administrator and Employer. Notice of fee adjustments will be in writing and must be delivered at least (30) days in advance of adjustment.

3.3 Administrator agrees to monitor relevancy of medical treatment by the following:

- a. Maintain continual contact with medical practitioners in order to monitor claimant treatment process and a timely return to work. Administrator shall make a good faith effort to establish contact with attending physician within twenty-four (24) hours of receipt of injury report and shall make contact with attending physician's office within forty-eight (48) hours of receipt of injury report and shall document such contact in the claim file.
- b. Review and discuss Vocational Rehabilitation Program(s) with Employer prior to its initiation for an individual claimant.
- c. Monitor individual vocational rehabilitation programs to determine appropriateness and progress.

3.4. Administrator agrees to the following record keeping and reporting requirements:

- a. Provide Employer with reports consisting of:

- (1) Daily check registers including all claim disbursements made on behalf of Employer.
 - (2) Computerized loss reports in an acceptable format as mutually agreed upon at the effective date of this Agreement, showing descriptive data, details of each month's payments, total payments, reserves and total experience and incurred loss values for each claim.
 - (3) Any and all other reports as required by Employer.
- b. Provide oral claims reports on demand, special specific-focus loss run reports within twenty-four (24) hours and larger or major computer analysis reports within seven (7) working days, excluding weekends and holidays. It is further agreed and understood that should Employer require that Administrator prepare for Employer special reports, which require additional programming costs there may be an additional charge for said reports.
 - c. Maintain all records and statistical data on each employee claim of injury or illness, including, but not limited to, a record of each denial, delay, litigated claim and loss, which records and data shall be available upon request by Employer. Employer, at Employer's discretion, may audit all records maintained by Administrator including, but not limited to, all payments made on behalf of Employer. Such audit may incorporate random sampling or other audit procedures suitable to Employer.
 - d. Prepare and submit Federal Information Return (Form 1099) by statutory deadline for applicable payments made by Administrator on Employer's behalf, during the term of this Agreement and as specified under Section 1.02. (e) of this Agreement.
 - e. Prepare all other reports as necessary to remain in compliance with all Workers' Compensation Laws and other state and federal laws, rules and regulations.
 - f. Provide report to Accounting Department of Employer of all payments when made and any other information necessary for Employer to adequately fund the bank trust account. All such payments shall be supported with check payment detail and daily summary report showing all payees, payment amounts and dates of payment.
 - g. Provide for Employer the ability to be on-line with Administrator's computer system. This system will provide Employer with all financial and statistical data relating to Employer's workers' compensation claims, together with narrative topical "notepad" reports, on each individual claim. This system will also include electronic mail service between Administrator and Employer; the ability to electronically transmit 5020's (Employer's First Report of Industrial Injury/Illness); OSHA Log generation; and complete report generation capabilities.
 - h. Special reports, new reports and data feeds can also be requested. They are subject to a cost per quote at a rate per project or per hour once the scope has been agreed upon.

IV. EMPLOYER'S DUTIES

4.1. Employer agrees to perform as follows:

- a. Promptly report to Administrator as they shall occur and become known to Employer, the

employee claims of occupational injury, disease, illness, or death.

- b. Promptly forward to Administrator all applications, notices of claims, notices of hearings or other legal notices pertaining to claims against Employer for occupational injury, disease, illness, or death, and all other correspondence or information received by Employer which is or could be relevant to the efficient and proper handling of any reported claim of industrial injury, disease, illness, or death.
- c. Provide Administrator with all necessary data required for Administrator to perform under this Agreement and cooperate fully with Administrator in the performance of this Agreement.
- d. Make available to Administrator funds for the payment of benefits or services to or for occupational injury, disease, illness, death, or vocational rehabilitation and medical treatment of employees of Employer, or their dependents in the event of death, and "Allocated Loss Expense". Administrator shall administer said funds in accordance with the terms of this Agreement as Trustee of Employer.
- e. Pay promptly to Administrator the service fees as prescribed and included in this Agreement. The Service Fees are not included in and do not include "Allocated Loss Expenses"

V. ELECTRONIC CLAIM FILES, STORAGE, AND TRANSFER OF FILES

5.1 Files

Administrator shall record and maintain an electronic file of all industrial injuries reported. Files may be maintained electronically, in hard copy, or in other media, at Administrator's discretion. Such files shall be made available to Employer or its designated representative for inspection upon request.

5.2 Transfer of Electronic Files

Administrator will provide Employer's files to Employer, or an entity designated by Employer, within 30 business days of the agreed upon transfer date of the files to the new Administrator. Employer will reimburse Administrator all reasonable costs incurred in returning the files to the Employer. The electronic files will be in the electronic form used by Administrator to provide the services to Employer under this Agreement. Employer may request that the files be provided in a different format or that the hard copies of the files be provided to it, provided that Employer pays Administrator for all costs associated with such request. Notwithstanding the foregoing, Administrator will not be obligated to provide the files to Employer or an entity designated by Employer, unless Employer has paid Administrator for all amounts owed pursuant to the Agreement. Employer agrees to comply, and to require any recipient of the files designated by it to comply, with all applicable laws and regulations relating to the storage, transmission, use and confidentiality of the files and to hold Administrator harmless in relation thereto, except for gross negligent acts of which the Administrator will be responsible.

5.3 Copies of Files

Administrator may, at its discretion keep a copy of Employer's files if it deems it necessary to comply with or defend itself in relation to any obligation or rights that it has under this Agreement, applicable laws or regulations.

VI. FINES, PENALTIES AND STANDARDS

- 6.1. All services as described in this Agreement shall be performed in accordance with all applicable laws, rules and regulations of any and all governmental authorities and applicable standards, and specifically performed in accordance with all applicable Workers' Compensation Laws of the State of California.
- 6.2. Administrator and Employer acknowledge the obligations and penalties contained in the California Workers' Compensation Reform Act of 1989 that may be imposed on both Employers and claim administrators and agree to the following:
- a. Penalties for errors or omissions caused by Employer's failure to act or timely report claims or issues to Administrator that create a delay in payment of benefits, incorrect payment of benefits, or administrative fine(s) or penalty(s) shall be the responsibility of Employer. Penalties for errors or omissions caused by Administrator's performance of services under this contract that create a delay in payment of benefits, incorrect payment of benefits, or administrative fine(s) or penalty(s) shall be the responsibility of Administrator.
 - b. Administrator shall provide Employer with a quarterly accounting of penalties paid by Administrator on behalf of Employer including a description and detailed listing of each penalty payment and the specific claim file to which the penalty payment was charged. Penalties, which are computed by Administrator, shall be paid out of Employer's benefit account and Administrator shall then reimburse Employer quarterly for those penalties, which are the responsibility of Administrator under the terms and conditions of this Agreement.
 - c. Without limiting the provisions set forth in the above two paragraphs it is agreed that upon receipt by Administrator of a notice of claim from Employer, upon which indemnity benefits shall be paid or notice given promptly to the employee in order to avoid late payment or notice of benefit penalties, Administrator shall have **ten working days** (excluding weekends and holidays) from the date of receipt of the claim from Employer, to investigate and pay the temporary disability or send the required wage continuation notice, and that failure on the part of Administrator to do so within this time frame shall be the financial responsibility of Administrator for any fine imposed for late notice or payment of benefits. Any fines or penalties for late payment or notice of benefits on claims, which are received from Employer by Administrator on or, after the **ninth day** following the date Employer knew or should have known about the claim(s) shall be the responsibility of Employer.
 - d. Any controversy between the parties to this Agreement involving the construction or application of the terms, provisions, or conditions of this Agreement relating to the payment of penalties or fines shall be submitted to arbitration upon the written request of one party, after service of that request upon the other party.
 - e. Arbitration and controversies relating to the payment of penalties or fines under this Agreement shall comply with and be governed by the provisions of the California Arbitration Act, as set forth at sections 1280 et. seq. of the California Code of Civil Procedure.
 - f. Failing informal efforts between the parties to this Agreement to resolve disputes regarding the payment of penalties or fines, each party shall appoint one person to hear and resolve the dispute. These arbitrators, one appointed by each party, shall be known for the purposes of this Agreement as "*initial arbitrators*". If the "*initial arbitrators*" are unable to agree on a

resolution of the dispute they shall then choose a third independent and impartial arbitrator whose decision shall be final and conclusive on both parties.

- g. If a dispute or arbitration under this Agreement is pending at a time when payment of the disputed penalty(s) or fine(s) is either statutorily mandated or when failure to effect payment will result in an increase in the fine or penalty, or an additional fine or penalty, each party shall bear liability for one-half of the penalty(s) or fine(s) in dispute until such time as the arbitration is concluded and liability for payment of the fine or penalty is finally determined. Once determined, the party adjudged to be liable for the penalty(s) or fine(s) shall reimburse the non-liable party for any portion of the penalty(s) or fine(s) the non-liable party may have paid during the pendency of the arbitration.

6.03 Excess Coverage or Other Insurance: Administrator, as a part of the regular claims administration process, shall comply with the reporting provisions, guidelines, and requirements imposed by the Employer's Excess Workers' Compensation Insurance Carrier(s) and other carriers that may be involved in the administration of the Employer's Workers' Compensation Program. However, Employer as policyholder shall continue to be liable for all the duties, requirements, obligations, and penalties imposed by Employer's Carrier(s).

VII. MATERIAL CHANGE

7.01. In the event of material change to Employer's operations, Section II, "Service Fees", to this Agreement shall be subject to renegotiation. "Material Change" shall be defined as the acquisition, merger, or divestiture by Employer of or with another company or business entity, the creation of new business operations not directly related to Employer's current California operations, or the elimination of business operations within the State of California, which could result in a materially significant increase or decrease in employee population and workers' compensation claims filed in the State of California.

VIII. DEFINITION OF "MEDICAL ONLY" AND "INDEMNITY" CLAIM

8.1. The definition of an "Indemnity Claim" shall be:

- a. Any alleged work-related claim for which any of the following is claimed:

- (1) Temporary Disability
- (2) Permanent Disability
- (3) Vocational Rehabilitation
- (4) Life Pension
- (5) Death

8.2. The definition of a "Medical Only" claim shall be:

- a. Any alleged work-related injury or illness for which medical treatment is sought, the claimant is not hospitalized, temporary disability does not exceed the waiting period as defined by the Workers' Compensation Laws of California, and no other Indemnity benefits are claimed.

IX. GENERAL PROVISIONS

9.1. Neither party shall assign this Agreement or any part hereof without the written consent of

the other party.

- 9.2.** Each party agrees to indemnify, defend, and hold harmless the other against all actions, claims or demands, and against all costs, expenses and attorneys' fees, arising directly or indirectly out of an actual or alleged injury to a person or to property as an actual or alleged result of an act or omission of the party or any of its shareholders, directors, officers, employees, or agents and each party's obligation to so indemnify, defend and hold harmless the other shall survive the expiration or earlier termination of this Agreement.

The provisions of the HIPPA Business Associate Agreement attached as an addendum to this contract imposes obligation on the parties in addition to the paragraph above.

- 9.3.** All notices or other communications under this Agreement shall be sent to the parties at the addresses set forth below:

Employer:

County of San Mateo

455 County Center

Redwood City, CA 94063

Attn: J. Scott Johnson, Deputy Director

Administrator

Athens Administrators

P.O. Box 696

Concord, CA 94522

Attn: James R. Jenkins, President

- 9.4.** In the event either party hereto shall institute formal legal action, each party shall bear their own cost in any legal action including its' own attorneys' fees.
- 9.05** This Agreement may be amended at any time by mutual agreement of the parties, but any such amendment must be in writing, dated, signed by the parties and attached hereto.
- 9.6.** Any failure of a party to insist upon strict compliance with any term, undertaking or condition of this Agreement shall not be deemed to be a waiver of such term, undertaking, or condition. To be effective, a waiver must be in writing, and signed by the parties hereto.
- 9.7.** This Agreement shall be governed by California law and any action arising out of it shall be instituted and prosecuted only in the municipal or superior court of San Mateo County, State of California.
- 9.8.** This Agreement instrument constitutes the entire agreement between the parties. Any oral representations or modifications concerning this Agreement shall be of no force and effect.

X. Addendum

1. Attachment SP
2. HIPPA Attachment H
3. Jury Service Requirement
4. Attachment I – Rehabilitation Act 504 Compliance
5. Living Wage Ordinance



IN WITNESS WHEREOF: The Parties have hereto caused this Agreement to be executed by their duly authorized representatives as of the day and year stated.

EMPLOYER

ATHENS ADMINISTRATORS

Signature

Signature

Title

Title

Dated

Dated

[Handwritten Signature]

PRESIDENT

May 12, 2017

ATTACHMENT SP
Service Provider Supplemental Attachment

This attachment is part of the agreement between Athens Administrators, Inc. and the County of San Mateo.

I. Contract Dollar Amount

In no event shall total payment for services under this Agreement exceed three million, one hundred fifty-nine thousand, sixty-two dollars, \$3,159,062 for the term of July 1, 2017 through July 1, 2020 with two one-year options to extend the agreement in an amount not to exceed one million, one hundred seventeen thousand four hundred two dollars (\$1,117,402) in year 4 and one million, one hundred fifty-one thousand, six hundred seventeen (\$1,151,617) in year 5.

II. AVAILABILITY OF FUNDS

County may immediately terminate this Agreement based upon unavailability of Federal, State, or County funds by providing written notice to Contractor as soon as is reasonably possible after County learns of said unavailability of funding.

III. EQUAL BENEFITS ORDINANCE

Contractor shall comply with all laws relating to the provision of benefits to its employees and their spouses or domestic partners, including, but not limited to, such laws prohibiting discrimination in the provision of such benefits on the basis that the spouse or domestic partner of the Contractor's employee is of the same or opposite sex as the employee.

IV. EMPLOYEE JURY SERVICE

Contractor shall comply with Chapter 2.85 of the County's Ordinance Code, which states that Contractor shall have and adhere to a written policy providing that its employees, to the extent they are full-time employees and live in San Mateo County, shall receive from the Contractor, on an annual basis, no fewer than five days of regular pay for jury service in San Mateo County, with jury pay being provided only for each day of actual jury service. The policy may provide that such employees deposit any fees received for such jury service with Contractor or that the Contractor may deduct from an employee's regular pay the fees received for jury service in San Mateo County. By signing this Agreement, Contractor certifies that it has and adheres to a policy consistent with Chapter 2.85. For purposes of this Section, if Contractor has no employees in San Mateo County, it is sufficient for Contractor to provide the following written statement to County: "For purposes of San Mateo County's jury service ordinance, Contractor certifies that it has no full-time employees who live in San Mateo County. To the extent that it hires any such employees during the term of its Agreement with San Mateo County, Contractor shall adopt a policy that complies with Chapter 2.85 of the County's Ordinance Code." The requirements of Chapter 2.85 do not apply if this Agreement's total value listed in the Section titled "Payments", is less than one-hundred thousand dollars (\$100,000), but Contractor acknowledges that Chapter 2.85's requirements will apply if this Agreement is amended such that its total value meets or exceeds that threshold amount.

V. HISTORY OF DISCRIMINATION

Contractor certifies that no finding of discrimination has been issued in the past 365 days against Contractor by the Equal Employment Opportunity Commission, the California Department of Fair Employment and Housing, or any other investigative entity. If any finding(s) of discrimination have been issued against Contractor within the past 365 days by the Equal Employment Opportunity Commission, the California Department of Fair Employment and Housing, or other investigative entity, Contractor shall provide County with a written explanation of the outcome(s) or remedy for the discrimination prior to execution of this Agreement. Failure to comply with this Section shall constitute a material breach of this Agreement and subjects the Agreement to immediate termination at the sole option of the County.

VI. HOLD HARMLESS

Each party agrees to indemnify, defend, and hold harmless the other against all actions, claims or demands, and against all costs, expenses and attorneys' fees, arising directly or indirectly out of an actual or alleged injury to a person or to property as an actual or alleged result of an act or omission of the party or any of its shareholders, directors, officers, employees, or agents and each party's obligation to so indemnify, defend and hold harmless the other shall survive the expiration or earlier termination of this Agreement.

The provisions of the HIPPA Business Associate Agreement attached as an addendum to this contract imposes obligation on the parties in addition to the paragraph above.

VII. ELECTRONIC SIGNATURE

Both County and Contractor wish to permit this Agreement and future documents relating to this Agreement to be digitally signed in accordance with California law and County's Electronic Signature Administrative Memo. Any party to this Agreement may revoke such agreement to permit electronic signatures at any time in relation to all future documents by providing notice pursuant to this Agreement.

Attachment H
Health Insurance Portability and Accountability Act (HIPAA)
Business Associate Requirements

DEFINITIONS

Terms used, but not otherwise defined, in this Schedule shall have the same meaning as those terms are defined in 45 Code of Federal Regulations (CFR) sections 160.103, 164.304, and 164.501. All regulatory references in this Schedule are to Title 45 of the Code of Federal Regulations unless otherwise specified.

- a. **Business Associate.** "Business Associate" shall generally have the same meaning as the term "business associate" at 45 CFR 160.103, and in reference to the parties to this agreement shall mean Contractor.
- b. **Covered Entity.** "Covered entity" shall generally have the same meaning as the term "covered entity" at 45 CFR 160.103, and in reference to the party to this agreement shall mean County.
- c. **HIPAA Rules.** "HIPAA rules" shall mean the Privacy, Security, Breach Notification and Enforcement Rules at 45 CFR part 160 and part 164, as amended and supplemented by Subtitle D of the Health Information Technology for Economic and Clinical Health Act provisions of the American Recovery and Reinvestment Act of 2009.
- d. **Designated Record Set.** "Designated Record Set" shall have the same meaning as the term "designated record set" in Section 164.501.
- e. **Electronic Protected Health Information.** "Electronic Protected Health Information" (EPHI) means individually identifiable health information that is transmitted or maintained in electronic media; it is limited to the information created, received, maintained or transmitted by Business Associate from or on behalf of Covered Entity.
- f. **Individual.** "Individual" shall have the same meaning as the term "individual" in Section 164.501 and shall include a person who qualifies as a personal representative in accordance with Section 164.502(g).
- g. **Privacy Rule.** "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.
- h. **Protected Health Information.** "Protected Health Information" (PHI) shall have the same meaning as the term "protected health information" in Section 160.103 and is limited to the information created or received by Business Associate from or on behalf of County.
- i. **Required By Law.** "Required by law" shall have the same meaning as the term "required by law" in Section 164.103.
- j. **Secretary.** "Secretary" shall mean the Secretary of the United States Department of Health and Human Services or his or her designee.
- k. **Breach.** The acquisition, access, use, or disclosure of PHI in violation of the Privacy Rule that compromises the security or privacy of the PHI and subject to the exclusions set forth in Section 164.402. Unless an exception applies, an impermissible use or disclosure of PHI is *presumed* to be a breach, unless it can be demonstrated there is a low probability that the PHI has been compromised based upon, at minimum, a four-part risk assessment:

1. Nature and extent of PHI included, identifiers and likelihood of re-identification;
 2. Identity of the unauthorized person or to whom impermissible disclosure was made;
 3. Whether PHI was actually viewed or only the opportunity to do so existed;
 4. The extent to which the risk has been mitigated.
- l. **Security Rule.** "Security Rule" shall mean the Security Standards for the Protection of Electronic Protected Health Information at 45 CFR Part 160 and Part 164, Subparts A and C.
- m. **Unsecured PHI.** "Unsecured PHI" is 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 in relevant HHS guidance.
- n. **Security Incident.** "Security Incident" shall mean the attempted or successful unauthorized access, use, disclosure, modification, or destruction of information or interference with systems operations in an information system. "Security Incident" includes all incidents that constitute breaches of unsecured protected health information.

OBLIGATIONS AND ACTIVITIES OF CONTRACTOR AS BUSINESS ASSOCIATE

- a. Business Associate agrees to not use or further disclose Protected Health Information other than as permitted or required by the Agreement or as required by law.
- b. Business Associate agrees to use appropriate safeguards to comply with Subpart C of 45 CFR part 164 with respect to EPHI and PHI, and to prevent the use or disclosure of the Protected Health Information other than as provided for by this Agreement.
- c. Business Associate agrees to make uses and disclosures requests for Protected Health Information consistent with minimum necessary policy and procedures.
- d. Business Associate may not use or disclose protected health information in a manner that would violate subpart E of 45 CFR part 164.504 if used or disclosed by Covered Entity.
- e. Business Associate agrees to mitigate, to the extent practicable, any harmful effect that is known to Business Associate of a use or disclosure of Protected Health Information by Business Associate in violation of the requirements of this Agreement.
- f. Business Associate agrees to report to County any use or disclosure of Protected Health Information not authorized by this Agreement.
- g. Business Associate agrees to ensure that any agent, including a subcontractor, to whom it provides Protected Health Information received from, or created or received by Business Associate on behalf of County, agrees to adhere to the same restrictions and conditions that apply through this Agreement to Business Associate with respect to such information.
- h. If Business Associate has Protected Health Information in a Designated Record Set, Business Associate agrees to provide access, at the request of County, and in the time and manner designated by County, to Protected Health Information in a Designated Record Set, to County or, as directed by County, to an Individual in order to meet the requirements under Section 164.524.
- i. If Business Associate has Protected Health Information in a Designated Record Set, Business Associate agrees to make any amendment(s) to Protected Health Information in a Designated Record Set that the County directs or agrees to make pursuant to Section 164.526 at the request of County or an Individual, and in the time and manner designed by County.

- j. Business Associate agrees to make internal practices, books, and records relating to the use and disclosure of Protected Health Information received from, or created or received by Business Associate on behalf of County, available to the County at the request of County or the Secretary, in a time and manner designated by the County or the Secretary, for purposes of the Secretary determining County's compliance with the Privacy Rule.
- k. Business Associate agrees to document such disclosures of Protected Health Information and information related to such disclosures as would be required for County to respond to a request by an Individual for an accounting of disclosures of Protected Health Information in accordance with Section 164.528.
- l. Business Associate agrees to provide to County or an Individual in the time and manner designated by County, information collected in accordance with Section (k) of this Schedule, in order to permit County to respond to a request by an Individual for an accounting of disclosures of Protected Health Information in accordance with Section 164.528.
- m. Business Associate shall implement administrative, physical, and technical safeguards that reasonably and appropriately protect the confidentiality, integrity, and availability of EPHI that Business Associate creates, receives, maintains, or transmits on behalf of County.
- n. Business Associate shall conform to generally accepted system security principles and the requirements of the final HIPAA rule pertaining to the security of health information.
- o. Business Associate shall ensure that any agent to whom it provides EPHI, including a subcontractor, agrees to implement reasonable and appropriate safeguards to protect such EPHI.
- p. Business Associate shall report to County any Security Incident within three (3) business days of becoming aware of such incident. Business Associate shall also facilitate breach notification(s) to the appropriate governing body (i.e. HHS, OCR, etc.) as required by law. As appropriate and after consulting with County, Business Associate shall also notify affected individuals and the media of a qualifying breach.
- q. Business Associate understands that it is directly liable under the HIPAA rules and subject to civil and, in some cases, criminal penalties for making uses and disclosures of Protected Health Information that are not authorized by this Attachment, the underlying contract as or required by law.

PERMITTED USES AND DISCLOSURES BY CONTRACTOR AS BUSINESS ASSOCIATE

Except as otherwise limited in this Schedule, Business Associate may use or disclose Protected Health Information to perform functions, activities, or services for, or on behalf of, County as specified in the Agreement; provided that such use or disclosure would not violate the Privacy Rule if done by County.

OBLIGATIONS OF COUNTY

- a. County shall provide Business Associate with the notice of privacy practices that County produces in accordance with Section 164.520, as well as any changes to such notice.

- b. County shall provide Business Associate with any changes in, or revocation of, permission by Individual to use or disclose Protected Health Information, if such changes affect Business Associate's permitted or required uses and disclosures.
- c. County shall notify Business Associate of any restriction to the use or disclosure of Protected Health Information that County has agreed to in accordance with Section 164.522.

PERMISSIBLE REQUESTS BY COUNTY

County shall not request Business Associate to use or disclose Protected Health Information in any manner that would not be permissible under the Privacy Rule if so requested by County, unless the Business Associate will use or disclose Protected Health Information for, and if the Agreement provides for, data aggregation or management and administrative activities of Business Associate.

DUTIES UPON TERMINATION OF AGREEMENT

- a. Upon termination of the Agreement, for any reason, Business Associate shall return or destroy all Protected Health Information received from County, or created, maintained, or received by Business Associate on behalf of County, that Business Associate still maintains in any form. This provision shall apply to Protected Health Information that is in the possession of subcontractors or agents of Business Associate. Business Associate shall retain no copies of the Protected Health Information.
- b. In the event that Business Associate determines that returning or destroying Protected Health Information is infeasible, Business Associate shall provide to 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, Business Associate shall extend the protections of the Agreement 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 Business Associate maintains such Protection Health Information.

MISCELLANEOUS

- a. **Regulatory References.** A reference in this Schedule to a section in the HIPAA Privacy Rule means the section as in effect or as amended, and for which compliance is required.
- b. **Amendment.** The Parties agree to take such action as is necessary to amend this Schedule from time to time as is necessary for County to comply with the requirements of the Privacy Rule and the Health Insurance Portability and Accountability Act, Public Law 104-191.
- c. **Survival.** The respective rights and obligations of Business Associate under this Schedule shall survive the termination of the Agreement.
- d. **Interpretation.** Any ambiguity in this Schedule shall be resolved in favor of a meaning that permits County to comply with the Privacy Rule.
- e. **Reservation of Right to Monitor Activities.** County reserves the right to monitor the security policies and procedures of Business Associate.

Jury Service Requirement

Contractor shall comply with Chapter 2.85 of the County's Ordinance Code, which states that a contractor shall have and adhere to a written policy providing that its employees, to the extent they live in San Mateo County, shall receive from the Contractor, on an annual basis, no fewer than five days of regular pay for jury service in San Mateo County, with jury pay being provided only for each day of actual jury service. The policy may provide that such employees deposit any fees received for such jury service with Contractor or that the Contractor may deduct from an employee's regular pay the fees received for jury service in San Mateo County. By signing this Agreement, Contractor certifies that it has and adheres to a policy consistent with Chapter 2.85. For purposes of this Section, if Contractor has no employees in San Mateo County, it is sufficient for Contractor to provide the following written statement to County: "For purposes of San Mateo County's jury service ordinance, Contractor certifies that it has no employees who live in San Mateo County. To the extent that it hires any such employees during the term of its Agreement with San Mateo County, Contractor shall adopt a policy that complies with Chapter 2.85 of the County's Ordinance Code."

ATTACHMENT I

Assurance of Compliance with Section 504 of the Rehabilitation Act of 1973, as Amended

The undersigned (hereinafter called "Contractor(s)") hereby agrees that it will comply with Section 504 of the Rehabilitation Act of 1973, as amended, all requirements imposed by the applicable DHHS regulation, and all guidelines and interpretations issued pursuant thereto.

The Contractor(s) gives/give this assurance in consideration of for the purpose of obtaining contracts after the date of this assurance. The Contractor(s) recognizes/recognize and agrees/agree that contracts will be extended in reliance on the representations and agreements made in this assurance. This assurance is binding on the Contractor(s), its successors, transferees, and assignees, and the person or persons whose signatures appear below are authorized to sign this assurance on behalf of the Contractor(s).

The Contractor(s): (Check a or b)

a. Employs fewer than 15 persons.

b. Employs 15 or more persons and, pursuant to section 84.7 (a) of the regulation (45 C.F.R. 84.7 (a), has designated the following person(s) to coordinate its efforts to comply with the DHHS regulation.

Name of 504 Person:

Janet McClain

Name of Contractor(s):

Athens Administrators

Street Address or P.O. Box:

2552 Stanwell Drive

City, State, Zip Code:

Concord, CA 94520

I certify that the above information is complete and correct to the best of my knowledge

Signature:

Janet McClain

Title of Authorized Official:

Executive Vice President, Human Resources

Date:

2/7/17

*Exception: DHHS regulations state that: "If a recipient with fewer than 15 employees finds that, after consultation with a disabled person seeking its services, there is no method of complying with (the facility accessibility regulations) other than making a significant alteration in its existing facilities, the recipient may, as an alternative, refer the handicapped person to other providers of those services that are accessible."

ORDINANCE NO. .

**BOARD OF SUPERVISORS, COUNTY OF SAN MATEO
STATE OF CALIFORNIA**

* * * * *

**ORDINANCE ADDING CHAPTER 2.88 OF TITLE 2 OF THE SAN MATEO COUNTY
ORDINANCE CODE ENACTING A LIVING WAGE ORDINANCE PILOT PROGRAM**

The Board of Supervisors of the County of San Mateo, State of California, **ORDAINS** as follows:

SECTION 1. Chapter 2.88, “Living Wage Ordinance Pilot Program,” consisting of Sections 2.88.010 through 2.88.090 is hereby added to Title 2 of the San Mateo County Ordinance Code and shall read as follows:

2.88.010 Findings and purpose

The Board of Supervisors finds and determines:

- (a) The current Federal minimum wage is seven dollars and twenty-five cents (\$7.25) per hour, and the California minimum wage is ten dollars (\$10.00) per hour;
- (b) The San Francisco Bay Area, including San Mateo County, has a higher relative cost of living than reflected in these national and state minimum wage standards;
- (c) San Mateo County awards contracts to employers to provide services to the public and the County government;
- (d) The use of San Mateo County funds to promote a living wage will improve the quality of services to the County and the public by ensuring contractors have access to qualified employees and are able to retain qualified employees, and it will improve the quality of life for residents of the County and employees of County contractors;
- (e) A policy requiring payment of a living wage is consistent with other San Mateo County programs designed to meet the employment and economic development needs of lower- income workers;
- (f) This Board does, accordingly, find and declare a need for the Living Wage ordinance to determine the effects of a living wage requirement for contracts issued by San Mateo County.

2.88.020 Definitions

(a) **“Contract Awarding Authority”** means the Board of Supervisors or the head of the department or agency authorized by the Board of Supervisors to enter into contracts on behalf of the County.

(b) **“Contractor”** means a party that enters into a Covered Contract with the County.

Contractor does not mean:

1. Government entities, including cities, counties, and state agencies.

(c) **“County”** means the County of San Mateo.

(d) **“Covered Contract”** means a legal agreement between the County and a Contractor for the provision of Services entered into on or after April 1, 2017.

1. Where one entity has multiple contracts with the County, only those contracts that are Covered Contracts are subject to this chapter.
2. Legal agreements for the exclusive use of real property owned by the County, including, without limitation, any lease, concession, franchise, or easement agreement, are not Covered Contracts.

(e) **“Covered Contract Amendment”** means the amendment of a contract on or after January 1, 2017, that:

1. Voluntarily subjects the contract to the requirements of this Chapter;
2. Increases the contract price more than \$25,000; or
3. Extends the contract term.

Covered Contract Amendments are subject to the requirements of this Chapter.

(f) **“Covered Employee”** means any employee permanently or temporarily employed by a Contractor or Subcontractor to provide Services under a Covered Contract. Covered Employee does not mean:

1. Any person providing services to earn academic credit;
2. Any person providing uncompensated volunteer services;
3. Any person working toward state licensure or professional accreditation sanctioned by a public entity or a recognized licensure agency;
4. Any person working as an election day worker;
5. Any disabled person covered by a current sub-minimum wage certificate issued to the Contractor or Subcontractor by the United States Department of Labor, or any person who would be covered by such certificate but for the fact the Contractor or Subcontractor is paying a wage equal to or higher than the minimum wage;

6. Any person employed to provide In-Home Supportive Services;
 7. The County Manager's Office shall have discretion to exclude certain additional categories of employees from the definition of Covered Employee when in the best interest of the County to do so.
- (g) **"CPI-U"** means the consumer price index for urban consumers for the San Francisco- Oakland- San Jose metropolitan statistical area, as determined by the United States Department of Labor, Bureau of Labor Statistics.
- (h) **"Enhancement"** means a payment from the County to eligible Nonprofit Organizations that amend existing contracts to comply with the Living Wage Ordinance. An Enhancement shall be a percentage of a Covered Contractor's total contract price, as specified by this Chapter, and shall be paid annually until the contract ends or the not-to- exceed amount is amended.
- (i) **"Living Wage"** means the wage rate specified by this chapter.
- (j) **"Nonprofit Organization"** refers to a nonprofit corporation, duly organized, validly existing, and in good standing under the laws of the jurisdiction of its incorporation and (if a foreign corporation) in good standing under the laws of the State of California, which corporation has established and maintains a valid nonprofit status under Section 501(c)(3) of the United States Internal Revenue Code of 1986, as amended, and all rules and regulations promulgated under such Section.
- (k) **"Reserve"** means funds maintained by the County to pay for approved Enhancement appeals.
- (l) **"Services"** mean any professional, technical, or non-technical services specified in a legal agreement with the County. Services do not include the provision of goods, products, information technology programs and systems, chattels, or real estate.
- (m) **"Sole Source"** means only one entity has been identified as capable of providing and willing to provide the services sought by the County.
- (n) **"Subcontractor"** means a party, other than an Employee, that agrees to assist a Contractor in providing Services under a Covered Contract.
- (o) **"Wage"** means a Covered Employee's hourly wage or hourly wage equivalent. For a full-time employee, hourly wage equivalent is determined by dividing two weeks of salary by eighty (80).

2.88.030 Covered Contract Requirements and Certification

Every Covered Contract or Covered Contract Amendment shall provide as follows:

- (a) Contractors and Subcontractors providing Services to the County shall pay Covered Employees no less than the Living Wage.
- (b) Failure of a Contractor or Subcontractor to comply with the foregoing requirement shall constitute a material breach of the terms of the Covered Contract.
- (c) If the Contractor or Subcontractor fails to cure such breach within thirty (30) days after receiving written notice from the County, the County shall have the right to pursue any rights or remedies available under the terms of the Covered Contract or under applicable law.
- (d) Contractor shall include a certification in the Covered Contract or Covered Contract Amendment stating Contractor and all of its Subcontractors are and will remain in full compliance with the requirements of the Living Wage ordinance. The certification shall be in substantially the following language:

As required by Chapter 2.88 of the San Mateo County Ordinance Code, Contractor certifies all contractor(s) and subcontractor(s) obligated under this contract shall fully comply with the provisions of the County of San Mateo Living Wage Ordinance (“LWO”), including, but not limited to, paying all Covered Employees the current Living Wage and providing notice to all Covered Employees and Subcontractors as required under the Program.
- (e) During the term of a Covered Contract, the Contractor or Subcontractor shall maintain documentation demonstrating every Covered Employee is being paid the Living Wage while providing Services pursuant to the Covered Contract. Such documentation must be retained for at least two (2) years following completion or termination of the Covered Contract. County representatives shall be permitted to review and make copies of such documentation at all reasonable times during performance or following completion or termination of the Covered Contract.
- (f) The County may conduct audits of Contractors and Subcontractors to ensure compliance with this Ordinance. For purposes of this Ordinance, audits shall be:
 - 1. Noticed in advance in writing and limited in scope to ascertain whether Covered Employees are paid the required Living Wage;
 - 2. Accomplished by examination of pertinent records within a reasonable period of time after such written notice; and
 - 3. Limited to one audit per Contractor or Subcontractor every year for the duration of a Covered Contract.
- (g) Contractor shall provide the County access to pertinent records after receiving a written request

to do so and being provided at least five (5) business days to respond.

- (h) Contractor shall promptly notify the Contract Awarding Authority of any Subcontractors performing Services and shall certify to the Contract Awarding Authority that Subcontractors have been notified of obligations under this chapter.
- (i) Contractor shall keep itself informed of the current Living Wage and must provide written notice to Covered Employees of the current Living Wage Rate. The notice shall specify the Living Wage and state that Covered Employees have grievance rights if they believe a Contractor or Subcontractor is failing to comply with the Living Wage Ordinance. Contractors and Subcontractors must provide such notice in writing to all Covered Employees, in all languages necessary to reasonably ensure all Covered Employees receive effective written notice pursuant to Section 2.88.030. A copy of such notice must be submitted to the Contract Awarding Authority in the manner directed by the Contract Awarding Authority.
- (j) Nothing in this section shall be construed to interfere with the authority of the County to investigate any report of an alleged breach of contract.

2.88.040 Living Wage Rate

The Living Wage shall be set and adjusted according to the following schedule.

| Effective Date | San Mateo County Living Wage |
|-----------------------|-------------------------------------|
| January 1, 2017 | \$14.00 |
| July 1, 2017 | \$15.00 |
| January 1, 2018 | |
| July 1, 2018 | \$16.00 |
| January 1, 2019 | |
| July 1, 2019 | \$17.00 |
| January 1, 2020 | |
| July 1, 2020 | +CPI-U |
| January 1, 2021 | |
| July 1, 2021 | +CPI-U |

- (a) After a wage of seventeen dollars (\$17.00) per hour is reached, the Living Wage shall increase annually at the same rate as the CPI-U for San Francisco-Oakland-San Jose then in effect.
- (b) A change in Living Wage based on CPI-U shall not be negative and shall not exceed three-and-one-half percent (3.5%).

2.88.050 Exclusions and Exemptions from Covered Contracts

- (a) The term Covered Contract shall exclude:
 - 1. Contracts for “public works” as defined under California Labor Code Sections 1720 and 1720.2 and subject to the payment of prevailing wages under the California Labor Code.
 - 2. Any agreement in which the County serves only as a fiscal agent and the contract is a 100% pass-through of state or federal funds.
- (b) The Contract Awarding Authority may exempt from the requirements of this Chapter 2.88, an agreement that would otherwise be a Covered Contract, when it is in the best interest of the County to do so, including for the following reasons:
 - 1. Upon review and approval of an exemption request by the Contractor or Subcontractor. Exemption requests are to be submitted by the Contractor or Subcontractor to the Contract Awarding Authority;
 - 2. A contract amendment or award of a contract is necessary to respond to an emergency;
 - 3. The Contractor is a Sole Source;
 - 4. No contractors willing or able to comply with the Living Wage Ordinance are capable of providing services that respond to the County’s requirements;
 - 5. Compliance with the Living Wage Ordinance would be inconsistent with the terms of a grant, subvention, or agreement with a public agency; or
 - 6. The County is purchasing services through a cooperative or joint purchasing agreement.

2.88.060 Employee Remedies

- (a) This chapter shall not be construed to limit a Covered Employee’s rights to bring any legal action for violation of the Covered Employee’s rights under this chapter or any other applicable law. A Covered Employee may bring an action against a Contractor or Subcontractor in the courts of the State of California for damages caused by a Contractor’s or Subcontractor’s violation of this chapter. The Court shall award reasonable attorneys’ fees and costs to an employee who prevails in any such action.
- (b) This chapter does not authorize an award of costs, expenses, or attorney’s fees against the County.
- (c) This chapter does not confer any rights upon any party other than the Board of Supervisors or its

designees to bring an action seeking the cancellation or suspension of a County contract.

- (d) Covered Employee Complaint Process: In addition to judicial remedies available to Covered Employees, individuals may submit a complaint regarding alleged violations of the Living Wage Ordinance by submitting a completed complaint form, including copies of all documents supporting the allegation, to the Purchasing and Procurement Division of the County Human Resources Department. The County shall provide complaint forms in English and Spanish.

2.88.070 Employer Retaliation Prohibited

Contractors and Subcontractors shall not discharge, reduce compensation to, or otherwise retaliate against any employee for:

- (a) Complaining to the County with regard to the Contractor’s or Subcontractor’s compliance or anticipated compliance with this Chapter;
- (b) Opposing any practice proscribed by this Chapter;
- (c) Participating in proceedings related to this Chapter; or
- (d) Seeking to assert or enforce any rights under this Chapter by lawful means.

2.88.080 Termination, Suspension, or Extension of the Living Wage Ordinance

- (a) The Living Wage Ordinance shall expire on December 31, 2021.
- (b) The Board of Supervisors may extend or permanently enact the Living Wage Ordinance after conducting a duly-noticed public hearing.
- (c) The Board of Supervisors may suspend the Living Wage Ordinance if it determines it is in the best interests of the County for reasons including, but not limited to, suspension by the State of California of the statewide minimum wage phase-in process.

2.88.090 Powers and duties of the County Manager

The County Manager’s Office shall have the authority to:

- (a) Adopt policies and procedures to effectively implement this Chapter;
- (b) Determine and recommend to the Board of Supervisors for final decision the imposition of appropriate sanctions for violation of this Chapter including but not limited to:
 - 1. Disqualification of the Contractors or Subcontractors from bidding on or being awarded a County contract for a period of up to five (5) years;
 - 2. Contractual and civil remedies, including but not limited to termination of contract.
- (c) Allow for remedial action after a finding of noncompliance, as specified by rule; and
- (d) Perform such other duties as may be required or necessary to implement the purposes of this

chapter.

SECTION 2. SEVERABILITY. If any provision(s) of this ordinance is declared invalid by a court of competent jurisdiction, it is the intent of the Board of Supervisors that such invalid provision(s) be severed from the remaining provisions of the ordinance and that those remaining provisions continue in effect.

SECTION 3. EFFECTIVE DATE. This Ordinance shall be effective on January 1, 2017.

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