

ORANGE COUNTY BOARD OF SUPERVISORS

A g e n d a R e v i s i o n s a n d S u p p l e m e n t a l s

Note: *This supplemental agenda is updated daily showing items that have been added, continued, deleted or modified. No new supplemental items will be added to the agenda following close of business on Friday immediately prior to a Board meeting.*

October 31, 2023

PRESENTATION (9:00 A.M.)

Supervisor Foley will be presenting a resolution proclaiming October 15, 2023 as “Pregnancy and infant Loss Remembrance Day”

CONSENT

4. Continued to 12/19/23, 9:30 a.m.

DISCUSSION

12. Continued to 11/7/23, 9:30 a.m.

21. Revised Title to read:

County Executive Office - Approve grant applications/awards submitted by *OC Waste & Recycling, District Attorney, OC Community Resources and Health Care Agency, and retroactive grant application/award submitted by OC Community Resources* in 10/31/23 grant report and other actions as recommended; *adopt resolution authorizing OC Waste & Recycling Director or designee to submit and execute application and related documents with State Department of Resources Recycling and Recovery for SB 1383 Local Assistance Grant Program; adopt resolution authorizing District Attorney or designee to execute grant award agreements and amendments with California Office of Traffic Safety for Alcohol and Drug Impaired Driver Vertical Prosecution Program (\$1,303,250) and California Traffic Safety Resource Prosecutor Training Network (\$1,539,354), FFY 2023-24; and making California Environmental Quality Act (CEQA) exemption findings pursuant to CEQA Guidelines Section 15061(b)(3) and other findings; adopt resolution approving standard agreement HI-2122-22, Amendment 3 with California Department of Aging for Older Americans Act Programs, (\$29,908), effective through 3/31/24; and authorizing OCCR Director or designee to execute amendment and related documents* - All Districts

22. Revised Title to read:

County Executive Office - Adopt resolution superseding Resolution 00-202 delegating authority to County Risk Manager to settle pending actions and pursue subrogation matters; *authorizing Risk Manager or designee to settle claims filed against County for up to \$50,000 and execute all documents necessary and appropriate to implement the resulting settlements; and authorizing Auditor-Controller to pay amounts as requested by Risk Manager or designee* - All Districts

23. Continued to 11/7/23, 9:30 a.m.

THE FOLLOWING AGENDA ITEMS HAVE HAD CHANGES TO THEIR RECOMMENDED ACTIONS SINCE RELEASE OF THE AGENDA TO THE PUBLIC:

Items: 21 and 22

REVISIONS AND SUPPLEMENTALS TO OCTOBER 31, 2023 AGENDA - PAGE 1 OF 2

ORANGE COUNTY BOARD OF SUPERVISORS

A g e n d a R e v i s i o n s a n d S u p p l e m e n t a l s

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S u p p l e m e n t a l I t e m (s)

- S23A. Continued to 11/7/23, 9:30 a.m.
Supervisor Chaffee and Supervisor Sarmiento - Adopt resolution opposing any unilateral action by Kaiser Permanente's attempt to reduce mental health therapists' Patient Management Time (PMT)
- S23B. **Sheriff-Coroner** - Approve contract MA-060-23011532 with Life Technologies Corporation for maintenance of genetic analyzers, magnetic particle processors, rapid DNA, and real time polymerase chain reaction instruments, 11/1/23 - 10/31/25 (\$217,398); renewable for three additional one-year terms; and authorize County Procurement Officer or Deputized designee to execute contract - All Districts
- S23C. **County Executive Office** - Reappoint Robin Stieler as Clerk of the Board; approve amendment 5 to employment agreement, effective 11/3/23 (\$195,555 annual salary; total compensation including benefits \$312,167) - All Districts
- SCS2. **County Counsel** - CONFERENCE WITH LEGAL COUNSEL - EXISTING LITIGATION - Pursuant to Government Code Section 54956.9(d)(1):
Name of Case: Reyner Guerrero v. County of Orange, WCAB Case: ADJ17014596



Continuation or Deletion Request

Date: October 26, 2023
To: Clerk of the Board of Supervisors
From: Sheriff-Coroner Department/Executive Director Brian Wayt
Re: ASR Control #: 23-000788, Meeting Date 10/31/23 Agenda Item No. # 4
Subject: Authorize Use of County Resources to Recognize Sheriff Volunteers

☒ Request to continue Agenda Item No. # 4 to the 12/19/23 Board Meeting.

Comments: Additional time is needed to make revisions to the resolution and Recommended Action section.


☐ Request deletion of Agenda Item No. # _____

Comments:

RECEIVED
2023 OCT 26 PM 4:08
CLERK OF THE BOARD
COUNTY OF ORANGE
BOARD OF SUPERVISORS



Continuation or Deletion Request

Date: 10/30/23
To: Clerk of the Board of Supervisors
From: Dylan Wright, Director, OC Community Resources 
Re: ASR Control #: 23-000796, Meeting Date 10/31/23 Agenda Item No. # 12
Subject: Approve Memorandum of Understanding for CalOptima Health Pilot Program

☒ Request to continue Agenda Item No. # 12 to the 11/7/23 Board Meeting.

Comments:

☐ Request deletion of Agenda Item No. # _____

Comments:



AGENDA STAFF REPORT

ASR Control 23-000428

MEETING DATE: 10/31/23
LEGAL ENTITY TAKING ACTION: Board of Supervisors
BOARD OF SUPERVISORS DISTRICT(S): All Districts
SUBMITTING AGENCY/DEPARTMENT: County Executive Office (Approved)
DEPARTMENT CONTACT PERSON(S): Peter DeMarco (714) 834-5777
 Julie Bechtol (714) 834-2009

SUBJECT: Grant Applications/Awards Report

CEO CONCUR Concur	COUNTY COUNSEL REVIEW Approved Resolution to Form	CLERK OF THE BOARD Discussion 3 Votes Board Majority
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Budgeted: N/A **Current Year Cost:** N/A **Annual Cost:** N/A
Staffing Impact: No **# of Positions:** **Sole Source:** N/A
Current Fiscal Year Revenue: N/A
Funding Source: N/A **County Audit in last 3 years:** No
Levine Act Review Completed: N/A
Prior Board Action: N/A

RECOMMENDED ACTION(S):

Approve grant applications/awards as proposed and other actions as recommended.

1.	Approve Grant Application and Adopt Resolution – OC Waste and Recycling – SB 1383 Local Assistance Grant – \$235,239
2.	Approve Grant Award and Adopt Resolution – District Attorney – Alcohol and Drug Impaired Driver Grants: Vertical Prosecution Program and California Traffic Safety Resource Program Training Network – \$2,842,604
3.	Approve Grant Application – OC Community Resources – Boating Access Grant – \$1,750,000
4.	Approve Grant Award and Adopt Resolution – OC Community Resources – Health Insurance Counseling and Advocacy Program (HICAP) – \$29,908
5.	Approve Retroactive Grant Award – OC Community Resources – California Library Literacy Services Program (CLLS): OC Read/Families for Literacy – \$126,549
6.	Approve Grant Agreement – Health Care Agency – Disease Intervention Specialist (DIS) Workforce Development Grant

7.	Receive and File Grants Report.

SUMMARY:

See the attached Grants Report.

BACKGROUND INFORMATION:

See the attached Grants Report.

FINANCIAL IMPACT:

N/A

STAFFING IMPACT:

N/A

ATTACHMENT(S):

Attachment A - Grants Report

Attachment B - Local Assistance Grant Resolution

Attachment B - Alcohol and Drug Impaired Driver Resolution

Attachment B - Health Insurance Resolution



Grants Report

DRAFT

County Executive Office/Legislative Affairs

October 31, 2023
Item No: 21**County of Orange Report on Grant Applications/Awards**

The Grants Report is a condensed list of grant requests by County Agencies/Departments that allows the Board of Supervisors to discuss and approve grant submittals in one motion at a Board meeting. County policy dictates that the Board of Supervisors must approve all grant applications prior to submittal to the grantor. This applies to grants of all amounts, as well as to new grants and those that have been received by the County for many years as part of an ongoing grant. Receipt of grants \$50,000 or less is delegated to the County Executive Officer. Grant awards greater than \$50,000 must be presented to the Board of Supervisors for receipt of funds. This report allows for better tracking of county grant requests, the success rate of our grants, and monitoring of County's grants activities. It also serves to inform Orange County's Sacramento and Washington, D.C. advocates of County grant activities involving the State or Federal Governments.

On October 31, 2023, the Board of Supervisors will consider the following actions:

RECOMMENDED ACTIONS

Approve grant applications/awards as proposed and other actions as recommended.

ACTION ITEMS:

1. Approve Grant Application and Adopt Resolution – OC Waste and Recycling – SB 1383 Local Assistance Grant – \$235,239
2. Approve Grant Award and Adopt Resolution – District Attorney – Alcohol and Drug Impaired Driver Grants: Vertical Prosecution Program and California Traffic Safety Resource Program Training Network – \$2,842,604
3. Approve Grant Application – OC Community Resources – Boating Access Grant – \$1,750,000
4. Approve Grant Award and Adopt Resolution – OC Community Resources – Health Insurance Counseling and Advocacy Program (HICAP) – \$29,908
5. Approve Retroactive Grant Award – OC Community Resources – California Library Literacy Services Program (CLLS): OC Read/Families for Literacy – \$126,549
6. Approve Grant Agreement – Health Care Agency – Disease Intervention Specialist (DIS) Workforce Development Grant
7. Receive and File Grants Report.

If you or your staff have any questions or require additional information on any of the items in this report, please contact Julie Bechtol at 714-834-2009.



CEO-Legislative Affairs Office Grant Authorization eForm

Attachment A

☒ GRANT APPLICATION / ☐ GRANT AWARD

Today's Date:	10/20/23
Requesting Agency/Department:	OC Waste & Recycling
Grant Name and Project Title:	SB 1383 Local Assistance Grant
Sponsoring Organization/Grant Source: <small>(If the grant source is not a government entity, please provide a brief description of the organization/foundation)</small>	Department of Resources Recycling and Recovery (CalRecycle)
Application Amount Requested:	\$235,239.00
Application Due Date:	11/15/23
Board Date when Board Approved this Application:	N/A
Awarded Funding Amount:	N/A
Notification Date of Funding Award:	
Is this an Authorized Retroactive Grant Application/Award? <small>(If yes, attach memo to CEO)</small>	
Recurrence of Grant	New <input type="checkbox"/> Recurrent <input checked="" type="checkbox"/> Other <input type="checkbox"/> Explain:
If this is a recurring grant, please list the funding amount applied for and awarded in the past:	2022: 181,119.00
Does this grant require CEQA findings?	Yes <input type="checkbox"/> No <input checked="" type="checkbox"/>
What Type of Grant is this?	Competitive <input type="checkbox"/> Other Type <input checked="" type="checkbox"/> Explain: Non-competitive
County Match?	Yes <input type="checkbox"/> Amount _____ or _____ % No <input checked="" type="checkbox"/>
How will the County Match be Fulfilled? <small>(Please include the specific budget)</small>	N/A
Will the grant/program create new part or full-time positions?	No
Purpose of Grant Funds:	Provide a summary and brief background on why the Board of Supervisors should accept this grant application/award, and how the grant will be implemented.
Use of these grant funds will cover costs associated with equipment and supplies that will aid OCWR staff in sorting and processing of organic materials. After sorting and processing is complete, the finished compost and mulch material is then offered to residents, cities, landscapers, and private businesses throughout Orange County.	
Board Resolution Required? <small>(Please attach document to eForm)</small>	Yes <input checked="" type="checkbox"/> No <input type="checkbox"/>
Deputy County Counsel Name: <small>(Please list the Deputy County Counsel that approved the Resolution)</small>	Paul Albarian
Recommended Action/Special Instructions <small>(Please specify below)</small>	
Authorize the Director of OCWR, or his/her designee, to sign all necessary application documents required for the submission of the application and any supporting documentation.	



CEO-Legislative Affairs Office Grant Authorization eForm

Attachment A

Department Contact :	List the name and contact information (telephone, e-mail) of the staff person to be contacted for further information.
Kevin Gaxiola – 714-380-9641 Kevin.Gaxiola@ocwr.ocgov.com Irene Alonso – 714-673-2849 Irene.Alonso@ocwr.ocgov.com	
Name of the individual attending the Board Meeting:	List the name of the individual who will be attending the Board Meeting for this Grant Item:
Tom Koutroulis	

**RESOLUTION OF THE ORANGE COUNTY BOARD OF SUPERVISORS
AUTHORIZING SUBMITTAL OF APPLICATION MATERIALS FOR CALRECYCLE
SB 1383 LOCAL ASSISTANCE GRANT PROGRAM (OWR4)**

WHEREAS, Public Resources Code sections 48000 et seq. authorize the Department of Resources Recycling and Recovery (CalRecycle) to administer various grant programs (grants) in furtherance of the State of California's (state) efforts to reduce, recycle and reuse solid waste generated in the state thereby preserving landfill capacity and protecting public health and safety and the environment; and

WHEREAS, in furtherance of this authority CalRecycle is required to establish procedures governing the application, awarding, and management of the grants; and

WHEREAS, CalRecycle grant application procedures require, among other things, an applicant's governing body to declare by resolution certain authorizations related to the administration of CalRecycle grants.

NOW, THEREFORE, BE IT RESOLVED that the Orange County Board of Supervisors authorizes the submittal of application materials to CalRecycle for the SB 1383 Local Assistance Grant (Grant ID: 27447) for which OC Waste & Recycling is eligible; and

BE IT FURTHER RESOLVED that the Director of OC Waste & Recycling, or his/her designee is hereby authorized and empowered to execute in the name of the OC Waste & Recycling, grant documents relating to the application submittal of the SB 1383 Local Assistance Grant (Grant ID: 27447); and

BE IT FURTHER RESOLVED that these authorizations are effective until the secondary application Due Date of December 20, 2023.

Date Adopted _____

Resolution No. _____

Attest/Certified name(s) _____



CEO-Legislative Affairs Office Grant Authorization eForm

Attachment A

☐ GRANT APPLICATION / ☒ GRANT AWARD

Today's Date:	October 24, 2023																					
Requesting Agency/Department:	District Attorney's Office																					
Grant Name and Project Title:	Alcohol and Drug Impaired Driver Grants: Vertical Prosecution Program and California Traffic Safety Resource Program Training Network																					
Sponsoring Organization/Grant Source: (If the grant source is not a government entity, please provide a brief description of the organization/foundation)	California Office of Traffic Safety																					
Application Amount Requested:	Total Grant Application Amount: \$2,217,280 <ul style="list-style-type: none"> Vertical Prosecution Program: \$1,331,180 CA Traffic Safety Resource Program: \$886,100 																					
Application Due Date:	January 31, 2023																					
Board Date when Board Approved this Application:	January 24, 2023																					
Awarded Funding Amount:	Total Grant Application Amount: \$2,842,604 <ul style="list-style-type: none"> Vertical Prosecution Program: \$1,303,250 CA Traffic Safety Resource Program: \$1,539,354 																					
Notification Date of Funding Award:	October 20, 2023																					
Is this an Authorized Retroactive Grant Application/Award? No (If yes, attach memo to CEO)																						
Recurrence of Grant	New <input type="checkbox"/> Recurrent <input checked="" type="checkbox"/> Other <input type="checkbox"/> Explain:																					
If this is a recurring grant, please list the funding amount applied for and awarded in the past:	<table border="1"> <thead> <tr> <th>Year</th><th>Amount</th><th>Purpose</th></tr> </thead> <tbody> <tr> <td>FFY 22-23</td><td>\$1,329,655</td><td>Vertical Prosecution</td></tr> <tr> <td>FFY 22-23</td><td>\$1,523,624</td><td>Statewide Training</td></tr> <tr> <td>FFY 21-22</td><td>\$1,111,504</td><td>Vertical Prosecution</td></tr> <tr> <td>FFY 21-22</td><td>\$833,392</td><td>Statewide Training</td></tr> <tr> <td>FFY 20-21</td><td>\$1,039,400</td><td>Vertical Prosecution</td></tr> <tr> <td>FFY 20-21</td><td>\$761,738</td><td>Statewide Training</td></tr> </tbody> </table>	Year	Amount	Purpose	FFY 22-23	\$1,329,655	Vertical Prosecution	FFY 22-23	\$1,523,624	Statewide Training	FFY 21-22	\$1,111,504	Vertical Prosecution	FFY 21-22	\$833,392	Statewide Training	FFY 20-21	\$1,039,400	Vertical Prosecution	FFY 20-21	\$761,738	Statewide Training
Year	Amount	Purpose																				
FFY 22-23	\$1,329,655	Vertical Prosecution																				
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FFY 21-22	\$833,392	Statewide Training																				
FFY 20-21	\$1,039,400	Vertical Prosecution																				
FFY 20-21	\$761,738	Statewide Training																				
Does this grant require CEQA findings?	Yes <input type="checkbox"/> No <input checked="" type="checkbox"/>																					
What Type of Grant is this?	Competitive <input checked="" type="checkbox"/> Other Type <input type="checkbox"/> Explain:																					
County Match?	Yes <input type="checkbox"/> Amount _____ or _____ % No <input checked="" type="checkbox"/>																					
How will the County Match be Fulfilled? (Please include the specific budget)	N/A																					
Will the grant/program create new part or full-time positions?	No																					
Purpose of Grant Funds:	Provide a summary and brief background on why the Board of Supervisors should accept this grant application/award, and how the grant will be implemented.																					
<p>The California Office of Traffic Safety (OTS) awards funds to identify and address emerging traffic safety issues through innovative and evidence-based programs. This grant will provide continued funding for specialized personnel consisting of prosecutorial and investigative staff to prosecute alcohol and drug impaired driving cases as well as to provide training and technical assistance to police officers, prosecutors and other traffic safety professionals throughout the state. OCDA has been working in partnership with OTS on traffic safety and driving under the influence of drugs prosecutions since 2011. In 2017,</p>																						



CEO-Legislative Affairs Office Grant Authorization eForm

Attachment A

OTS designated the District Attorney's Office as the statewide training agency for traffic safety.

Board Resolution Required?

(Please attach document to eForm)

Yes ☒

No ☐

Deputy County Counsel**Name:**

(Please list the Deputy County Counsel that approved the Resolution)

James Harman, Deputy County Counsel

Recommended Action/Special Instructions

(Please specify below)

The District Attorney requests the Board to:

1. Authorize the District Attorney, or his designee, to sign and execute, on behalf of the County of Orange, the Grant Agreements with the California Office of Traffic Safety accepting the grant awards of \$1,303,250 and \$1,539,354 to continue the Alcohol and Drug Impaired Vertical Prosecution Program and California Traffic Safety Resource Prosecutor Training Network, respectively, for federal fiscal year 2023-24.
2. Authorize the District Attorney, or his designee, to sign and execute on behalf of the County of Orange, any extensions or amendments that reflect the actual grant award but do not materially alter the terms of the grant award, and
3. Adopt the Resolution to receive funds for the Alcohol and Drug Impaired Vertical Prosecution and California Traffic Safety Resource Prosecutor Training Network Programs.

The District Attorney has been receiving grants for our drug impaired driving program since 2011. OTS requires the District Attorney to submit a Board Resolution.

Department Contact :

List the name and contact information (telephone, e-mail) of the staff person to be contacted for further information.

Matthew Pettit 714-347-8440, matthew.pettit@dapa.org

Name of the individual attending the Board Meeting:

List the name of the individual who will be attending the Board Meeting for this Grant Item:

Matthew Pettit

RESOLUTION OF THE BOARD OF SUPERVISORS OF
ORANGE COUNTY, CALIFORNIA

October 31, 2023

WHEREAS, the County of Orange desires to undertake its projects designated “Alcohol and Drug Impaired Driver Vertical Prosecution Program” and “California Traffic Safety Resource Prosecutor Training Network” to be funded for federal fiscal year (“federal fiscal year” i.e. October 1, 2023 – September 30, 2024), in part, from funds made available through California Office of Traffic Safety (hereafter referred to as OTS).

NOW, THEREFORE, BE IT RESOLVED that this Board does hereby:

1. Find that the proposed project is exempt from CEQA pursuant to 14 C.C.R. 15061(b)(3) because it does not impose a significant effect on the environment.
2. Find that pursuant to Section 711.4 of the California Fish and Game Code, the proposed project is exempt from the required fees as it has been determined that no adverse impacts to wildlife resources will result from the project.
3. Authorize the District Attorney, or his designee, to sign and execute, on behalf of the County of Orange, Grant Agreements with Office of Traffic Safety for the Alcohol and Drug Impaired Driver Vertical Prosecution Program for federal fiscal year 2023-24 in the amount not to exceed \$1,303,250, and the California Traffic Safety Resource Prosecutor Training Network for federal fiscal year 2023-24 in the amount not to exceed \$1,539,354.
4. Authorize the District Attorney, or his designee, to execute, on behalf of the County of Orange, any extensions or amendments that reflect the actual grant amount but do not materially alter the terms of the grant award.
5. Assure that the County of Orange will not use grant funds to supplant expenditures controlled by the Board of Supervisors.



CEO-Legislative Affairs Office Grant Authorization eForm

Attachment A

☒ GRANT APPLICATION / ☐ GRANT AWARD

Today's Date:	10/23/2023
Requesting Agency/Department:	OC Community Resources/OC Parks
Grant Name and Project Title:	Boating Access Grant – Dana Point Harbor Sailing and Events Center Dock Refurbishment
Sponsoring Organization/Grant Source: (If the grant source is not a government entity, please provide a brief description of the organization/foundation)	California Department of Fish and Wildlife (CDFW)
Application Amount Requested:	\$1,750,000
Application Due Date:	11/3/2023
Board Date when Board Approved this Application:	N/A
Awarded Funding Amount:	N/A
Notification Date of Funding Award:	N/A
Is this an Authorized Retroactive Grant Application/Award?	No
(If yes, attach memo to CEO)	
Recurrence of Grant	New <input checked="" type="checkbox"/> Recurrent <input type="checkbox"/> Other <input type="checkbox"/> Explain:
If this is a recurring grant, please list the funding amount applied for and awarded in the past:	
Does this grant require CEQA findings?	Yes <input checked="" type="checkbox"/> No <input type="checkbox"/>
What Type of Grant is this?	Competitive <input checked="" type="checkbox"/> Other Type <input type="checkbox"/> Explain:
County Match?	Yes <input checked="" type="checkbox"/> Amount: <u> </u> or <u>25</u> % No <input type="checkbox"/>
How will the County Match be Fulfilled? (Please include the specific budget)	OC Parks Fund 406
Will the grant/program create new part or full-time positions?	No
Purpose of Grant Funds:	Provide a summary and brief background of why Board of Supervisors why should accept this grant application/award, and how the grant will be implemented.
The Boating Access Grant will support the Dana Point Harbor Sailing and Events Center Dock Refurbishment project. The project will replace and reconfigure the existing Sailing and Event Center floating pier and docks, improving community access by replacing the existing gangway ramp with an Americans with Disabilities Act (ADA) compliant ramp. At present, there is no ADA access to the dock. In addition, the project will provide dredging, a pump out station and alleviation of ongoing maintenance issues of the existing dock structure.	
Board Resolution Required? (Please attach document to eForm)	Yes <input type="checkbox"/> No <input checked="" type="checkbox"/>
Deputy County Counsel Name: (Please list the Deputy County Counsel that approved the Resolution)	Chris Anderson
Recommended Action/Special Instructions (Please specify below)	
1. Authorize the OC Community Resources Director or designee to apply for a California	



CEO-Legislative Affairs Office Grant Authorization eForm

Attachment A

<p>Department of Fish and Wildlife Boating Access Grant for the Dana Point Harbor Sailing and Events Center.</p> <p>2. Authorize the OC Community Resources Director, OC Parks Director, or designee to sign and submit all documents required for participation in the program.</p>	
Department Contact:	List the name and contact information (telephone, e-mail) of the staff person to be contacted for further information.
<p>Marisa O'Neil, OC Parks Grants Manager - 714-973-6876; marisa.oneil@ocparks.com Sheila Cedervall, Senior Landscape Architect – 949-585-6442; Sheila.cedervall@ocparks.com</p>	
Name of the individual attending the Board Meeting:	List the name of the individual who will be attending the Board Meeting for this Grant Item:
<p>Dylan Wright, Director, OC Community Resources</p>	



CEO-Legislative Affairs Office Grant Authorization eForm

Attachment A

☐ GRANT APPLICATION / ☒ GRANT AWARD

Today's Date:	October 24, 2023
Requesting Agency/Department:	OC Community Resources/OC Community Services
Grant Name and Project Title:	Health Insurance Counseling and Advocacy Program (HICAP), Amendment 3
Sponsoring Organization/Grant Source: (If the grant source is not a government entity, please provide a brief description of the organization/foundation)	California Department of Aging (CDA)
Application Amount Requested:	N/A
Application Due Date:	N/A
Board Date when Board Approved this Application:	N/A
Awarded Funding Amount:	\$29,908
Notification Date of Funding Award:	October 4, 2023
Is this an Authorized Retroactive Grant Application/Award? No (If yes, attach memo to CEO)	
Recurrence of Grant	New <input type="checkbox"/> Recurrent <input checked="" type="checkbox"/> Other <input type="checkbox"/> Explain:
If this is a recurring grant, please list the funding amount applied for and awarded in the past:	FY 2023 – 24: \$622,517 FY 2022 – 23: \$514,159 FY 2021 – 22: \$621,867 FY 2020 – 21: \$588,635 FY 2019 – 20: \$588,187
Does this grant require CEQA findings?	Yes <input type="checkbox"/> No <input checked="" type="checkbox"/>
What Type of Grant is this?	Competitive <input type="checkbox"/> Other Type <input checked="" type="checkbox"/> Explain: HICAP funds are allocated by the CDA as a Formula Grant.
County Match?	Yes <input type="checkbox"/> No <input checked="" type="checkbox"/>
How will the County Match be Fulfilled? (Please include the specific budget)	N/A
Will the grant/program create new part or full-time positions?	No
Purpose of Grant Funds:	Provide a summary and brief background of why Board of Supervisors why should accept this grant application/award, and how the grant will be implemented. HICAP provides free unbiased one-on-one counseling, along with education and assistance to individuals and their families on Medicare, Long-Term Care insurance, planning for Long-Term Care needs, and other health insurance related issues. HICAP counselors are trained in Medi-Cal and Medicare to help individuals understand their health insurance options. Counseling services are available to persons 65 years of age or older, who are eligible for Medicare, soon to be eligible for Medicare, or disabled persons younger than age 65 who are eligible for Medicare. During the time frame of April 1, 2023, to August 31, 2023, the current HICAP service provider, Council on Aging – Southern California (COASC), processed 1,564 client intakes and took part in 93 in-person counseling sessions at senior and community centers. The HICAP State Standard Agreement is for the term July 1, 2021, through March 31, 2024. Amendment 3 increases the FY 2023-24 funding allocation by \$29,908, for a total amount of \$652,425. This funding will be used to expand awareness of HICAP services through a direct mailing campaign in County threshold languages targeting individuals new to Medicare. COASC's HICAP contract will be amended to incorporate this additional funding.
Board Resolution Required? (Please attach document to eForm)	Yes <input checked="" type="checkbox"/> No <input type="checkbox"/>



CEO-Legislative Affairs Office Grant Authorization eForm

Attachment A

Deputy County Counsel Name: (Please list the Deputy County Counsel that approved the Resolution)		John Cleveland
Recommended Action/Special Instructions (Please specify below)		
<ol style="list-style-type: none">1. Adopt the resolution as approved by County Counsel to receive \$29,908 in funds from the California Department of Aging for the Health Insurance Counseling and Advocacy Program.2. Approve the State Standard Agreement HI-2122-22, Amendment 3, with the California Department of Aging in the amount of \$29,908 effective upon Board approval through March 31, 2024.3. Authorize the OC Community Resources Director or designee to execute the State Standard Agreement HI-2122-22, Amendment 3.4. Authorize OC Community Resources Director or designee to execute all documents required to accept the additional Health Insurance Counseling Advocacy Program grant award funding.		
Department Contact:		List the name and contact information (telephone, e-mail) of the staff person to be contacted for further information.
Renee Ramirez (714) 480-6483 / Renee.Ramirez@occr.ocgov.com Dylan Wright (714) 480-2788 / Dylan.Wright@occr.ocgov.com		
Name of the individual attending the Board Meeting:		List the name of the individual who will be attending the Board Meeting for this Grant Item:
Dylan Wright, Director, OC Community Resources		

RESOLUTION OF THE BOARD OF SUPERVISORS OF
ORANGE COUNTY, CALIFORNIA
October 31, 2023

WHEREAS, OC Community Resources Office on Aging has received State Standard Agreement HI-2122-22, Amendment 3 in the amount of \$29,908 from the California Department of Aging containing funding allocations for Older Americans Act Programs; and

WHEREAS, the County of Orange assures that it will abide by the terms and conditions of Agreement HI-2122-22, Amendment 3; and

WHEREAS this Board agrees with the terms of the State Standard Agreement and the allocation of funds contained therein.

NOW, THEREFORE, BE IT RESOLVED that this Board does hereby:

1. Approve the State Standard Agreement HI-2122-22, Amendment 3 with the California Department of Aging in the amount of \$29,908 effective upon Board approval through March 31, 2024.
2. Authorize the OC Community Resources Director or designee to execute the State Standard Agreement HI-2122-22, Amendment 3 to receive \$29,908 in additional funding from the California Department of Aging.
3. Authorize the OC Community Resources Director or designee to execute all documents required to accept the additional Health Insurance Counseling and Advocacy Program grant award funding.

Approved By: _____

Chairman of the Board of Supervisors
County of Orange, California

Grant Retroactive/Ratification Memorandum

Date: 10/23/2023
To: County Executive Office
From: Dylan Wright, Director, OC Community Resources
Re: California Library Literacy Services Funding Award
Subject: Request to Approve Retroactive Award

OC Community Resources/ OC Public Libraries (OCCR/OCPL) requests retroactive approval to accept the award from California Library Literacy Services in the amount of \$126,549. OCCR/OCPL was notified of the grant award on September 8, 2023. OCCR/OCPL was unable to submit the grant award for approval to the Board within 30 days of award notification due to the time required for administrative processes (e.g., reviewing grant agreement terms). Grant funds will be used to support OC Public Libraries' OC Read and Families for Literacy programs.



Dylan Wright, Director
OC Community Resources

10/23/2023

Date

Approved:



Digitally signed by Frank Kim
DN: cn=Frank Kim, o=County
of Orange, ou=CEO,
email=frank.kim@ocgov.com
, c=US
Date: 2023.10.25 09:48:26
-07'00'

Frank Kim, County Executive Officer
County Executive Office

10/25/23

Date



CEO-Legislative Affairs Office Grant Authorization eForm

Attachment A

☐ GRANT APPLICATION / ☒ GRANT AWARD

Today's Date:	October 24, 2023
Requesting Agency/Department:	OC Community Resources/ OC Public Libraries
Grant Name and Project Title:	California Library Literacy Services Program (CLLS): OC Read/ Families for Literacy
Sponsoring Organization/Grant Source: (If the grant source is not a government entity, please provide a brief description of the organization/foundation)	California State Library
Application Amount Requested:	N/A
Application Due Date:	May 20, 2023
Board Date when Board Approved this Application:	June 28, 2022
Awarded Funding Amount:	\$126,549
Notification Date of Funding Award:	September 8, 2023
Is this an Authorized Retroactive Grant Application/Award? Yes (If yes, attach memo to CEO)	
Recurrence of Grant	New <input type="checkbox"/> Recurrent <input checked="" type="checkbox"/> Other <input type="checkbox"/> Explain:
If this is a recurring grant, please list the funding amount applied for and awarded in the past:	FY 2022-2023 Amount \$126,728 FY 2021- 2022 Amount \$140,809 FY 2020-2021 Amount \$145,621 FY 2019-2020 Amount \$151,245 FY 2018-2019 Amount \$162,066
Does this grant require CEQA findings?	Yes <input type="checkbox"/> No <input checked="" type="checkbox"/>
What Type of Grant is this?	Competitive <input checked="" type="checkbox"/> Other Type <input type="checkbox"/> Explain:
County Match?	Yes <input type="checkbox"/> Amount _____ or _____ % No <input checked="" type="checkbox"/>
How will the County Match be Fulfilled? (Please include the specific budget)	N/A
Will the grant/program create new part or full-time positions?	No
Purpose of Grant Funds:	Provide a summary and brief background of why Board of Supervisors why should accept this grant application/award, and how the grant will be implemented.
Grant funding will be used to support OC Public Libraries' OC Read and Families for Literacy programs. OC Read provides tutoring in basic reading and writing to adult learners throughout Orange County. Lessons are individualized and goal-oriented. Tutors structure the learning process around the goals established by the learner, using materials and library programs to achieve those goals. The Families for Literacy program helps support the family unit for participants with children, promotes a culture of literacy, and assists adults in developing confidence and skills in supporting their children's literacy and educational endeavors. The funding will allow for program opportunities and services fostering a positive learning experience for parents and/or caregivers.	
Board Resolution Required? (Please attach document to eForm)	Yes <input type="checkbox"/> No <input checked="" type="checkbox"/>
Deputy County Counsel Name: (Please list the Deputy County Counsel that approved the Resolution)	
Recommended Action/Special Instructions (Please specify below)	



CEO-Legislative Affairs Office Grant Authorization eForm

Attachment A

Authorize the OC Community Resources Director, or designee, to sign documents applicable to this award, accept the grant funds and administer the Program utilizing said funds. No Board Resolution is required to accept the grant award.

Department Contact:

List the name and contact information (telephone, e-mail) of the staff person to be contacted for further information.

Dylan Wright, OCCR Director
714-480-2788
Dylan.Wright@occr.ocgov.com

Name of the individual attending the Board Meeting:

List the name of the individual who will be attending the Board Meeting for this Grant Item:

Dylan Wright, OCCR Director
Julie Quillman, County Librarian



CEO-Legislative Affairs Office Grant Authorization eForm

Attachment A

☐ GRANT APPLICATION / ☐ GRANT AWARD

Today's Date:	10/23/2023
Requesting Agency/Department:	Health Care Agency
Grant Name and Project Title:	Disease Intervention Specialist (DIS) Workforce Development grant
Sponsoring Organization/Grant Source: (If the grant source is not a government entity, please provide a brief description of the organization/foundation)	California Department of Public Health (CDPH) – STD Control Branch
Application Amount Requested:	N/A
Application Due Date:	N/A; funding is awarded based on allocation
Board Date when Board Approved this Application:	September 26, 2023 (Grant Report)
Awarded Funding Amount:	0.00
Notification Date of Funding Award:	Notice of extension of project period received
Is this an Authorized Retroactive Grant Application/Award? No (If yes, attach memo to CEO)	
Recurrence of Grant	New <input type="checkbox"/> Recurrent <input checked="" type="checkbox"/> Other <input type="checkbox"/> Explain:
If this is a recurring grant, please list the funding amount applied for and awarded in the past:	FY 2023: \$563,657 FY 2022: \$563,657 FY 2021: \$563,657
Does this grant require CEQA findings?	Yes <input type="checkbox"/> No <input checked="" type="checkbox"/>
What Type of Grant is this?	Competitive <input type="checkbox"/> Other Type <input checked="" type="checkbox"/> Explain: Allocation award
County Match?	Yes <input type="checkbox"/> Amount _____ or _____ % No <input checked="" type="checkbox"/>
How will the County Match be Fulfilled? (Please include the specific budget)	N/A
Will the grant/program create new part or full-time positions?	No
Purpose of Grant Funds:	Provide a summary and brief background of why Board of Supervisors why should accept this grant application/award, and how the grant will be implemented.
<p>The purpose of these funds is to implement key strategies for STD, HIV, COVID-19 and other infectious diseases prevention and control by increasing the capacity to conduct disease investigation (case investigation and contact tracing), linkage to prevention and treatment, case management and oversight and outbreak response to communicable diseases. The grant funds must be used to expand, train, and sustain a response-ready DIS workforce.</p> <p>The DIS grant award was originally presented and approved by the Board on May 10, 2022 for a funding period of five years with an annual allocation of \$563,657, totaling \$2,818,285. On August 21, 2023, CDPH released a notice of rescission of the DIS Workforce supplemental grant funding. The DIS grant was be amended for the following:</p> <ol style="list-style-type: none">1. The total grant budget was reduced to \$1,690,971 by removing funding amounts for Years 4 and 52. The grant agreement term end date was amended from the original end date of 12/31/25 to the new end date of 01/31/25. <p>On October 6, 2023, CDPH released a notice of extension of the DIS Workforce supplemental grant funding. This extension changes the project end date from January 31, 2025, to January 31, 2026 with no additional funding.</p>	



CEO-Legislative Affairs Office Grant Authorization eForm

Attachment A

Board Resolution Required?

(Please attach document to eForm)

Yes ☐

No ☒

Deputy County Counsel Name:

(Please list the Deputy County Counsel that approved the Resolution)

Recommended Action/Special Instructions

(Please specify below)

The HCA respectfully requests that the Board takes the following action:

1. Approve and execute the amended Grant Agreement Number 21-10573 upon County Counsel review and authorize the Health Care Agency Director, or designee, to sign and execute the Agreement and related documents.

Department Contact:

List the name and contact information (telephone, e-mail) of the staff person to be contacted for further information.

Dr. Regina Chinsio-Kwong
rchinsiokwong@ochca.com

Name of the individual attending the Board Meeting:

List the name of the individual who will be attending the Board Meeting for this Grant Item:

[Debra Baetz](#)
dbaetz@ochca.com



Revision to ASR and/or Attachments

Date: 10/17/23
To: Clerk of the Board of Supervisors
CC: County Executive Office
From: Frank Kim, County Executive Officer
Re: ASR Control #: 23-000844, Meeting Date 10/31/23, Item No. #22
Subject: Risk Management Authority to Settle Pending Actions

Frank Kim

Digitally signed by Frank Kim
DN: cn=Frank Kim, o=County of Orange, ou=CEO,
email=frank.kim@ocgov.com,
c=US
Date: 2023.10.23 10:46:30
+07'00'

CLERK OF THE BOARD
COUNTY OF ORANGE
BOARD OF SUPERVISORS

2023 OCT 23 PM 12:43

RECEIVED

Explanation:

Adding Recommended Actions 2 and 3 to include delegated authority.

☒ Revised Recommended Action(s)

1. Adopt Resolution superseding Resolution 00-202 delegating authority to County Risk Manager to settle pending actions and pursue subrogation matters.
2. Authorize the Risk Manager, or designee, to execute all documents necessary and appropriate to implement the resulting settlements authorized by this Resolution.
3. Authorize the Auditor-Controller to pay amounts as requested by the Risk Manager, or designee, acting under the authority provided in this Resolution.

☐ Make modifications to the:

☐ Subject ☐ Background Information ☐ Summary ☐ Financial Impact

☐ Revised Attachments (attach revised attachment(s) and redlined copy(s))



Continuation or Deletion Request

Date: October 30, 2023
To: Clerk of the Board of Supervisors
From: Frank Kim, County Executive Officer *for Maguire*
Re: ASR Control #: 23-000787, Meeting Date 10/31/23 Agenda Item No. # 23
Subject: Approve 2024 Contract Policy Manual

☒ Request to continue Agenda Item No. # 23 to the 11/7/2023 Board Meeting.

Comments:

☐ Request deletion of Agenda Item No. # _____

Comments:

RECEIVED
2023 OCT 31 AM 7:47
CLERK OF THE BOARD
COUNTY OF ORANGE
BOARD OF SUPERVISORS

Lopez, Maria [COB]

From: Annette Puga <Annette.X.Puga@kp.org>
Sent: Monday, October 30, 2023 5:22 PM
To: COB_Response
Cc: ichairez@nuhw.org
Subject: Subject: Item 23A SUPPORT for Resolution on Kaiser Permanente PMT Dear Orange County Board of Supervisors,

Attention: This email originated from outside the County of Orange. Use caution when opening attachments or links.

Dear Orange County Board of Supervisors,

I am writing this letter to voice SUPPORT for item 23A in your agenda. Kaiser Permanente mental health clinicians in Southern California deserve to have the same amount of time as their counterparts in Northern California, to do crucial back end work including calling social services agencies, working with parents of young patients, and general patient care planning. As a resident of Southern California, I urge a YES vote on this matter.

Thank you,

Annette Puga, LCSW

NOTICE TO RECIPIENT: If you are not the intended recipient of this e-mail, you are prohibited from sharing, copying, or otherwise using or disclosing its contents. If you have received this e-mail in error, please notify the sender immediately by reply e-mail and permanently delete this e-mail and any attachments without reading, forwarding or saving them. v.173.295 Thank you.

Ross, Jamie

From: Jean J Lee <Jean.J.Lee@kp.org>
Sent: Monday, October 30, 2023 2:19 PM
To: COB_Response
Cc: ichairez@nuhw.org
Subject: Item 23A SUPPORT for Resolution on Kaiser Permanente PMT
Attachments: ACTION KIT_ Support Kaiser Workers in OC Oct 31.pdf

Attention: This email originated from outside the County of Orange. Use caution when opening attachments or links.

Dear Orange County Board of Supervisors,

I am writing this letter to voice SUPPORT for item 23A in your agenda. Kaiser Permanente mental health clinicians in Southern California deserve to have the same amount of time as their counterparts in Northern California, to do crucial back end work including calling social services agencies, working with parents of young patients, and general patient care planning.

As a resident of Orange County, I urge a YES vote on this matter. Thank you,

Bitna Jean Lee

NOTICE TO RECIPIENT: If you are not the intended recipient of this e-mail, you are prohibited from sharing, copying, or otherwise using or disclosing its contents. If you have received this e-mail in error, please notify the sender immediately by reply e-mail and permanently delete this e-mail and any attachments without reading, forwarding or saving them. v.173.295 Thank you.



FR: Izeah Chairez, NUHW Organizer, (714) 363-7056
TO: Interested Allies
RE: OC Board of Supervisors Kaiser Permanente Resolution
Date: Thursday, October 26, 2023

Urgent Ask: Join OC Board of Supervisors, Tuesday, Oct 31 at 9:00 AM to support NUHW Kaiser members

NUHW urges community members and allies who support improving Kaiser Permanente's behavioral health care services to **join the Orange County Board of Supervisors Meeting on Tuesday, October 31st at 9:30 AM**. The Board of Supervisors will consider Item S23A. introduced by Supervisor Chaffee and Supervisor Sarmiento: a "resolution opposing any unilateral action by Kaiser Permanente's attempt to reduce mental health therapists' Patient Management Time (PMT)."

Date of Vote:

Tuesday, October 31, 2023

Order of Business:

9:00 A.M. Presentations

9:30 A.M. Regular Business

Address:

Board Hearing Room, First Floor
400 W. Civic Center Drive
Santa Ana, California

You can find additional details on the resolution below.

Kaiser Patient Management Time Sample Letter

If you cannot join in person, consider sending a letter to the board. Please submit **by 5:00 PM Monday, Oct 30**.

[Agenda Link here.](#)

[Resolution linked here.](#)

Email Letter to: response@ocgov.com

CC: ichairez@nuhw.org

Subject: Item 23A SUPPORT for Resolution on Kaiser Permanente PMT

Dear Orange County Board of Supervisors,

I am writing this letter to voice SUPPORT for item 23A in your agenda. Kaiser Permanente mental health clinicians in Southern California deserve to have the same amount of time as their



counterparts in Northern California, to do crucial back end work including calling social services agencies, working with parents of young patients, and general patient care planning.

As a resident of XX, I urge a YES vote on this matter. Thank you,

XX

Additional Background:

When more than 2,000 Kaiser Permanente mental health therapists in Northern California went on strike last year, their top priority was to secure more time to perform critical patient care duties such as responding to patient emails and voicemails, communicating with social service agencies, tailoring treatment plans, preparing for appointments and doing required paperwork.

Burnout from the lack of what Kaiser calls “Patient Management Time” was the biggest reason why therapists were leaving Kaiser in droves and leaving patients waiting months for therapy appointments in violation of state law. It took 10 weeks on the picket line, but Kaiser officials in Northern California finally agreed to significantly increase Patient Management Time to about 6.5 hours per week.

However, in Southern California, Kaiser management is actually threatening to reduce Patient Management Time — to just two hours per week in most areas. This would make it much harder for Kaiser to retain its therapists, forcing patients to wait even longer between therapy appointments.

It would also make it harder for Kaiser to comply with SB 221, the law NUHW sponsored in 2021 requiring all health plans to provide follow-up therapy appointments within 10 business days unless the treating therapist determines that a longer wait would not be detrimental.

Not only is Kaiser in Southern California already failing to comply with the law, it’s pressuring therapists not to advocate for patients who need to be seen within the 10-business day timeline. Currently, Kaiser is requiring Southern California therapists to fill out extensive paperwork for patients who need to be seen frequently, and managers are challenging their clinical judgment and pressuring them to make additional time in their already packed schedules for returning patients.

It’s easy to think of Kaiser as a one-size-fits-all behemoth, but when it comes to mental health care, Kaiser is treating its therapists and patients far worse in Southern California than in Northern California. Our members in Southern California are ready to fight for their patients, and they are seeking your support.

Elected allies who have voiced support for this issue:



Supervisor Doug Chaffee
Supervisor Vince Sarmiento
Supervisor Katrina Foley

Congresswoman Katie Porter
State Senator Josh Newman
State Senator Dave Min
State Senator Scott Wiener
State Senator Richard Roth
State Assemblymember Sharon Quirk Silva
State Assemblymember Avelino Valencia
State Assemblymember Cottie Petrie-Norris
State Assemblymember Sabrina Cervantes
State Assemblymember Corey Jackson
State Assemblymember Juan Carrillo
State Assemblymember James C. Ramos
State Assemblymember Eloise Gomez Reyes
State Assemblymember Freddie Rodriguez



BOARD OF SUPERVISORS

MEMORANDUM

2023 OCT 30 PM 2:35

CLERK OF THE BOARD
COUNTY OF ORANGE
BOARD OF SUPERVISORS

10/30/23

To: Clerk of the Board

From: Supervisor Doug Chaffee, Fourth District
Supervisor Vicente Sarmiento, Second District

Doug Chaffee
Vicente Sarmiento

Subject: Request to continue Supplemental Agenda Item No. # S23A to the 11/07/23 Board meeting.

Supervisor Doug Chaffee and Supervisor Vicente Sarmiento respectfully request the Clerk of the Board to continue Agenda Item No. S 23A – the resolution to “Oppose Kaiser Permanente’s attempt to reduce mental health therapists’ Patient Management Time (PMT)” to the 11/07/23 Board meeting.



BOARD OF SUPERVISORS

MEMORANDUM

2023 OCT 24 PM 4: 32

CLERK OF THE BOARD
COUNTY OF ORANGE
BOARD OF SUPERVISORS

10/24/23

To: Clerk of the Board

From: Supervisor Doug Chaffee, Fourth District
Supervisor Vicente Sarmiento, Second District

Subject: Supplemental Agenda Resolution Item for October 31, 2023 Board of Supervisors Meeting – Resolution to Oppose Kaiser Permanente’s Attempt to Reduce Mental Health Therapists’ Patient Management Time (PMT)

[Signature]

Doug Chaffee

S23A

Supervisor Doug Chaffee and Supervisor Vicente Sarmiento respectfully request the Clerk of the Board to add a resolution item to the agenda for the October 31 Board of Supervisors meeting to “Oppose Kaiser Permanente’s attempt to reduce mental health therapists’ Patient Management Time (PMT).”

Resolution to “Oppose Kaiser Permanente’s Attempt to Reduce Mental Health Therapists’ Patient Management Time”

By the authority of the Orange County Board of Supervisors, the following resolution is hereby issued:

WHEREAS, Kaiser Permanente is one of the largest private providers of mental health care for Orange County residents, as well as County employees and their families; and

WHEREAS, the California Health Care Foundation reported that nearly 1 in 7 California adults experiences a mental illness, and the American Academy of Child and American Academy of Pediatrics declared a national emergency over a “shocking” rise in families seeking urgent mental help; and

WHEREAS, quality mental healthcare requires that therapists have sufficient time to chart appointments, communicate with social service agencies, or respond to patient correspondence known as Patient Management Time (PMT); and

WHEREAS, Northern Californian therapists at Kaiser Permanente are given seven hours per week for PMT, and current therapists in Orange County are permitted just three hours to perform the same duties; and

WHEREAS, Kaiser management in Orange County is proposing to raise the permitted PMT to only four hours for therapists who have unrealistically low appointment cancellation rates; and

WHEREAS, outside of Orange County, Kaiser Permanente is seeking to unilaterally cut the amount of permitted PMT for therapists to as few as two hours per week, which will make it increasingly difficult for Kaiser to comply with SB 221, requiring all health plans to provide follow-up therapy appointments within 10 business days unless the treating therapist determines that a longer wait would not be detrimental; and

WHEREAS, a reduction in protected PMT hours will worsen the equity gap in care that Kaiser Permanente mental healthcare patients in Southern California receive compared to Kaiser Permanente patients in Northern California; and

WHEREAS, non-English proficient speakers who require additional follow-up communication and patients who are children will be most impacted by the reduction in PMT, as their therapists need additional time to communicate with parents, teachers, and social workers; and

WHEREAS, Kaiser Permanente is increasing health plan rates by 10 percent or more for patients in Orange County; and

WHEREAS, on October 12, 2023, Kaiser Permanente entered into a \$200-million settlement agreement with the California Department of Managed Health Care (DMHC), that includes paying a \$50-million fine and pledging \$150-million over 5 years to improve its behavioral healthcare services and promises to improve documentation of its patients’ medical record; and

NOW, THEREFORE, BE IT RESOLVED that the Orange County Board of Supervisors opposes any unilateral action by Kaiser Permanente that reduces the amount of PMT time for therapists and calls for Kaiser Permanente to provide therapists in Southern California with the same amount of protected PMT that therapists in Northern California receive.

SONIA R. FERNANDES
Deputy Director | Chief Counsel, Bar Number 232932
ANGELA M. LAI
Assistant Chief Counsel, Bar Number 237616
LICIA M. MARSHALL
Attorney IV, Bar Number 265826
AMIR J. JAVIDEYAN
Attorney III, Bar Number 277636
CALIFORNIA DEPARTMENT OF
MANAGED HEALTH CARE
980 9th Street, Suite 500
Sacramento, CA 95814-2725
916-323-0435 – Phone
916-323-0438 – Fax

Attorneys for the Department of Managed Health Care

BEFORE THE DEPARTMENT OF MANAGED HEALTH CARE
OF THE STATE OF CALIFORNIA

In the Matter of the Investigation of:
Kaiser Foundation Health Plan, Inc.,
Respondent.

Enforcement Matter Number: 22-469;
2022 Non-Routine Survey 933-0055

SETTLEMENT AGREEMENT

IT IS HEREBY STIPULATED AND AGREED by and between the parties to the above-entitled Enforcement Matters that the following matters are true:

PARTIES

The parties to this Settlement Agreement and Order of the Director of the Department of Managed Health Care (“Settlement Agreement”) are:

1. Sonia R. Fernandes (“Complainant”) is the Deputy Director and Chief Counsel of the DEPARTMENT OF MANAGED HEALTH CARE’s (“Department”) Office of Enforcement. Pursuant to Government Code section 11180 et seq., the Department’s Director has delegated to Complainant the powers and authority to conduct the Department’s investigations and enforcement matters. The enforcement investigations referred to herein were brought solely in Complainant’s official capacity.

2. Kaiser Foundation Health Plan, Inc., (“Plan”) was issued license number 933 0055 to operate a health care service plan on or about November 4, 1977. The Plan is represented in this matter by Sheppard, Mullin, Richter & Hampton, LLP.

3. The Department and the Plan are each referred to herein as a “Party,” and collectively, as the “Parties.”

ACTIONS

4. On May 16, 2022, the Department issued a notice, referenced as “License #933-0055,” to the Plan of the Department’s intent to conduct a non-routine survey of the Plan pursuant to the Knox-Keene Health Care Service Plan Act of 1975 (the “Knox-Keene Act”), and regulations promulgated thereunder¹ (Health & Saf. Code, § 1382; Cal. Code Regs., tit. 28, § 1300.82.1) (the “2022 Non-Routine Survey”).

5. On August 12, 2022, the Department initiated Enforcement Matter 22-469, titled In the Matter of the Investigation and Examination of: Kaiser Foundation Health Plan, Inc. (the “Enforcement Investigation”).

6. The Parties desire to fully and finally resolve the 2022 Non-Routine Survey and the Enforcement Investigation, the terms and conditions of which are fully set forth in detail in this Settlement Agreement. The Department’s investigation in connection with the 2022 Non-Routine Survey is ongoing. Notwithstanding, the Parties agree that this Settlement Agreement will resolve these matters, including penalties and any possible future enforcement referral that may arise related to deficiencies identified by the Department in the 2022 Non-Routine Survey Final Report, where the violation occurred prior to the date this Settlement Agreement is executed by all Parties.

ADVISEMENTS AND WAIVERS

7. The Plan has carefully read, fully discussed with counsel, and understands the

¹ The Knox-Keene Act is codified at Health and Safety Code section 1340 et seq. All references to “Section” are to the Health and Safety Code unless otherwise indicated. The regulations promulgated from the Knox-Keene Act are codified at Title 28 of the California Code of Regulations section 1000 et seq. All references to “Rule” are to Title 28 of the California Code of Regulations unless otherwise indicated.

1 effects of this Settlement Agreement.

2 8. The Plan is fully aware of its legal rights in this matter, including the right to a
3 hearing on any potential accusation related to the Enforcement Investigation and 2022 Non-
4 Routine Survey findings; the right to be represented by counsel at its own expense; the right to
5 confront and cross-examine the witnesses against it; the right to present evidence and
6 testimony on its behalf; the right to the issuance of subpoenas to compel the attendance of
7 witnesses and the production of documents; the right to reconsideration and court review of an
8 adverse decision; the right to require the Department to meet its burden of proof to establish all
9 elements of any violations charged at an administrative or other hearing; and, all other rights
10 accorded by the California Administrative Procedure Act and other applicable laws.

11 9. Except as provided herein, by entering into this Settlement Agreement, the Plan
12 voluntarily, knowingly, and intelligently waives and gives up each and every right set forth
13 above with respect to the Enforcement Investigation and 2022 Non-Routine Survey.

14 10. The Plan acknowledges that this Settlement Agreement will be posted on the
15 Department's public website and will be public record. For work product created under this
16 Settlement Agreement that is submitted to the Department, including portions of the Corrective
17 Action Work Plan, the Plan may request confidential treatment pursuant to California Code of
18 Regulations, title 28, section 1007, subdivision (a).

19 11. The Plan acknowledges that the Department's investigation in connection with
20 the 2022 Non-Routine Survey is ongoing, and no Preliminary Report has been issued at the
21 time of the Settlement Agreement. The Plan further acknowledges that the Department shall
22 issue a Non-Routine Final Report upon completion of the 2022 Non-Routine Survey.

23 12. The Plan acknowledges that the Department may, as permitted by law, take into
24 consideration deficiencies found by the 2022 Non-Routine Survey and/or documented in the
25 2022 Non-Routine Survey Final Report when assessing future administrative or other penalties
26 under Section 1386 and Rule 1300.86.

27 13. The Parties agree that if the Plan discovers that it is in breach of any of its
28

obligations under this Settlement Agreement, it will promptly notify the Department in writing of the breach and what actions the Plan has taken or will undertake to cure the breach.

14. The Settlement Agreement may not be altered, amended, or otherwise changed or modified, except as provided herein or in writing signed by both of the Parties.

15. For purposes of construction, the language of the Settlement Agreement is to be construed broadly with respect to the nature and scope of the Department's oversight of the Plan and the Plan's obligations under the Settlement Agreement.

BACKGROUND AND HISTORY

16. The Plan is a full-service health care service plan licensed to operate in the State of California. As of December 31, 2022, the Plan had 9,056,931 enrollees in 32 of the 58 counties in California, making it the largest health care service plan by enrollees in the State. As of December 31, 2022, the Plan reported a total year revenue of \$91,367,748,000, tangible net equity of \$58,380,824,000, and cash equivalents of \$717,781,000.

17. The Plan provides medical and hospital services to its enrollees in California through Kaiser Foundation Hospitals, Inc., ("KFH") and two medical groups, The Permanente Medical Group, Inc. and Southern California Permanente Medical Group (each a "Medical Group" and together the "Medical Groups"), that cover the Northern California market and the Southern California market, respectively. The Plan's long history of coordinated care has, and continues to, provide significant benefits to its enrollees. However, the Department has repeatedly cited the Plan for deficiencies in its oversight of the Medical Groups. While the Plan has not delegated its quality oversight obligations to the Medical Groups, the Plan has failed to clearly define the Medical Groups' roles related to the provision of behavioral health services and there is a lack of role clarity between the Plan and the Medical Groups. In part because of this lack of role clarity, the Plan has exercised inconsistent oversight over the Medical Groups and has not always intervened when necessary to ensure compliance. It is the Department's observation that the close coordination between the Plan and the Medical Groups contributes to the Plan's inconsistent oversight of the Medical Groups. To address these and other issues

1 identified by the Department, the Plan must, among other requirements, have continuous
2 access to data, have full transparency to assess performance, and be fully engaged to take
3 action or intervene where necessary to ensure compliance. However, the Plan is ultimately
4 responsible for ensuring that compliant medical and behavioral health care services are
5 provided to Plan enrollees.

6 18. Since 2006, the Department has brought several enforcement actions against the
7 Plan for failure to consistently oversee the Medical Groups and ensure quality assurance
8 compliance relating to the provision of medical and, most significantly, behavioral health care
9 services. A history of these enforcement actions includes the following:

10 19. In March of 2006, the Department's Non-Routine Survey of the Plan's provision
11 of renal transplant and related services to Plan enrollees at the renal transplant center at KFH
12 – San Francisco (the "Transplant Center") and the Plan's oversight of the Transplant Center
13 and The Permanente Medical Group, identified the Plan's deficiencies in the following areas:
14 1) Failure to provide oversight of the Medical Group in the administration of its kidney
15 transplant program; 2) Failure to ensure that the Medical Group had sufficient administrative
16 capacity to transfer enrollees from externally contracted kidney transplant centers into the
17 medical group's kidney transplant program; 3) Failure to ensure that the Medical Group
18 consistently provided timely accessibility to medically required specialists in its kidney
19 transplant program; 4) Failure to ensure that the Medical Group utilized a formal system for
20 handling and processing member grievances; and 5) Failure to ensure that specialty services
21 related to kidney transplantation were provided in a manner providing continuity of care and
22 ready referral of patients. In response to these findings, the Plan instituted corrective actions to
23 address the issues identified related to the Plan's kidney transplant program.

24 20. On August 9, 2006, the Plan entered into a Consent Agreement where the Plan
25 agreed to pay a penalty of \$2 million and make a charitable donation of \$3 million for the
26 benefit of Donate Life California via the Eastbay Community Foundation. The Plan also agreed
27 to ensure continuity of care for patients and ensure ready access to medical services for
28

1 enrollees.

2 21. In 2007, the Department's 2006 Non-Routine Medical Survey pertaining to the
3 Plan's quality oversight program, identified the Plan's deficiencies in the following areas: 1)
4 Failure to establish a program to monitor and evaluate the care provided by each contracting
5 provider group to ensure the care provided meets professionally recognized standards of
6 practice; 2) Failure to inform each delegate of the scope of that delegate's Quality Assurance
7 ("QA") responsibilities and how it will be monitored by the Plan or have ongoing oversight
8 procedures in place to ensure that delegates are fulfilling all delegated QA responsibilities; 3)
9 Failure to ensure QA reports to the Plan's governing body from quality committees, to which it
10 delegates QA responsibilities, are sufficiently detailed to include findings and actions taken as
11 a result of the QA program and to identify those internal or contracting provider components
12 that the QA program has identified as presenting significant or chronic quality of care issues; 4)
13 Peer Review system is not designed to ensure the level of care meets professional recognized
14 standards of practice and not effective to identify and correct deficiencies in care; and 5) QA
15 system is not designed to ensure a level of care meeting professionally recognized standards
16 of practice is delivered to all enrollees and not effective to identify and correct deficiencies in
17 care.

18 22. On July 30, 2007, the Plan entered into a Consent Agreement where the Plan
19 agreed to pay a penalty of \$2 million and implement a corrective action plan which included
20 changes to the Plan's reporting process to allow the Plan to better monitor the health care
21 delivery system at the medical center level, implementation of a Peer Review Performance
22 Project and regular audits of the Plan's medical centers to ensure a uniform set of peer review
23 standards and consistency throughout the clinical departments, correction of Potential Quality
24 Issues (PQI), and implementation of program changes at the facility level.

25 23. In 2013, the Department's 2012 Routine Survey identified deficiencies related to
26 the ability of the Plan to provide enrollees with timely access to mental health appointments.
27 Specifically, the Plan: (1) failed to accurately measure behavioral health appointments based
28

1 in part on some medical centers and facilities ability to customize the Plan's Patient
2 Appointment Registration Reporting System (PARRS) beyond established Plan policies and
3 procedures; (2) failed to monitor appointment wait times, hindering the Plan's ability to detect
4 patterns of non-compliant wait times and leading to inaccurate compliance reports; (3) failed to
5 resolve access deficiencies through its QA Program and instead shifting responsibility onto the
6 medical center and/or the medical group's clinical and administrative management to establish
7 and implement corrective actions; and (4) failed to provide accurate and understandable
8 effective behavioral health education services.

9 24. On June 24, 2013, the Department filed an Accusation and a Cease and Desist
10 Order based on the deficiencies identified in the 2013 Routine Survey Final Report, seeking an
11 administrative penalty of \$4 million. In September of 2014, the Plan agreed to pay an
12 administrative penalty of \$4 million.

13 25. In 2015, the Department's Follow-Up Survey identified two uncorrected
14 deficiencies. Specifically, the Plan's Behavioral Health Quality Assurance Program failed to
15 ensure that effective corrective action was taken when deficiencies were identified, and the
16 Plan failed to provide accurate and understandable behavioral health benefit and coverage
17 education services for its members. In July of 2017, the Plan agreed to implement an
18 extensive corrective action plan to address and correct the identified deficiencies in the Plan's
19 behavioral health program ("2017 Agreement"). The corrective action plan focused on several
20 areas, including, but not limited to, improved documentation of the Plan's quality improvement
21 efforts for access compliance, improved monitoring of follow-up appointment access and
22 adherence to enrollees' treatment plans uniformly applied across both regions, and improved
23 integration of external contracted provider access data and oversight. The Plan represented to
24 the Department that the corrective action plan and associated deliverables under the 2017
25 Agreement were completed as of July 18, 2020.

26 26. The Department's current Enforcement Investigation has confirmed that certain
27 challenges by the Plan related to quality assurance, including monitoring, supervision, and
28

oversight of the Medical Groups continue to persist. These challenges have contributed to several of the issues addressed in this Settlement Agreement including maintenance of adequate provider networks and effective and functional quality assurance programs. While the Plan has worked to address these issues, despite multiple enforcement actions, and comprehensive corrective action plans, the Plan's shortfalls have continued and have impacted the Plan's ability to ensure adequate and timely access to behavioral health services to its enrollees.

2022 NON-ROUTINE SURVEY AND ENFORCEMENT INVESTIGATION
OF THE PLAN'S BEHAVIORAL HEALTH SERVICES

27. Acknowledging that the Plan was managing unprecedented statewide need for behavioral health services exacerbated by the impacts of the pandemic, on May 16, 2022, the Department issued notice to the Plan that the Department would commence a non-routine survey ("2022 Non-Routine Survey") in part, based on complaints received from enrollees, providers, and other stakeholders concerning the Plan's behavioral health operations. The 2022 Non-Routine Survey examined the Plan's Northern and Southern California behavioral health operations including, but not limited to, the Plan's internal and external contracted provider networks, timely access to care, processes for intake and follow-up appointments, appointment scheduling processes, levels of care and associated decision-making processes, medical record documentation and retention practices, and monitoring of urgent appointments. The Department conducted the onsite and virtual portions of the 2022 Non-Routine Survey on November 7-9, 2022, and November 14-15, 2022.

28. On August 15, 2022, approximately 2,000 licensed non-physician behavioral health clinician members of the National Union of Health Care Workers ("NUHW") began a labor strike in the Plan's Northern California region (the "NUHW Strike"). The strike which took place at a time of increased statewide need for behavioral health care, exacerbated the Plan's challenges in connection with the provision of behavioral health care services. On August 12, 2022, the Department initiated the Enforcement Investigation in advance of the NUHW Strike.

As part of the Enforcement Investigation, the Department conducted virtual interviews with Plan and Medical Group personnel on September 13-15, 2022. Additionally, the Department's Office of Enforcement engaged in document discovery and review of Plan documents and enrollee medical records. Given the scope of the strike and the heightened demand in the State, the Plan expected certain difficulties in meeting its enrollees' behavioral health care needs during the strike.

29. In summary, while the Plan was managing unprecedented statewide need for behavioral health services exacerbated by the pandemic and the NUHW strike, the Department's investigation identified deficiencies in the Plan's provision of behavioral health care services, many of which have been ongoing. As explained in more detail herein, the Department identified several areas of concern related to the Plan's provision of behavioral health care in Quality Assurance, Delegate and Provider Oversight, Timely Access, Network Adequacy, Grievance and Appeals, Mental Health Parity, and Communications, among others. The Department identified these areas of concern through document and medical records review and a combination of onsite and virtual interviews with Plan and Medical Group staff.

IDENTIFIED AREAS OF CONCERN WITH THE PLAN'S BEHAVIORAL HEALTH CARE SYSTEM

Area No 1: Oversight

(i) Quality Assurance and Delegation Oversight

30. Health care service plans are required to have procedures in place for continuous review of the quality of care, performance of medical personnel, utilization of services and facilities, and costs. (Health & Saf. Code, § 1370.) To meet the Department's requirements for a QA program, the program must, in part, continuously review the quality of care provided to ensure that the level of care meets professionally recognized standards of practice, quality of care problems are identified and corrected, and appropriate care which is consistent with professionally recognized standards of practice is not withheld or delayed for any reason. (Cal. Code Regs., tit. 28, § 1300.70, subd. (b)(1)(A)-(E).) The obligation of the

Plan to comply with the Knox Keene Act, cannot be waived, even if the Plan delegates any services to its Medical Groups. (Health & Saf. Code, § 1367, subd. (j).)

31. Despite several past agreements and corrective actions, including the 2017 Agreement, the Plan has been unable to consistently maintain compliance with Quality Assurance requirements. Specifically, the Plan acknowledges that it is accountable for quality oversight and is required to establish a Quality Assurance Program that continuously reviews and monitors quality of care, performance of medical personnel, utilization of services and facilities, and costs, and that ensures a network that is adequate to timely and appropriately meet enrollees' behavioral health needs. As evidenced in repeated survey findings since 2006 and past enforcement actions, the Plan has not put adequate procedures in place to continuously review and maintain compliance with these requirements.

(ii) **Oversight of Medical Groups and Providers**

32. The Department's investigation, including in connection with the NUHW Strike, confirms that the Plan lacks sufficient access to Medical Group data to ensure transparency and meet its continuous oversight of critical program functions. Specifically, in reference to behavioral health services, the Plan does not have an adequate system for monitoring and evaluating the care provided by the Medical Groups and external contracted providers (in-network providers that are contracted with the Medical Groups and are not directly employed by the Plan or the Medical Groups). Despite requirements that the Plan oversee quality of care, provider performance, and network adequacy, the Plan lacks systems and processes for adequate monitoring of the behavioral health policies and practices implemented by the Medical Groups and external contracted providers. The Plan's responsibility is more than passive monitoring; the Plan has an affirmative, continuous obligation to oversee the quality of its providers and provider network.

33. While the Plan has some processes and procedures in place to review and audit the Medical Groups and external contracted providers, these processes and procedures are not meeting the expected level of continuous oversight (which requires, among

1 other things, sufficient access to performance data as well as procedures to intervene if
2 necessary) to ensure level of care appropriateness, including treatment plan consistency and
3 appropriateness, and if care is being provided in a timely manner consistent with professionally
4 recognized standards. (Cal. Code Regs., tit. 28, § 1300.70, subd. (b)(1)(A)-(E).) In part, the
5 Plan's failure to meet its oversight obligations is exacerbated by limited access to necessary
6 Medical Group data. The Enforcement Investigation's review of enrollee medical records
7 observed a lack of documentation in enrollee charts and treatment plans. The Plan
8 acknowledges its difficulties in implementing effective oversight of the Medical Groups'
9 activities.

10 34. The Plan also lacks sufficient oversight of the external behavioral health
11 contracted providers. As noted above, while the external contracted providers are contracted
12 through the Medical Groups, the Plan has a continuing obligation to oversee these providers.
13 However, the Plan does not have effective processes in place, including for Plan intervention,
14 to ensure that enrollees referred to external contracted providers receive timely access to initial
15 and follow-up care, or that the treatment provided by external contracted providers is
16 compliant. (See Area No. 3(i) (External Contracted Provider Network), pp. 18-20.)

17 (iii) **Oversight of Level of Care Appropriateness**

18 35. All medical necessity determinations by a health care service plan
19 concerning behavioral health services, including service intensity, level of care placement,
20 continued stay, and transfer or discharge of enrollees diagnosed with mental health and
21 substance use disorders shall be conducted in accordance with Health and Safety Code
22 section 1374.721. (Health & Saf. Code, § 1374.72, subd. (a)(7).) Utilization review of all
23 covered behavioral health care services and benefits for the diagnosis, prevention, and
24 treatment of mental health and substance use disorders shall apply the criteria and guidelines
25 set forth in the most recent versions of treatment criteria developed by the nonprofit
26 professional association for the relevant clinical specialty. (Health & Saf. Code, § 1374.721,
27 subd. (b).) When conducting utilization review involving level of care placement decisions or
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any other patient care decisions that are within the scope of the nonprofit professional association criteria and guidelines, a health care service plan shall not apply different, additional, conflicting, or more restrictive utilization review criteria. (Health & Saf. Code, § 1374.721, subd. (c).) A plan may apply other utilization review criteria or guidelines if the health care service is either outside the scope of the nonprofit professional association criteria and guidelines, or relates to advancements in technology or types of care that are not covered in the most recent versions of the nonprofit professional association criteria and guidelines; however, a plan must still base the criteria on current generally accepted standards of mental health and substance use disorder care. (Health & Saf. Code, §§ 1374.721, subd. (c)(1)-(2); 1374.721, subd. (a).) These requirements apply to health plans and any entity or contracting provider that performs utilization review or utilization management functions on behalf of the health plan. (Health & Saf. Code, § 1374.721, subd. (h).)

36. To ensure proper use of the required criteria by the health plan, and any entity or contracting provider that performs utilization review or utilization management functions on its behalf, a health plan shall, inter alia, track, identify, and analyze how the criteria are used to certify care, deny care, and support the appeals process, conduct interrater reliability (IRR) testing to ensure consistency in utilization review decisions, and run IRR reports about how the clinical guidelines are used in conjunction with the utilization management process and parity compliance activities. (Health & Saf. Code, § 1374.721, subd. (e)(1)-(7).)

37. During the Enforcement Investigation, the Plan represented that it and the Medical Groups, as required by Senate Bill 855, use criteria and guidelines set forth in the most recent versions of treatment criteria developed by the nonprofit professional association for the relevant clinical specialty – specifically, Level of Care Utilization System (LOCUS), Child and Adolescent Level of Care Utilization System/Child and Adolescent Service Intensity Instrument (CALOCUS/CASII), Early Childhood Service Intensity Instrument (ECSII), World Professional Association for Transgender Health (WPATH), National Standards Project-2

(NSP-2), and American Society of Addiction Medicine (ASAM) guidelines – when making clinical determinations in relation to treatment of mental health and substance use disorders, as required by Health and Safety Code section 1374.721. However, the Department's review of 100 behavioral health medical records indicated that none of the medical records documented scores or criteria from the nonprofit professional associations, including LOCUS, CALOCUS, or ASAM. Additionally, the Plan did not provide clinical criteria documentation that would reflect implementation or use of the appropriate clinical criteria. The Department only found the Plan's use of the required clinical criteria in grievance files – analysis which was conducted via email – not copied to or documented in the enrollee's medical record.

38. Instead, the enrollee medical records reviewed by the Department indicate that Medical Group providers are presented with an enrollee's self-assessment BHI score through the Tridium platform. The enrollee medical records also include self-assessment scores from an Adult Outcome Questionnaire (AOQ) and Personal Health Questionnaire (PHQ). Further, the enrollee medical records include scores related to General Anxiety Disorder (GAD) and Alcohol Use Disorder (AUD).

39. While these scores are intended to measure an enrollee's treatment progress and assist in directing care going forward, the application of these scores is inconsistent across the board. Enrollee medical record review indicates that higher acuity scores do not consistently result in higher acuity placement or treatment frequency. Additionally, although the Plan conducts treatment plan audits, the Plan did not provide documentation reflecting that review of the substance of treatment plans was performed to determine the treatment plans' appropriateness for the enrollees' conditions or whether appropriate clinical criteria were utilized in developing the treatment plans. This lack of submitted documentation regarding substantive review of treatment plans further indicates the Plan lacks sufficient oversight of the Medical Groups.

40. Furthermore, the Plan has asserted that it conducts IRR testing to evaluate consistency with providers' application of utilization review criteria. However, the

Plan's IRR policy submitted with the Department in Filing no. 20211027-8 only applies to medical/surgical services. The Plan has not filed an IRR policy that applies to behavioral health services, nor did audit documentation address how IRR review of behavioral health services was to be conducted.

41. Of additional concern, Medical Group clinicians statewide consistently use Microsoft Teams chats and groups to make clinical decisions and determinations on level of care and treatment planning. The Plan's data retention policy for Microsoft Teams chat records states that generally records are deleted after 90 days, though this is subject to exceptions based on various document hold and preservation requirements. These clinical and treatment planning discussions are not consistently copied to the enrollees' medical records. As such, the Plan is not ensuring that the Medical Groups effectively document clinical reviews and determinations, and the Plan is unable to review the decisions for audit purposes necessary to carry out its oversight functions.

Area No. 2: Access

(i) Timely Access and Network Adequacy

42. Health care service plans must ensure that their networks have adequate capacity and availability of licensed providers to offer enrollees appointments for covered services that meet specific timeframes. (Health & Saf. Code, § 1367.03, subd. (a)(5); Cal. Code Regs., tit. 28, § 1300.67.2.2, subd. (c).) The obligation of a health plan to comply with the timely access requirements under Section 1367.03 shall not be waived if the health plan delegates to its provider groups or other contracting entities any services or activities that the health plan is required to perform. (Health & Saf. Code, § 1367.03, subd. (c).)

43. The Plan acknowledges that it lacks sufficient behavioral health providers in its Medical Groups and external contracted provider networks. In an effort to address the deficiencies identified herein, the Plan represented to the Department that it has made significant strides and improvements in expanding its behavioral health network. Nevertheless, this is an area that requires significant review and continued improvement. While the Plan has

1 the ultimate responsibility to ensure network adequacy to provide timely and appropriate
2 behavioral health care services, the Department has observed that the Plan relies in part on
3 the Medical Groups to monitor the Plan's network for sufficient capacity, and has delegated to
4 the Medical Groups the responsibility for contracting with external providers. However, the
5 Plan has not been performing adequate oversight of the process to ensure that the Medical
6 Groups are adequately performing this task. Specifically, the Plan has not continuously
7 reviewed necessary data nor intervened to ensure that the Plan has an adequate network. If
8 the Medical Groups are not performing their obligation to the Plan to ensure that behavioral
9 health care services are reasonably available to Plan enrollees, then the Plan must intervene
10 and take appropriate steps to address this issue. The requirement to maintain adequate
11 networks and ensure timely access is not waivable and rests with the Plan. This lack of clinical
12 staff has resulted in excessive wait times for enrollee individual therapy appointments, and has
13 potentially contributed to a heavy reliance on group therapy, as discussed in paragraph 50
14 below.

15 (ii) **Initiation of Care and Tracking First Appointments**

16 44. When seeking behavioral health care, the Enforcement Investigation
17 documented that the enrollee experience can be unnecessarily complicated and vary
18 significantly based on Plan or Medical Group interaction. Enrollees are provided with several
19 different phone numbers and methods of contact for appointments or to initiate care, and the
20 level of service an enrollee receives is inconsistent depending on which point of contact is
21 used.

22 45. Plan enrollees have complained that they face significant delays and
23 obstacles when seeking behavioral health therapy. These delays and obstacles are due, in
24 part, to the structure of the Plan's behavioral health care intake process, specifically related to
25 its Connect 2 Care program in the Northern California region. For new requests for behavioral
26 health care, enrollees are generally directed through Connect 2 Care after an enrollee has
27 been screened and tracked through the eConsult process that requires a brief clinical review or
28

1 triage of the enrollee's concerns. The Department recognizes that Connect 2 Care program
2 was a well-intentioned and innovative program developed by the Plan's Northern California
3 region in collaboration with NUHW, as well as in consult with the Department in connection
4 with the 2017 Agreement. However, the Plan acknowledges certain challenges with respect to
5 the program require its reevaluation by the Plan.

6 46. Connect 2 Care appointments are generally conducted remotely and the
7 Connect 2 Care clinicians do not become the enrollees' regular treating clinicians, which often
8 results in the enrollees having to explain their behavioral health concerns multiple times to
9 other clinicians. Additionally, the Plan's Northern California region generally performs all intake
10 appointments with only Medical Group providers, prohibiting enrollees from having intake
11 appointments with external contracted providers regardless of excessive appointment wait
12 times.

13 47. Even though the Connect 2 Care clinicians perform an assessment of
14 enrollees and are not the enrollees' treating providers (though in some instances they provide
15 initial care and/or interventions) the Plan has consistently tracked Connect 2 Care intake
16 assessments as appointments for services to satisfy the timely access requirements under
17 Health and Safety Code section 1367.03, subdivision (a)(5)(E) and (F), under the rationale that
18 the Plan believes that the intake process of evaluating a patient and determining the proper
19 treatment plan for the patient is a part of providing appropriate care. However, the Plan cannot
20 confirm that every appointment with a Connect 2 Care clinician results in a treatment plan
21 appropriate for the enrollee's condition, although as mentioned above the Plan conducts
22 treatment plan audits. Further, the Plan does not track the elapsed time between an enrollee's
23 initial request for a behavioral health appointment and the earliest date offered for the
24 appointment for services with a treating provider.

25 (iii) **Follow-up Appointments and Wait Times**

26 48. Beginning July 1, 2022, a health plan must ensure that its contracted
27 provider network has adequate capacity and availability of licensed health care providers to
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1 offer non-urgent appointments with nonphysician behavioral health providers within 10
2 business days of the prior appointment for enrollees in an ongoing course of treatment for an
3 ongoing mental health or substance use disorder condition. (Health & Saf. Code, § 1367.03,
4 subd. (a)(5)(F).) The wait time for an appointment may be extended if the referring or treating
5 licensed health care provider, or the health professional providing triage or screening services,
6 has determined and noted in the medical record that a longer wait time will not have a
7 detrimental impact on the health of the enrollee. (Health & Saf. Code, § 1367.03, subd.
8 (a)(5)(H).)

9 49. At the Department's request, the Plan provided analysis of appointment
10 wait times, which demonstrated that average wait times for non-urgent follow-up behavioral
11 health appointments were longer than prescribed by law. These delays are in part due to the
12 structure of the Plan's behavioral health care processes. The Plan's own analysis determined
13 that in 2021, average non-urgent follow-up appointments for behavioral health therapy were
14 completed within 19 business days of the prior appointment (average across the entire state).
15 In 2022, only 44% of behavioral health therapy non-urgent follow-up individual appointments
16 with internal providers were completed within 10 business days of the prior appointment,
17 whereas 93% of group appointments were completed within 10 business days of a prior
18 appointment. In 2022, average non-urgent follow-up individual appointments for behavioral
19 health therapy were completed within 18.1 business days of the prior appointment. From July
20 1, 2022, when Health and Safety Code section 1367.03, subdivision (a)(5)(F) went into effect,
21 through December 31, 2022, average non-urgent follow-up individual appointments for
22 behavioral health therapy were completed within 21.4 business days of the prior appointment
23 (average across the entire state). During the same time period the average non-urgent follow-
24 up appointment completion time for group therapy was 5 business days from the prior
25 appointment, and from July 1, 2022, through December 31, 2022, the average completion time
26 was 5.9 business days from the prior appointment.

27 50. The Department's review of enrollee medical records indicated a heavy
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1 reliance on outpatient group programs and classes to treat enrollees' behavioral health
2 conditions as opposed to individual therapy or higher levels of care. While outpatient group
3 therapy can be an effective mode of therapy when clinically appropriate, the Department's
4 review of 100 enrollee medical records identified that outpatient group programs and classes
5 were recommended or considered in 70 of the files reviewed. Enrollees have expressed
6 discomfort with receiving treatment primarily in a group setting, and the Enforcement
7 Investigation's review of enrollee medical records indicated that many enrollees chose not to
8 engage in group therapy settings but were not offered alternative treatments or more frequent
9 individual therapy. Further, the majority of the files did not state why an enrollee was referred
10 to a specific group, or whether the recommended group, received in conjunction with any other
11 therapeutic modality, represented a specific level of care consistent with the non-profit criteria
12 guidelines. Moreover, the use of groups and classes potentially obscures the wait times for
13 follow-up appointments if the recommended groups and classes do not actually offer the
14 medically necessary treatment and level of care that are appropriate for each enrollee's mental
15 health or substance use disorder.

16 51. In response to the follow-up appointment standards in Senate Bill 221,
17 effective July 1, 2022, the Plan, through its Medical Groups, implemented policies and
18 procedures, including standardized templates, for providers to use when documenting
19 enrollees' behavioral health appointments to help track follow-up appointments. However,
20 during the period that data was reviewed the Medical Groups had not enforced consistent use
21 of these templates, nor had the Medical Groups required all behavioral health providers to use
22 these templates. In addition, the templates could be altered at the discretion of individual
23 behavioral health providers.

24 **Area No. 3: Network and Referrals**

25 (i) **External Contracted Provider Network**

26 52. As discussed above, the Plan is required to continuously oversee and
27 monitor the external contracted providers to the same extent as the Medical Group providers.
28

1 The Plan has not adequately done so and has to a significant extent, instead, relied on the
2 Medical Groups. While the Plan has expanded and improved access to its external contracted
3 network, during the time period covered by the Department's Enforcement Investigation, the
4 Department observed that the Plan's lack of oversight and management of its network has
5 resulted in significant issues relating to initial and follow-up appointments with the Medical
6 Groups' processes of referring enrollees to external contracted providers.

7 53. At the Department's request, the Plan provided data analysis for wait
8 times for follow-up, non-urgent individual behavioral health therapy appointments with external
9 contracted providers. As mentioned above, the Plan's data analysis considered the times
10 between completed appointments, not offered appointments. The Plan's analysis
11 demonstrated that wait times for external contracted providers were better than for
12 appointments with Medical Group providers. According to the Plan, 83% of non-urgent
13 individual behavioral health therapy follow-up appointments with external contracted providers
14 were completed within 10 business days of the prior appointment. The Plan's analysis shows
15 that, in 2022, the average non-urgent individual behavioral health therapy follow-up
16 appointment was completed within 8.2 business days of the prior appointment, and from July
17 1, 2022, through December 31, 2022, was completed within 8.6 business days of the prior
18 appointment (average across the entire state).

19 54. A Clinical Care Pathways document allows Initial Assessment
20 Coordinators (IAC) the option to refer enrollees with moderate (PHQ/GAD scores up to 14) or
21 moderately severe acuity levels (PHQ/GAD scores of 15-19) to external contracted providers
22 through Connect 2 Care. However, the same document does not allow IACs the option to refer
23 enrollees with severe (PHQ/GAD scores above 20) acuity levels to refer directly to external
24 contracted providers through Connect 2 Care. The Plan asserts that PHQ/GAD scores are not
25 dispositive with respect to referrals or treatment.

26 55. The Plan does not directly arrange for enrollee appointments with external
27 contracted providers. Rather, in general, except for external contracted providers who use
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Tridium (below), the external contracted provider contacts the enrollee or, in some cases, the enrollee is required to contact the provider from a list of providers. Further, the Plan, in general, does not have immediate access to data to track whether referrals to all external contracted providers result in appointments and, if so, whether those appointments are timely. While some external contracted providers provide immediate booking data for initial appointments, not all do, and there is currently no Plan requirement that they do.

External Contracted Providers that Use Tridium

56. For some external contracted providers, initial appointments are scheduled through the Tridium system and documented in the KP HealthConnect medical record, which is the centralized medical record system used by the Plan. However, external contracted providers are not required to document clinical or progress notes in the KP HealthConnect medical record. Record of ongoing patient encounters may be documented through Tridium if the external contracted provider performs a progress evaluation through the program. However, if no progress evaluation is performed for an appointment, no documentation of the appointment would immediately appear in the KP HealthConnect medical record.

External Providers referred through Tapestry

57. For enrollees referred to external contracted providers that do not use Tridium, a referral letter is generated through Tapestry. The letter sent to the enrollee includes the name of the external provider network and the contact information for scheduling an appointment. The enrollee, or the external contracted provider, must then schedule an appointment. The Plan does not generally have direct access to the external contracted providers' scheduling systems, although there may be exceptions for specific external contracted providers. As such, a specific provider may show as having appointment availability when the referral is made, but the information the Plan is basing this determination on may be outdated.

1 (ii) **Adequacy of Higher Acuity Treatment Facilities**

2 58. During the Enforcement Investigation, the Department requested data on
3 the contracted Partial Hospitalization Program (PHP) and Residential Treatment Programs
4 (RTC). The Plan provided a list of 78 contracted PHP facilities and 144 contracted RTC
5 facilities. Twelve of the reported PHP facilities were Plan Hospitals. The Plan randomly
6 contacted a sample of the non-Plan contracted facilities to determine the soonest available
7 admission date. Of the 53 RTC facilities sampled, only 29 had availability within a week. Of the
8 37 PHP contracted facilities sampled, 12 responded that they were not a PHP program; 7 of
9 the facilities had a waitlist of longer than two weeks; 3 of the facilities were closed temporarily
10 or permanently; and 1 was no longer contracted. Only 14 of the sampled PHP facilities had
11 immediate availability or an opening within two weeks for PHP services. The Plan's shortage of
12 contracted PHP and RTC facilities with current availability indicates the Plan has an
13 inadequate network of facilities that are able to treat enrollees with higher acuity levels in an
14 appropriate treatment milieu. While the Department is aware of a general shortage of PHP and
15 RTC providers in the state, the Plan can do more to expand its network.

16 (iii) **Referrals to Out of Network Providers**

17 59. A health care service plan shall arrange for the provision of covered
18 services from providers outside the plan's network if not available in network where medically
19 necessary for the enrollee's condition. (Health & Saf. Code, § 1367.03, subd. (a)(7)(C).) For
20 medically necessary behavioral health services not available in network within the geographic
21 region, or within timely access standards, the plan shall arrange for coverage of such services
22 outside the plan's network in accordance with Health and Safety Code section 1374.72,
23 subdivision (d). (*Ibid.*)

24 60. The Plan has not consistently arranged for out-of-network care when the
25 Plan cannot offer a member a timely appointment. The Plan relies on the Medical Groups to
26 make out-of-network referrals, and the Plan has not exercised sufficient performance
27 monitoring or continuous oversight to ensure appropriate access to out-of-network providers.
28

1 The Enforcement Investigation included a review of grievance files wherein an enrollee was
2 requesting referral or coverage for out of network care because the Plan could not offer a
3 timely in-network appointment and, the Plan, with few exceptions, would refer the enrollee to
4 its external contracted providers.

5 **Area No. 4: Grievance and Appeals**

6 61. Health care service plans must have a grievance system established in
7 writing and approved by the Department which provides reasonable procedures that shall
8 ensure adequate consideration of enrollee grievances and rectification where appropriate.
9 (Health & Saf. Code, § 1368, subd. (a)(1).) The health plan's grievance process shall provide
10 for written acknowledgement within five calendar days of receipt of a grievance unless an
11 exception applies. (Health & Saf. Code, § 1368, subd. (a)(4)(A).) The grievance system shall
12 require the health plan to resolve standard grievances within 30 days. (Health & Saf Code, §
13 1368.01, subd. (a).) A grievance regarding a delay or difficulty in obtaining an appointment for
14 covered services may constitute an initial request for an appointment. (Cal. Code Regs, tit. 28,
15 § 1300.67.2.2, subd. (b)(2).)

16 62. During the Enforcement Investigation, interviews conducted with Plan and
17 Medical Group staff demonstrated that, in an effort to address the difficulty in locating timely
18 behavioral health appointments, the Plan implemented a practice of routing appointment
19 requests through its grievance and appeals process. This can result in enrollees receiving
20 offered appointments and referrals to external providers outside of the timely access timelines,
21 given that by the time the grievance is resolved, the timeframe to receive a timely appointment
22 may have passed. The Enforcement Investigation's review of grievance files related to
23 behavioral health care appointments noted that in 118 files reviewed, 28 resulted in referrals to
24 external providers. Of the 28 external provider referrals, 22 of the referrals did not provide a
25 specific appointment date, but instead stated that a referral had been initiated and the enrollee
26 would receive the referral in 7-10 days.

27 63. The Plan provided the Department with grievance and appeals data for
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the period of August 8, 2022, through October 21, 2022, relating to behavioral health services in the Plan's Northern California region. The Department noted that during that timeframe, the Plan opened 29,906 grievances and 18,779² of those grievances were subject to the 30-day grievance resolution requirement. However, 5,878³ grievances, or 31.3%, of the 18,779 grievances were not resolved and closed within the required 30 days.

64. The Department noted 27,863⁴ grievances that were subject to the requirement to issue a written acknowledgment of the grievance within 5 calendar days, the Plan failed to acknowledge receipt of 5,052⁵ grievances out of the 27,863 submitted. The Plan's routing of appointment requests through its grievance and appeals process during the NUHW Strike also resulted in delayed grievance acknowledgments and responses through the Plan's already overwhelmed grievance and appeals system. Additionally, the Plan's practice of referring enrollees to external providers, which requires a referral letter to be issued, resulted in multiple grievances that were not adequately resolved in 30 days.

Area No. 5: Cancelled Appointments During the NUHW Strike

65. The law requires that when it is necessary for a provider or enrollee to reschedule an appointment, the appointment shall be promptly rescheduled in a manner that is appropriate for the enrollee's health care needs and ensures continuity of care consistent with good professional practice. (Health & Saf. Code, § 1367.03, subd, (a)(3); Cal. Code Regs., tit. 28. 1300.67.2.2, subd. (c)(3).)

66. As noted above, the NUHW Strike created an unusually difficult

² 18,779 represents the total number of grievances received by the Plan at least 30 days prior to the end of the reporting period on October 21, 2022.

³ 5,878 represents the total number of grievances that were resolved or in "pending" status beyond 30 days of the receipt date, excluding grievances that were resolved on the next business day following a weekend or holiday, and grievances that were withdrawn before the expiration of the 30-day response period.

⁴ 27,863 represents the total number of grievances received by the Plan at least 5 days prior to the end of the reporting period on October 21, 2022.

⁵ 5,052 represents the total number of grievances where an acknowledgement letter was not sent to the enrollee within the required 5 days, excluding grievances that were resolved or withdrawn within the 5-day timeframe.

1 circumstance for the Plan and the Medical Groups to manage. While the Plan faced significant
2 challenges related to the NUHW Strike, the Plan was obligated to comply with timely access
3 requirements during the NUHW Strike period. During the NUHW Strike in Northern California,
4 the Plan reported that 111,803 behavioral health appointments (individual and group) were
5 cancelled, affecting a total of 63,808 enrollees. Of these appointments, 69,080 behavioral
6 health appointments (individual and group) were cancelled by the Medical Group, affecting a
7 total of 46,631 enrollees. Of the Medical Group-initiated cancelled appointments, there were
8 29,645 enrollees for whom the cancelled appointment was not rescheduled internally, or for
9 whom the cancelled appointment was rescheduled internally outside of 10 business days.
10 However, the Enforcement Investigation revealed multiple appointments – either cancelled,
11 rescheduled, or bridge appointments – that were not reflected in the Plan’s appointment
12 documentation, casting doubt on the accuracy of the Plan’s calculations and appointment
13 tracking system.

14 67. During the NUHW Strike, the only means available to the Plan to fully
15 determine whether an offered appointment was medically appropriate was a chart audit of
16 each member’s records conducted by the Plan’s Appointment Audit Team. The Plan provided
17 a Rescheduling Review Job Aid to the Audit Team that instructed the reviewer to notate
18 whether a treatment plan and clinically appropriate appointment wait time was documented in
19 the enrollee’s medical record. The Auditors were then instructed to confirm if the enrollee’s
20 provider had documented that appointments rescheduled outside of the recommended wait
21 time would not be detrimental to the enrollee. However, they were not instructed to review if
22 the appointment cancellation or rescheduling was consistent with good professional practices
23 based on the provider’s most recent assessment of the enrollee or the enrollee’s most recent
24 health care needs. If a cancelled appointment was not rescheduled, was rescheduled outside
25 of 10 business days (but did not reflect non-detriment documentation), or reflected risk criteria,
26 the Plan’s Audit Team would refer the appointment to the Medical Group’s Audit Team for
27 further review and potential rescheduling. In addition to the Medical Group Audit Team’s
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1 review, the Medical Group would also apply its usual workflow to flag and reschedule
2 appointments that needed rescheduling.

3 68. The Department noted in its Enforcement Investigation that the Plan's
4 appointment cancellation audit criteria training was inconsistent. The Plan provided its
5 Behavioral Health Chart Review Teaching Guide, which does not include a publish date, and
6 instructs reviewers that behavioral health groups or classes do not count as an appointment for
7 tracking and audit purposes. However, the Plan's New, Group, Class Appointment Audit guide,
8 dated September 24, 2022, instructs reviewers that groups and classes do count as
9 appointments for audit purposes. Finally, a Plan document, titled IRR Review Chart, dated
10 September 19, 2022, instructs reviewers not to count groups or classes as appointments for
11 tracking and audit purposes. The Plan's inconsistent guidance on the treatment of classes and
12 groups given to the Audit Team further calls into question the accuracy of the Audit Team's
13 results and data concerning the thousands of cancelled appointments during the NUHW Strike.

14 **Area No. 6: Mental Health Parity**

15 69. Health care service plans shall provide coverage for medically necessary
16 treatment of mental health and substance use disorders under the same terms and conditions
17 applied to other medical conditions. (Health & Saf. Code, § 1374.72, subd. (a)(1).)

18 70. Enrollees who seek behavioral health services face greater obstacles and
19 challenges accessing behavioral health care and, even after obtaining it, retaining such care.
20 As discussed above, in order to access a behavioral health provider, Plan enrollees in the
21 Northern California services area often have to explain their behavioral health concerns
22 multiple times to different clinicians. In contrast, an enrollee generally is not required to
23 undergo multiple screenings before accessing certain other routine medical care. The Plan
24 represented that certain medical centers, primarily in the Plan's Southern California service
25 area, have in place limitations on referrals, and enrollees are often unaware of the limitations.
26 In some instances, referrals to external contracted providers were limited to instances where a
27 Medical Group provider was unavailable. Additionally, the Plan represented that in certain
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1 medical centers, enrollees generally could not schedule multiple behavioral health
2 appointments at one time, despite being provided a treatment plan requiring specific
3 appointment frequency. For example, the Plan asserted that in some medical centers,
4 enrollees were generally limited to scheduling one behavioral health appointment at a time
5 while enrollees under other medical treatment plans do not face the same restriction.

6 **Area No. 7: Communications and Advertising**

7 71. Health care service plans may not use or permit the use of any advertising
8 or solicitation that is untrue or misleading. (Health & Saf. Code, § 1360, subd. (a).) A written or
9 printed statement or item of information is misleading whether or not literally true, if in total the
10 statement or item may be understood by a person not possessing special knowledge regarding
11 health care coverage, indicates any benefit or advantage or absence of any exclusion
12 limitation or disadvantage. (Health & Saf. Code, § 1360, subd. (a)(2). Moreover, California's
13 Business and Professions Codes (e.g., Sections 17200, et seq.) prohibit inaccurate advertising
14 and communications.

15 72. The Plan has had a consistent and ongoing issue with communications
16 with enrollees regarding access to behavioral health services. The Plan reported that enrollees
17 have complained that they have difficulty understanding how to access behavioral health care,
18 including how to obtain referrals to external contracted providers. While enrollees do not
19 require a PCP referral to access initial behavioral health services, enrollees cannot typically
20 self-refer to external contracted providers for behavioral health services; however, when
21 enrollees do self-refer to external contracted providers, it is the Plan's policy to reimburse for
22 such treatment. However, certain Plan-issued communications could lead enrollees to believe
23 they can self-refer to external contracted providers.

24 73. By way of example, the Plan's Evidence of Coverage ("EOC") defines a
25 "Plan Provider" as "A Plan Hospital, a Plan Physician, the Medical Group, a Plan Pharmacy, or
26 any other health care provider that Health Plan designates as a Plan Provider." The EOC
27 defines a "Non-Plan Provider" as "A provider other than a Plan Provider." These definitions
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may cause confusion to enrollees when determining if external contracted providers are considered Plan Providers or Non-Plan Providers. Furthermore, the Plan's use of the term "External (Out-of-Plan) Referrals" (which refers to out-of-network providers) in its Utilization Management document may create further confusion to enrollees with no specialized knowledge regarding health care coverage. As each type of provider classification carries different referral or prior-authorization requirements, the unclear use of each term may result in enrollees misunderstanding the benefits under the Plan.

74. The Department identified individual clinical records where requests were submitted by enrollees and Medical Group Providers for referrals to external contracted providers and out-of-network providers. The documents indicated that a referral to external contracted providers required approval by the Medical Group, although the Medical Group does not make coverage decisions for the Plan. This process may be confusing to enrollees with no specialized knowledge regarding health care coverage when compared against the language pertaining to referrals to Non-Medical Group providers contained in the Plan-issued EOC.

ACKNOWLEDGEMENTS

75. Overall, the Department has noted that the Plan's processes, systems, and level of oversight must improve. The Plan has not consistently performed continuous review and appropriate oversight, including intervening where needed, of quality assurance, delegated functions, timely access, network adequacy, and grievance and appeals, among other things, related to behavioral health services.

76. While, as described above, the Department has identified deficiencies, the Plan has represented that, in recent years and since the Department's investigation began, the Plan has invested significant sums in improving its behavioral health programs and access including the following: (i) since 2020, the Plan's annual cost to provide mental health treatment to members has increased by \$1.1 Billion; (ii) since the start of the Non-Routine Survey, KP has increased its spending by \$450 million on outpatient treatment, intensive

1 outpatient treatment (which includes residential treatment for addiction medicine) and autism;
2 and (iii) since 2020 the Plan invested \$195 million in new built clinic facilities for 329 new
3 mental health provider offices.

4 77. After engaging in discussions with the Department, the Plan accepts the
5 above discussed areas of concern and has expressed willingness to undertake a systemic
6 overhaul and transformational change of the Plan's behavioral health delivery system to
7 improve the Plan's enrollees' experiences and treatment outcomes. In addition to the above
8 areas of concern identified by the Department, the Plan further acknowledges areas needing
9 improvement with respect to the Plan's internal and external contracted provider networks,
10 timely access to care, processes for intake and follow-up appointments, appointment
11 scheduling processes, levels of care and associated decision-making processes, medical
12 record documentation and retention practices, monitoring of urgent appointments, and
13 communications with members.

14 78. The Plan agrees that it is in the best interest of the Plan's enrollees for the
15 Plan to enter into this Settlement Agreement and resolve the Enforcement Investigation and
16 2022 Non-Routine Survey. The Department also acknowledges the Plan's and Medical
17 Groups' commitment to care of Plan enrollees and patients.

18 79. The Plan agrees to be bound by all settlement terms and obligations as
19 set forth in this Settlement Agreement, including the imposition of a corrective action plan, and
20 acknowledges that failure to comply with the corrective action plan will subject the Plan to
21 disciplinary action under Health and Safety Code section 1386, subdivision (b)(19). Failure to
22 comply with the terms of the agreed-upon corrective action plan and/or settlement terms and
23 obligations may subject the Plan to additional administrative penalties, and any other remedies
24 available to the Director.

25 80. During the term of this Settlement Agreement, including during the
26 Consultation Period (as set forth in paragraph 107 below), the Department's Office of
27 Enforcement may become aware of new facts arising after the execution of this Settlement
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Agreement which are related to the subject matter of the Corrective Action Areas and which the Department may want the Plan to investigate and/or address. Should that happen, the Office of Enforcement may request to meet and confer with the Plan to determine if the issues can be, or are being, addressed through the Corrective Action Work Plan. Subject to the provisions of this Settlement Agreement and the release of claims herein, the Department may utilize any means necessary to ensure the Plan's compliance with the Knox Keene Act and regulations.

81. At the conclusion of the 2022 Non-Routine Survey, the Department will issue a final report as required by Health and Safety Code section 1380, subdivision (h)(2), that identifies deficiencies that have been corrected by the Plan and describes remedial actions for deficiencies for which correction is or will be in progress. By entering into this Settlement Agreement, the Plan is not waiving any rights it has under the law, including the Knox-Keene Act, with respect to the report.

82. The Plan agrees that any deficiencies identified in the 2022 Non-Routine Survey Final Report that are not addressed in the Corrective Action Work Plan developed under paragraph 105, shall be addressed by the Plan through a modified Corrective Action Work Plan subject to the Department's approval.

83. The Plan agrees that the Department shall conduct a Follow-up Survey to the 2022 Non-Routine Survey Final Report as required by Health and Safety Code section 1380, subdivision (i)(2). Any uncorrected deficiencies identified in the 2022 Non-Routine Survey Follow-up Report that are not encompassed by the terms of this Settlement Agreement, and any penalty amounts paid by the Plan under this Settlement Agreement are exclusive of any future penalties the Department may determine are warranted by the 2022 Non-Routine Survey Follow-up Report.

MONETARY PENALTY

84. The Plan agrees to pay an administrative penalty in the amount of \$50 Million (Fifty Million dollars) ("Penalty Amount") to resolve the issues identified by the

1 Enforcement Investigation and 2022 Non-Routine Survey Final Report. The Plan is hereby
2 ordered to pay to the Department \$40 Million (Forty Million dollars) of the Penalty Amount
3 within 10 business days of the effective date of this Settlement Agreement.

4 85. The Department, through its Director, has determined that the remaining
5 \$10 Million (Ten Million dollars) of the Penalty Amount shall be paid only if, after the conclusion
6 of the Consultation Period, the Department concludes that the Plan unreasonably failed to
7 meet its obligations under this Settlement Agreement. The payment of this amount would be in
8 addition to any penalties the Director may assess pursuant to Health and Safety Code section
9 1380, subdivision (i)(2).

10 **INVESTMENT COMMITMENT**

11 86. In addition to the Penalty Amount, the Plan agrees to invest \$150 Million
12 (One Hundred and Fifty Million dollars) ("Investment Amount") in the next five years to expand
13 and improve behavioral health for Plan enrollees and for community members throughout
14 California, including developing and implementing new models of care, investing in
15 partnerships and training to expand access to care. The Plan shall have the discretion to
16 determine the specific amounts and projects toward which it will invest the Investment Amount.
17 It is the Department's intention and desire that the Plan's investments include projects
18 designed to develop new models of care that set the standards for behavioral health care in
19 California. The Plan's investment shall include the following projects and programs:

- 20 (1) Workforce development programs that transform the landscape for MH
21 service delivery by growing diverse mental health professionals for mental health
22 and substance use disorder care (including Mental Health Scholars Academy
23 and the Behavioral Health Training Institute programs);
- 24 (2) Partnerships with local schools and universities and engagement with local
25 charitable organizations/partners for expansion of community mental health
26 training programs;
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- (3) Programs designed to decrease stigma around seeking mental health/substance use disorder care and reduce youth suicide prevalence;
- (4) Prevention and Early Intervention programs for mental health and wellness programs for school aged children and families;
- (5) Programs designed to support reductions in depression/anxiety for California's youth through cognitive behavioral therapy informed approaches at middle schools across California to equip students with the knowledge and skills to reduce or prevent symptoms;
- (6) Growing community training pathways for peers/para-professionals to provide support for Californians on their mental health and substance use disorder care journey; and
- (7) Supporting/investing in community based organizations providing mental health and substance use disorder care for high risk and high acuity community members.

87. In connection with the Quarterly Meetings required under this Settlement Agreement (Paragraph 110 below), the Plan shall provide information to the Department regarding its anticipated investments of any of the Investment Amounts to enable the Department to provide feedback and ensure that it is within the scope of this Settlement Agreement.

RECITALS

88. The acknowledgments made by the Plan herein are only for the purposes of this Settlement Agreement and shall not be admissible in any other criminal or civil proceeding, but may be used by the Department in future administrative proceedings and/or in considering penalties against the Plan.

89. In the event of any future litigation (administrative or civil) between the Department and the Plan, the Plan agrees it will not object on the basis of California Evidence Code section 1151 to the admissibility of corrective actions taken by the Plan under this

1 Settlement Agreement.

2 90. Each signatory below warrants and represents that she or he has authority
3 to sign on behalf of, and to legally bind, her or his respective entity.

4 91. This Settlement Agreement shall be binding on all Parties, including all
5 principals, executors, administrators, representatives, and successors in interest.

6 92. This Settlement Agreement is the entire agreement between the Parties
7 and supersedes any prior negotiations, representations, or agreements, whether written or
8 oral.

9 93. This Settlement Agreement may not be altered, amended, or otherwise
10 changed or modified, except in writing signed by both Parties.

11 94. This Settlement Agreement shall take effect upon execution by both
12 Parties.

13 95. The Parties understand and agree that facsimile or PDF copies of the hard
14 copy of the original electronically-signed Settlement Agreement shall have the same force and
15 effect as the original. After the Plan representative has executed the document, the Plan shall
16 forward the hard copy of its original electronically-signed Settlement Agreement to the
17 Department of Managed Health Care's Office of Enforcement, located at 980 9th Street, Suite
18 500, Sacramento, CA 95814. This Settlement Agreement may be executed in counterparts.

19 **AGREEMENT**

20 WHEREFORE, the parties hereby agree and stipulate as follows:

21 96. **Comply with all laws.** The Plan shall obey all federal, state, and local
22 laws, rules, and regulations governing health care service plans. Nothing in this Settlement
23 Agreement limits the Plan's obligations to comply with the requirements of all applicable state
24 and federal laws and regulations. In the event that the Plan contends that any provision or
25 portion of this Settlement Agreement is inconsistent with or invalid based on (1) legislation
26 enacted or regulations adopted by the State of California or federal government which have
27 not been superseded, or (2) a final judgment has been entered by a court of competent
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jurisdiction that is binding precedent from which no appeal or other judicial review has been taken, or, if appealed, the final judgment has been affirmed by the court of last resort and is no longer subject to further appeal or review, the process described below shall be followed.

97. The Plan will give written notice to the Department of its contention that there has been a change in the law and shall indicate that such notice is being provided pursuant to this Paragraph 97 of the Settlement Agreement. Such notice shall be sent to the attention of the Director. The Parties shall meet and confer in good faith, and if the Parties do not reach agreement within sixty (60) days after the Department's receipt of the Plan's written notice referenced above, the Plan may file a declaratory relief action on the question of whether, and to what extent, the alleged change in the law affects the Plan's responsibility to continue to perform in accordance with this Settlement Agreement. Any legal action taken by the Plan shall be venued in accordance with Paragraph 102, and may not be filed by the Plan any sooner than the sixty-first (61st) day after the Department receives the Plan's written notice. The Plan shall continue to perform in strict compliance with this Settlement Agreement (1) while the Parties are engaging in the meet and confer process, and (2) during the pendency of any such legal action and/or proceeding relating to the change in law that allegedly conflicts with the Plan's obligations under the Settlement Agreement, and (3) until a final and enforceable judgment is entered in favor of the Plan (i.e., a final judgment has been entered from which no appeal or other judicial review has been taken, or if appealed, the final judgment has been affirmed by the court of last resort and is no longer subject to further appeal or review). The Department shall retain its full enforcement authority regarding the terms of this Settlement Agreement during the pendency of litigation regarding the Plan's contention that a change in the law relieves it of its responsibility to continue to perform in accordance with this Settlement Agreement.

98. This Settlement Agreement fully and finally resolves the Enforcement Investigation and the 2022 Non-Routine Survey Final Report, and any other administrative or civil action based on or related to the Enforcement Investigation and the 2022 Non-Routine

1 Survey Final Report, and/or facts and circumstances upon which the Enforcement
2 Investigation and the 2022 Non-Routine Survey Final Report are based on or before the date
3 this Settlement Agreement is executed. The Department agrees to administratively close any
4 open or pending enforcement referrals for which the alleged violations are addressed in the
5 corrective action plan set forth herein. Nothing in this Settlement Agreement shall constitute a
6 disclaimer, accord, relinquishment, estoppel, or a waiver of any form of any right or authority of
7 the Department, including without limitation to continue with its current investigations, surveys,
8 audits, or examinations and/or to exercise its enforcement and disciplinary authority relative to,
9 or independent of, those investigations, audits or examinations, with the exception of those
10 made the subject of the Enforcement Investigation, and the 2022 Non-Routine Survey Final
11 Report. Subject to the foregoing release, nothing in this Settlement Agreement shall limit,
12 affect, or inhibit in any manner the Department's powers to initiate any new or additional
13 investigations, routine or non-routine audits or examinations, or to require and/or order any
14 remediation, penalties, and/or other remedies the Department deems necessary or appropriate
15 to carry out the objectives and purposes of this Settlement Agreement and/or the Knox-Keene
16 Act, including, without limitation, actions necessary to protect and/or effectuate remediation to
17 enrollees and/or providers.

18 99. **Director's Order.** The Parties agree that the terms of this Settlement
19 Agreement are not only a contract but they are additionally an Order of the Director, and the
20 Department may exercise any and all aspects of its enforcement authority to enforce the Plan's
21 compliance with any and/or all of its obligations under this Settlement Agreement, and that any
22 remedy available to the Director is not exclusive, and may be sought and employed in any
23 combination with civil, criminal, and other administrative remedies deemed warranted by the
24 Director to enforce this Settlement Agreement.

25 100. Given its role as the regulator of health care service plans in California
26 and with respect to interpretation of the Knox-Keene Act and regulations promulgated
27 thereunder, the Department will monitor and evaluate the Plan's provision of behavioral health
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1 services and the Plan's compliance with its obligations under applicable laws including the
2 Knox-Keene Act, this Settlement Agreement and the Corrective Action Plan required herein. In
3 so doing, the Department will exercise the discretion vested in it by applicable law and rely on
4 its expertise regarding the subject matter of this Settlement Agreement to monitor the Plan and
5 ensure its compliance with all applicable laws and this Settlement Agreement.

6 101. **Governing Law.** This Settlement Agreement shall be governed by and
7 construed in accordance with the laws of the State of California without regard to conflicts of
8 law principles.

9 102. **Venue.** Each Party irrevocably submits to the jurisdiction of the California
10 Office of Administrative Hearings located in Sacramento, California, or the California Superior
11 Court located in Sacramento County, California, over any suit, action, or other proceeding
12 arising out of or relating to this Settlement Agreement, and irrevocably agrees that all claims
13 with respect to any such suit, action, or proceeding may be heard and determined in such
14 venue.

15 103. **Severability.** In the event any term or portions of any term set forth herein
16 shall be declared invalid or unenforceable for any reason by a court of competent jurisdiction,
17 such term or any portion of any term, to the extent declared invalid or unenforceable, shall not
18 affect the validity or enforceability of any other terms, and such other terms shall remain in full
19 force and effect and shall be enforceable to the maximum extent permitted by applicable law.

20 **CORRECTIVE ACTION PLAN**

21 104. **Retention of Consulting Team.** The Plan shall retain a consulting team
22 ("Consulting Team") pursuant to the Consultation Agreement discussed in Paragraph 106. The
23 Plan will bear all costs of the Consulting Team's services throughout the Consultation Period.

24 105. **Purpose of the Consulting Team.** The Plan will work with the Consulting
25 Team to develop a work plan (the "Corrective Action Work Plan") to address the Corrective
26 Action Areas. The Corrective Action Work Plan will set forth corrective actions, performance
27 measures, reporting provisions, timelines, deadlines, deliverables, benchmarks, and expected
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outcomes. The Consulting Team will also aid the Plan with respect to implementing the Corrective Action Work Plan and with respect to reporting to the Department regarding the Plan's progress.

106. **Consultation Agreement.** Prior to the execution of the Settlement Agreement, the Plan and the Consulting Team will execute an agreement setting forth the scope of the Consulting Team's services ("Consultation Agreement") related to this Settlement Agreement. In the event of conflict between the Settlement Agreement and the Consultation Agreement, the Settlement Agreement controls.

107. **Consultation Period.** Except as modified pursuant to Paragraph 108 below, the Consultation Period shall be two years from the date this Settlement Agreement is finalized (the “Consultation Period”).

108. **Extension of the Consultation Period.** The Consultation Period may be extended at the Plan's discretion; however, the Department shall make the final determination as to whether the Plan's decision complies with the terms of the Corrective Action Plan.

109. **Quarterly Reports.** The Consulting Team shall provide the Department with status updates and progress review reports of the activities performed and outcomes pursuant to the Settlement Agreement on a quarterly basis during the Consultation Period.

110. **Quarterly Meetings.** The Plan, the Department, and the Consulting Team will meet telephonically, virtually, or in-person on a quarterly basis during the Consultation Period. The purpose of these meetings will be to provide a progress review and status update of the activities performed and outcomes pursuant to the Settlement Agreement.

Corrective Action Areas

111. The Plan and Consulting Team will focus on the following **Corrective Action Areas** in order to help ensure enrollees receive timely access to medically necessary behavioral health services and to aid the Plan's Behavioral Health Quality Assurance program in ensuring that effective action is taken to improve care where deficiencies are identified in service areas, including accessibility, availability, and continuity of care. The Corrective Action

Areas are not intended to be an exhaustive list of actions the Plan must take to address each area. Rather, they are intended to provide guidance and set the minimum actions the Plan must undertake. The Correction Action process is intended to be dynamic and subject to continued modification through the Corrective Action Work Plan process as needed to address the issues and deficiencies the Department has identified.

Corrective Action Area No. 1: Oversight

The Plan shall improve its Quality Assurance Program, including continuous performance review and enhanced oversight of the Medical Groups and external contracted providers to ensure timely access, network adequacy, continuity of care, level of care, and quality of care for behavioral health services. The Plan must also implement policies and procedures for intervention whenever necessary, including, for example, if the Medical Groups are unable to ensure that behavioral health care services are reasonably available to Plan enrollees. The corrective actions the Plan shall implement on this topic must include at minimum, the following:

- A. The Plan shall create quality metrics and performance standards that are established and routinely monitored by the Plan and documented to ensure enrollees receive timely behavioral health appointments, as well as medically necessary behavioral health services, that are consistent with the standards under the Knox-Keene Act and regulations promulgated thereunder. Issues that are identified will be escalated appropriately and corrective action will be taken in a timely manner. (See Health & Saf. Code, §§ 1367.03, 1370, 1374.72, 1374.721; Cal. Code Regs., tit. 28, §§ 1300.67.2.2, 1300.70, subd. (a)(3), 1300.70, subds. (b)(2)(G), 1300.70, subd. (b)(2)(H), 1300.74.72.)
- B. The Plan shall ensure that it has full transparency of and access to all necessary policies, practices, standards, and data, including real-time data, from the Medical Groups and from external contracted providers to conduct the Plan's oversight and review of the Medical Groups and external contracted providers,

1 including, but not limited to, encounter data, appointment data, medical records,
2 and claims information. (See Health & Saf. Code, § 1370; Cal. Code Regs., tit.
3 28, §§ 1300.67.2.2, 1300.70, subd. (a)(3), 1300.70, subd. (b)(2)(G), 1300.70,
4 subd. (b)(2)(H).)

5 C. The Plan shall improve its development of internal corrective action plans
6 (“CAP”). The Plan shall develop a process to implement internal CAPs in a way
7 that fully documents and analyzes the root cause of the issue to be corrected and
8 sets forth clear corrective action interventions, including improvement
9 benchmarks. When a CAP does not result in timely improved results, the Plan
10 shall have a process, including associated documentation, that modifies the CAP
11 to demonstrate enhanced analysis and intensified efforts. (See Cal. Code Regs.,
12 tit. 28, § 1300.67.2.2, subd. (d)(3).)

13 D. The Plan shall improve its measurement of behavioral health appointment
14 access compliance. The Plan shall develop a measurement mechanism that
15 identifies appointment requests where the resulting first offered appointment
16 does not meet the timely access standards for behavioral health appointments.
17 The Plan’s measurement mechanism shall differentiate between and document
18 all appointments where (1) an enrollee was offered an appointment within the
19 timely access standards but chose an appointment outside the timely access
20 standards; (2) those instances where an appointment within the timely access
21 standards was not available or not offered to the enrollee, and the provider, or
22 the health professional providing triage or screening services, did not note a non-
23 detriment statement; and (3) those instances where an appointment within the
24 timely access standards was not available or not offered to the enrollee, but the
25 provider, or the health professional providing triage or screening services, did
26 note a non-detriment statement. (See Health & Saf. Code, § 1367.03; Cal. Code
27 Regs., tit. 28, §§ 1300.67.2.2, 1300.67.2.3.)
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1 E. The Plan shall fully implement clinical policies and procedures to ensure
2 consistent treatment, and inter-rater reliability (IRR) across the Plan, Medical
3 Groups, and external contracted providers. The clinical policies and procedures,
4 including criteria and guidelines, shall be consistent with the clinical review
5 standards set forth in the Knox-Keene Act and regulations promulgated
6 thereunder. (See Health & Saf. Code, §§ 1374.72; 1374.721; Cal. Code Regs.,
7 tit. 28, § 1300.74.72.)

8 **Corrective Action Area No. 2: Access**

9 The Plan shall improve its procedures to ensure that its enrollees can access
10 behavioral health appointments consistent with timely access standards. The corrective
11 actions the Plan shall implement on this topic must include at minimum, among other things,
12 the following:

13 A. The Plan shall develop and implement an improved policy and process to
14 effectively monitor each enrollee's appointments, treatment plan, individualized
15 behavioral health care needs, and care consistent with good professional
16 practice, with the Plan intervening as necessary to ensure compliance. The Plan
17 must provide a clearly defined and fully implemented policy and process to be
18 uniformly applied across the Plan, all Medical Groups, Medical Group providers,
19 and external contracted providers, to ensure that initial, follow-up, and
20 rescheduled behavioral health appointment access complies with the timely
21 access requirements, and is consistent with each enrollee's treatment plan,
22 individualized behavioral health care needs, and the clinical criteria stated under
23 the Knox-Keene Act and regulations promulgated thereunder. The policy and
24 process shall ensure that the Plan requires the Medical Groups and external
25 contracted providers to fully document in the enrollees' medical records the date
26 and time the enrollee requested behavioral health appointments, the date and
27 time of the first available appointment that was offered to the enrollee, the date
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1 and time of the appointment the enrollee accepted, and if a statement of non-
2 detriment or patient preference is documented in the enrollee's medical record.
3 The policy and process shall further ensure that enrollees are provided with
4 timely behavioral health services that are based on individualized determinations
5 of medical necessity. (See Health & Saf. Code, §§ 1367.03, 1374.72; Cal. Code
6 Regs., tit. 28, §§ 1300.70, subds. (a)(3), (b)(1), (b)(2)(G), (b)(2)(H).)

7 B. The Plan shall improve, for both Medical Group providers and external
8 contracted providers, the processes for appointment booking and documentation
9 related to behavioral health services, including, but not limited to, booking of
10 initial and follow-up behavioral appointments within the timely access standards
11 under the Knox-Keene Act and regulations promulgated thereunder. (See Health
12 & Saf. Code, § 1367.03; Cal. Code, Regs., tit. 28, §§ 1300.67.2.2, subd. (b)(2).)

13 C. The Plan shall continuously assess whether the Medical Groups are performing
14 their obligation to the Plan to ensure that behavioral health care services are
15 available consistent with good professional practice and timely access standards
16 to Plan enrollees. If the Plan determines that the Medical Groups are not
17 performing these delegated functions, the Plan must intervene and take whatever
18 steps necessary to ensure compliance. (See Health & Saf. Code, §§ 1367.03,
19 1370; Cal. Code Regs., tit. 28, §§ 1300.67.2.2; 1300.70.)

20 **Corrective Action Area No. 3: Network and Referrals**

21 The Plan shall improve the ability of its enrollees to access the Plan's network,
22 including external contracted providers, for behavioral health services, and improve the ability
23 of its enrollees to access out-of-network providers for behavioral health services in instances
24 where the Plan's network cannot offer enrollees timely care. The corrective actions the Plan
25 shall implement in this area must include at minimum the following:

26 A. The Plan shall review, monitor and participate in the process of issuing referrals
27 to external contracted providers and out-of-network providers for behavioral
28

1 health services. The Plan shall participate and oversee the process of scheduling
2 of behavioral health appointments with external contracted providers and out-of-
3 network providers within the timely access standards required under the Knox-
4 Keene Act and regulations promulgated thereunder. The Plan shall not, and must
5 ensure that the Medical Groups do not, prohibit a referral to an external
6 contracted provider based solely on a determination that the enrollee has a
7 severe or chronic condition that requires care to be performed by Medical Group
8 providers. (See Health & Saf. Code, §§ 1367.03, 1374.72; Cal. Code, Regs., tit.
9 28, § 1300.67.2.2.)

10 B. The Plan shall improve and oversee the collection of external contracted provider
11 access data. The Plan's external contracted provider network shall be fully
12 integrated into the Plan's behavioral health access monitoring plan, processes,
13 systems, and reporting structures. The Plan shall ensure that enrollee
14 appointment access when an enrollee is referred to an external network complies
15 with timely access standards. The Plan shall ensure that the Plan has full
16 transparency of and access to all necessary data from the external contracted
17 providers so that the Plan can conduct its continuous, oversight, review, and
18 intervention as necessary, including, but not limited to, encounter data,
19 appointment data, medical records, and claims information. (See Health & Saf.
20 Code, § 1367.03, subd. (f)(1); Cal. Code, Regs., tit. 28, § 1300.67.1, subd. (c).)

21 C. The Plan shall develop a process for identifying members who attempted, but
22 were unable to, obtain timely and clinically appropriate behavioral health care
23 services in-network and, as a result self-referred to an out-of-network provider.
24 The Plan will develop a process for evaluating enrollee out-of-network claims for
25 reimbursement. The terms of such reimbursement will be subject to agreement
26 between the Plan and the Department. The Plan shall present the process
27
28

required by this paragraph to the Department no later than the due date for the first Quarterly Report, as provided in Paragraph 109 above.

Corrective Action Area No. 4: Grievance and Appeals

The Plan shall improve its grievance and appeals policies and procedures. The corrective actions the Plan shall implement on this topic must include at minimum, the following:

- A. The Plan shall improve the Grievance and Appeals process by which enrollee grievances are acknowledged, adequately considered, and responded to within the timeframes required under the Knox-Keene Act and regulations promulgated thereunder. The Plan shall review its practice of referring appointment requests for which a timely appointment cannot be booked through the Grievance and Appeals review process, to ensure that this practice results in enrollees receiving appointments consistent with timely access standards separate from the time that it takes grievances to be resolved. The Plan's review shall develop processes to promptly address any enrollee grievance based, in part, on a complaint that the enrollee cannot schedule a timely behavioral health appointment. The Plan must implement a consistent procedure to ensure that all enrollees who are not offered timely appointments are reviewed for risk and their behavioral health care needs are met. (See Health & Saf. Code, §§ 1367.03, 1368, 1368.01; Cal. Code, Regs., tit. 28, §§ 1300.67.2.2, subd. (b)(2), 1300.68.)
- B. The Plan shall develop a process through which all enrollee grievances regarding a delay or difficulty in obtaining a timely behavioral health appointment are routed to grievance coordinators specially trained in Department-regulated products and Knox-Keene Act and regulations relating to timely access. Although this group of grievance coordinators may primarily focus on Department-regulated products, the group of grievance coordinators may answer calls about health care products

1 licensed in other states, should the Plan choose to have them answer such calls.
2 (See Health & Saf. Code, §§ 1367.03, 1368.)

3 **Corrective Action Area No. 5: Future Strike Contingency Plans**

4 The Plan shall develop a comprehensive contingency plan to be implemented in the
5 event of future labor work stoppages that may result in cancellation of enrollee behavioral
6 health appointments. The contingency plan shall include uniform processes for documentation
7 of enrollee notification of appointment cancellation, and clinical review for prompt rescheduling
8 consistent with enrollees' individual treatment needs. The contingency plan shall also create a
9 uniform reporting structure for Plan oversight of appointment cancellations and/or
10 rescheduling. (Health & Saf. Code, § 1367.03, subd. (a)(3).)

11 **Corrective Action Area No. 6: Mental Health Parity**

12 The Plan shall develop processes to ensure that the Plan is in compliance with all
13 behavioral health parity laws. This shall include, but is not limited to, the Plan ensuring that
14 enrollees receive appropriate treatment based on individualized determinations of clinical
15 appropriateness, and regardless of the type or severity of the enrollees' behavioral health
16 conditions. The Plan shall ensure that enrollees are not directed to behavioral health group
17 therapy, classes, smartphone applications, or "one-size-fits-all" therapy alternatives without an
18 individualized determination that such therapy, classes, applications, or alternatives are
19 clinically appropriate for the enrollee's individual condition. The Plan shall ensure that enrollees
20 do not face barriers to scheduling behavioral health appointments that do not exist for non-
21 behavioral health appointments. (Health & Saf. Code, § 1374.72, subd. (a).)

22 **Corrective Action Area No. 7: Member Communications and Advertising**

23 The Plan shall conduct a comprehensive review of all Plan communications and
24 representations to enrollees, including any related policies, procedures, and training materials,
25 regarding behavioral health services including, but not limited to, advertising to enrollees and
26 the general public, to ensure accuracy and completeness of information provided. This shall
27 include communications and representations regarding the ability of enrollees to obtain
28

individual and group behavioral health therapy, the ability of enrollees to obtain referrals to external contracted providers and out-of-network providers, and regarding alternatives to behavioral health therapy such as classes and smartphone applications. This shall also include information about changes the Plan will implement as the result of this Settlement Agreement and Corrective Action Work Plan, and will also include review of communications to enrollees made by the Medical Groups and external contracted providers. (Health & Saf. Code, § 1360, subds. (a) & (a)(2).)

Corrective Action Area No. 8: Continuous Detailed and Comprehensive Review

The Plan shall engage in a systemic evaluation of all existing programs, processes, mechanisms, and policies and procedures by which enrollees access or receive behavioral health services, including but not limited to Connect 2 Care, eConsult, Tridium, Tapestry, Ableto, and VADAPT. In addition, the Plan shall engage in a systemic evaluation of how enrollees access urgent behavioral health care services, including the availability of the Medical Groups and external contracted providers to offer urgent and emergent behavioral health services. The Plan shall also continuously review whether the Medical Groups are appropriately performing the delegated services, compliant with the Knox Keene Action and regulations promulgated thereunder. (See Health & Saf. Code, §§ 1367, subd. (j), 1367.03, 1374.72; Cal. Code Regs., tit. 28, §§ 1300.70, subd. (a)(3).)

Deliverables/Benchmarks

112. The Plan and the Consulting Team shall complete the draft Corrective Action Work Plan by February 1, 2024. Upon completion of the draft Corrective Action Work Plan, the Plan and the Consulting Team shall submit the Corrective Action Work Plan to the Department for review. The Department shall provide any comment or feedback on the draft Corrective Action Work Plan within 30 days of receipt from the Plan. The Plan and the Consulting Team shall then have an additional 30 days to provide any response to the Department's feedback or comments.

113. Additional benchmarks, deliverables, and deadlines will be established as part of the Corrective Action Work Plan.

114. As acknowledged above, the Department's investigation in connection with the 2022 Non-Routine Survey is ongoing. It is the Parties' intention that this Settlement Agreement incorporates all deficiencies, factual findings, and corrective actions related to the subject matters covered by the 2022 Non-Routine Survey Final Report. The Parties acknowledge that if as the result of the 2022 Non-Routine Survey Final Report, the Department identifies additional deficiencies that are not already addressed as part of the Corrective Action Areas or the Corrective Action Work Plan, the Department has authority to require the Plan and Consulting Team to supplement or amend the Corrective Action Work Plan to address such deficiencies. Any additional corrective actions will be incorporated into and become a part of this Settlement Agreement.

Department Discretion

115. At the Plan's request, the Department has the discretion, with the Consulting Team's recommendation and/or input, to revise or modify benchmarks, deadlines, and Deliverables set forth in the Corrective Action Work Plan. Such discretion may be exercised if the Plan fails to achieve any of the stated benchmarks, deadlines, or Deliverables, despite the Plan's best efforts in working with the Consulting Team, or in the event there is a change to state or federal law impacting the requirements of this Settlement Agreement.

ACCEPTANCE

Dated: October 11, 2023

Kaiser Foundation Health Plan, Inc.

/Original Signed/
Deborah Espinal, PhD
Vice President, Enterprise Regulatory Services
Kaiser Foundation Health Plan, Inc. & Hospitals

I have read and fully discussed with the Plan the terms and conditions and other matters contained in the above Stipulated Settlement and Agreement. I approve its form and content.

Dated: October 11, 2023

Sheppard, Mullin, Richter & Hampton, LLP

/Original Signed/
Moe Keshavarzi
Attorney for Kaiser Foundation Health Plan, Inc.

Dated: October 11, 2023

DEPARTMENT OF MANAGED HEALTH CARE

/Original Signed/
Sonia R. Fernandes, Complainant
Deputy Director | Chief Counsel
Office of Enforcement

Ross, Jamie

From: Saly Nasrat <Saly.X.Nasrat@kp.org>
Sent: Monday, October 30, 2023 9:50 AM
To: COB_Response
Cc: ichairez@nuhw.org
Subject: RE: re OC Board of supervisors

Attention: This email originated from outside the County of Orange. Use caution when opening attachments or links.

Please disregard/delete my last email with the attachment.

Please keep the following statement from me on file instead:

Dear Orange County Board of Supervisors,

I am writing this letter to voice SUPPORT for item 23A in your agenda. Kaiser Permanente mental health clinicians in Southern California deserve to have the same amount of time as their counterparts in Northern California, to do crucial back end work including calling social services agencies, working with parents of young patients, and general patient care planning. As a resident of Orange County, I urge a YES vote on this matter.

Thank you,

Saly Nasrat

Saly Nasrat, LMFT

Psych Social Worker

Kaiser Permanente

Behavioral Health- Euclid Medical Office

1188 N. Euclid St., 5th floor

Anaheim, CA 92801

714.254.6480 (office)

714.254.6805 (fax)

From: Saly Nasrat
Sent: Monday, October 30, 2023 9:34 AM
To: response@ocgov.com
Cc: ichairez@nuhw.org
Subject: re OC Board of supervisors

NOTICE TO RECIPIENT: If you are not the intended recipient of this e-mail, you are prohibited from sharing, copying, or otherwise using or disclosing its contents. If you have received this e-mail in error, please notify the sender immediately by reply e-mail and permanently delete this e-mail and any attachments without reading, forwarding or saving them. v.173.295 Thank you.



County Executive Office

Memorandum

October 25, 2023

To: Clerk of the Board of Supervisors

From: Frank Kim, County Executive Officer

Subject: Exception to Rule 21

CLERK OF THE BOARD
COUNTY OF ORANGE
BOARD OF SUPERVISORS

2023 OCT 26 PM 12: 07

RECEIVED

Digitally signed by Frank Kim
DN: cn=Frank Kim, o=County of
Orange, ou=County Executive Office,
email=frank.kim@ocgov.com, c=US
Date: 2023.10.25 09:54:51 -0700
X.509v3: 2023.06.01

523B

The County Executive Office is requesting a Supplemental Agenda Staff Report for the October 31, 2023, Board Hearing.

Agency: Sheriff-Coroner

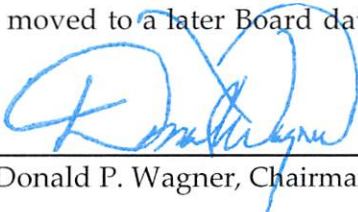
Subject: Approve Life Technologies Corporation Contract

Districts: All Districts

Reason Item is Supplemental: This ASR is being requested to be submitted as a supplemental due to extensive negotiations of terms and conditions and to the challenges in obtaining the required signatures from the contractor in a timely manner. The Agenda Staff Report and attachments were finalized after the filing deadline to the Clerk of the Board. Approval of the sole source contract with Life Technologies Corporation will allow the Sheriff-Coroner Department to continue to contract for the maintenance of Genetic Analyzers, Magnetic Particle Processors, Rapid DNA, and Real Time Polymerase Chain Reaction instruments in support of the Orange County Crime Lab.

Justification: This item must be heard on the October 31, 2023, Board of Supervisors Meeting and cannot be moved to a later Board date as this would result in retroactive approval of the contract.

Concur:


Donald P. Wagner, Chairman of the Board of Supervisors

cc: Board of Supervisors
County Executive Office
County Counsel



**SUPPLEMENTAL AGENDA ITEM
AGENDA STAFF REPORT**

MEETING DATE: 10/31/23
LEGAL ENTITY TAKING ACTION: Board of Supervisors
BOARD OF SUPERVISORS DISTRICT(S): All Districts
SUBMITTING AGENCY/DEPARTMENT: Sheriff-Coroner
DEPARTMENT HEAD REVIEW: [Signature]
Department Head Signature
DEPARTMENT CONTACT PERSON(S): Andrew Stephens (714) 647-1833
Stephanie Callian (714) 834-6380

RECEIVED
2023 OCT 26 PM 12:07
CLERK OF THE BOARD
COUNTY OF ORANGE
BOARD OF SUPERVISORS

SUBJECT: Approve Life Technologies Corporation Contract

CEO CONCUR

[Signature]

CEO Signature

Digitally signed by Frank Kim
DN: cn=Frank Kim, ou=County of
Orange, ou=County Executive Office,
email=frank.kim@ocgov.com, c=US
Date: 2023.10.26 08:59:15 -0700
Adobe Acrobat version:
2023.006.20360

COUNTY COUNSEL REVIEW

Approval as to Form
Action
[Signature]

County Counsel Signature

**CLERK OF THE BOARD
Discussion**

3 Votes Board Majority

Budgeted: Yes

Current Year Cost: \$72,466

Annual Cost:
FY 2024-25 \$108,699
FY 2025-26 \$36,233

Staffing Impact: No

of Positions: N/A

Sole Source: Yes

Current Fiscal Year Revenue: N/A

Funding Source: Budget Control 060: 100% General Fund

County Audit in last 3 years N/A

Levine Act Review Completed: Yes

Prior Board Action: 10/4/2022 #6, 10/5/2021 #5, 11/6/2018 #S9A

RECOMMENDED ACTION(S)

Authorize the County Procurement Officer or Deputized designee to execute the sole source contract with Life Technologies Corporation for maintenance of Genetic Analyzers, Magnetic Particle Processors, Rapid DNA, and Real Time Polymerase Chain Reaction instruments, in an amount not to exceed \$217,398, for the term of November 1, 2023, through October 31, 2025, renewable for three additional one-year terms.

SUMMARY:

Approval of the sole source contract with Life Technologies Corporation will allow the Sheriff-Coroner Department to continue to contract for the maintenance of Genetic Analyzers, Magnetic Particle Processors, Rapid DNA, and Real Time Polymerase Chain Reaction instruments in support of the Orange County Crime Lab.

BACKGROUND INFORMATION:

The County was awarded \$484,711 in 2011 from the U.S. Department of Justice for additional DNA laboratory personnel and laboratory instruments, equipment and related supplies to speed DNA analysis and to increase the number of cases analyzed to prevent future backlogs as casework demands increase. The County has since received Prop. 69 and additional Federal Grant funding for these purposes. As a result, the County has developed a system of instruments and diagnostic testing equipment that benefit all law enforcement stakeholders in the County, including police departments and the Orange County District Attorney's Office. The Genetic Analyzers process DNA samples and provide the genetic profile for each sample. The Magnetic Particle Processors are utilized in the automation and optimization of the DNA extraction process and is compatible with the existing robotic platforms. The Rapid DNA instrumentation has the ability to generate a genetic profile from a known individual in under two hours. The Real Time Polymerase Chain Reaction (PCR) instruments provide live genetic data on how much DNA is present while the DNA is amplified and prepared for genetic analysis. This system provides investigative leads, reliable suspect identifications and physical evidence for trial.

Life Technologies Corporation (LT) is the proprietary and sole manufacturer of the entire line of Genetic Analyzers and related instruments used for the analysis of forensic DNA samples in the OC Crime Lab. The entire OC Crime Lab system has been set up and validated to use the complete LT's DNA extraction and profiling platform, which includes the Genetic Analyzers, Rapid DNA instruments, DNA typing kits and data analysis software. There is no other vendor offering forensic Genetic Analyzers, nor is there one selling a Genetic Analyzer compatible with the typing systems and data analysis software used in the OC Crime Lab. In addition, the OC Crime Lab's DNA analysts have been extensively trained to operate and maintain this platform. The proposed agreement is a sole source agreement.

The table below shows recent contract history with LT for Genetic Analyzers and Real Time Polymerase Chain Reaction instruments maintenance.

Board of Supervisors (Board) Approved	Amendment Number or Contract	Contract Term	Contract Amount	Comments
11/6/18	Contract	11/6/18 - 10/31/20	\$60,000	New contract was approved pursuant to County's 2018 Contract Policy Manual Section 4.5-107.
n/a	1	11/1/20 - 10/31/21	\$21,163	On September 2, 2020, Amendment Number One to renew contract was approved administratively through Board Resolution No. 3.26.2020 CPM Exempt 2-11.
10/5/21	2	11/1/21 - 10/31/22	\$60,276	Contract renewed and Attachment B, Compensation and Pricing Provisions, was amended pursuant to County's 2021 Contract Policy Manual section 4.5-106.
10/4/22	3	11/1/22 - 10/31/23	\$59,181	Contract renewed and Attachment B, Compensation and Pricing Provisions, was amended pursuant to

				County's 2021 Contract Policy Manual section 4.5-106.
--	--	--	--	--

Sheriff now requests approval of the sole source contract with LT for maintenance of Genetic Analyzers, Magnetic Particle Processors, RapidDNA, and Real Time Polymerase Chain Reaction instruments for the term of November 1, 2023, through October 31, 2025, in the amount of \$217,398, as noted in the Recommended Action. The increased amount is the result of the addition of magnetic particle processors utilized in DNA extraction as well as Rapid DNA instrumentation to the contract. These new instruments were acquired through Prop. 69 and Federal Grant funding over the last three years and their initial warranties and service contracts will be expiring.

The contract is submitted for Board approval less than 30 days as the vendor did not forward the signed contract in time to submit it for the prior Board meeting due to extensive negotiations of terms and conditions.

The Contractor's performance has been confirmed as satisfactory. Sheriff has verified there are no concerns that must be addressed with respect to Contractor's ownership/name, litigation status or conflicts with County interests. The Orange County Preference Policy is not applicable to this sole source contract amendment. This contract does not include subcontractors or pass through to other providers, see Attachment C for Contract Summary form.

FINANCIAL IMPACT:

Appropriations for this contract are included in Budget Control 060, Sheriff-Coroner FY 2023-24 Budget and will be included in the budgeting process for future years. This contract contains language allowing the Sheriff-Coroner Department to terminate the contract or reduce the level of services without penalty with cause or without cause in the event that funding is reduced and/or not available to continue funding the contract.

STAFFING IMPACT:

N/A

ATTACHMENT(S):

Attachment A - Contract MA-060-23011532
Attachment B - Redline of Previous Amendment
Attachment C - Contract Summary Form

Contract MA-060-23011532
with
Life Technologies Corporation
for
Maintenance of Genetic Analyzers

This Contract MA-060-23011532 for Maintenance of Genetic Analyzers (hereinafter referred to as "Contract") is made and entered into as of the date fully executed by and between the County of Orange, a political subdivision of the State of California (hereinafter referred to as "County") and Life Technologies Corporation, with a place of business at 5791 Van Allen Way, Carlsbad, CA 92008 (hereinafter referred to as "Contractor"), with a County and Contractor sometimes referred to as "Party" or collectively as "Parties".

ATTACHMENTS

This Contract is comprised of this document and the following Attachments, which are attached hereto and incorporated by reference into this Contract:

Attachment A – Scope of Work
Attachment B – Compensation and Pricing Provision

RECITALS

WHEREAS, Contractor and County are entering into this Contract for Maintenance of Genetic Analyzers under a firm fixed fee Contract; and

WHEREAS, Contractor agrees to provide Maintenance of Genetic Analyzers to the County as further set forth in the Scope of Work, attached hereto as Attachment A; and

WHEREAS, County agrees to pay Contractor based on the schedule of fees set forth in Compensation and Pricing Provision, attached hereto as Attachment B; and

WHEREAS, the County Board of Supervisors has authorized the Purchasing Agent or designee to enter into a Contract for Maintenance of Genetic Analyzers with the Contractor;

NOW, THEREFORE, the Parties mutually agree as follows:

ARTICLES

General Terms and Conditions:

- A. Governing Law and Venue: This Contract has been negotiated and executed in the state of California and shall be governed by and construed under the laws of the state of California. In the event of any legal action to enforce or interpret this Contract, the sole and exclusive venue shall be a court of competent jurisdiction located in Orange County, California, and the parties hereto agree to and do hereby submit to the jurisdiction of such court, notwithstanding Code of Civil Procedure Section 394.
- B. Entire Contract: This Contract contains the entire Contract between the parties with respect to the matters herein, and there are no restrictions, promises, warranties or undertakings other than those set forth herein or referred to herein. No exceptions, alternatives, substitutes or revisions are valid or binding on County unless authorized by County in writing. Electronic acceptance of any additional terms, conditions or supplemental Contracts by any County employee or agent, except by installers of software that relates to the functional and/or application software required by a product to meet

the County's requirements, shall not be valid or binding on County unless accepted in writing by County's Purchasing Agent or designee.

- C. Amendments: No alteration or variation of the terms of this Contract shall be valid unless made in writing and signed by the parties; no oral understanding or agreement not incorporated herein shall be binding on either of the parties; and no exceptions, alternatives, substitutes or revisions are valid or binding on County unless authorized by County in writing.
- D. Taxes: Unless otherwise provided herein or by law, price quoted does not include California state sales or use tax. Out-of-state Contractors shall indicate California Board of Equalization permit number and sales permit number on invoices, if California sales tax is added and collectable. If no permit numbers are shown, sales tax will be deducted from payment. The Auditor-Controller will then pay use tax directly to the State of California in lieu of payment of sales tax to the Contractor.
- E. Delivery: Contractor provides services Monday through Friday, 8:00 a.m. through 5:00 p.m. Contractor will work with the County to schedule services at a time that is mutually convenient and the Contractor shall use commercially reasonable efforts to comply with County's requested time of delivery of services. Should any delay be anticipated, the Contractor shall notify the County as soon as possible. County reserves the right to refuse any goods or services and to cancel all or any part of the goods not conforming to manufacturer's specifications, drawings, samples or descriptions or services that do not conform to Attachment A – Scope of Work. Acceptance of any part of the order for goods shall not bind County to accept future shipments. Over shipments and under shipments of goods shall be only as agreed to in writing by County. Delivery shall not be deemed to be complete until all goods or services have actually been received and accepted by County as set forth in Section F [Acceptance/Payment].
- F. Acceptance Payment: Unless otherwise agreed to in writing by County and Contractor, 1) acceptance of the laboratory instrument services to be performed by Contractor shall be deemed complete when Contractor performs services in accordance with service plan specification, Attachment A – Scope of Work, and the generally accepted standards prevailing in the instrument service industry. Upon acceptance, the County will not lose any warranty rights and 2) payment shall be made as set forth in Attachment B [Payment/Compensation].
- G. Warranty: Contractor expressly warrants that the goods covered by this Contract are 1) free of liens or encumbrances, and that Contractor will comply with any applicable state or federal codes, ordinances, orders, or statutes which may relate to Contractor's activities under this Contract, including the Occupational Safety and Health Act (OSHA) and the California Industrial Safety Act, 2) will conform to Attachment A – Scope of Work, and 3) are provided with Contractor's standard limited warranty for instrument services, which reads in its entirety as follows:

As used in this Section: – “we” “us” or “our” refers to Contractor, and “you” and “your” refers to the County. – “Instrument Services” refers to the Contractor's laboratory instruments services provided under this Contract.

Limited Warranty for Instrument Services.

1. Limited Warranty: We warrant that the Instrument Services we provide to you will be in accordance with the generally accepted standards prevailing in the Instrument Service industry. You must make any claim for breach of this warranty within 90 days of the date the Instrument

Services were performed and prior to any unauthorized repair, change, or modification has been made to any part of the instrument.

2. Exclusions: Our warranties do not apply to (i) your neglect, carelessness, or misuse, such as but not limited to, connecting the instrument to electrical services or other utilities not in accordance with the installation requirements for the instrument, using incompatible solvents or samples with the instrument, operating the instrument not in conformance with our instructions or specifications, or your improper or inadequate maintenance of the instrument; (ii) installation of software or use in combination with software or products that we did not supply or authorize; (iii) modification, repair, service transfer to another location of the instrument that you or your employees, agents or an unauthorized contractor made; (iv) intrusive activity, including without limitation computer viruses, hackers or other unauthorized interactions with instrument or software that detrimentally affects normal operations; from acts of nature or accident; or (v) any defects or damage that we did not cause. ADDITIONALLY, ANY INSTALLATION, RELOCATION, MAINTENANCE, REPAIR, SERVICE OR ALTERATION TO OR OF, OR OTHER TAMPERING WITH, THE PRODUCTS PERFORMED BY ANY PERSON OR ENTITY OTHER THAN US WITHOUT OUR PRIOR WRITTEN APPROVAL, OR ANY USE OF REPLACEMENT PARTS WE HAVE NOT SUPPLIED, WILL IMMEDIATELY VOID AND CANCEL ALL WARRANTIES WITH RESPECT TO THESE INSTRUMENT SERVICES AND THE AFFECTED PRODUCTS.

3. Remedies: During the applicable warranty period only, for services not meeting our warranty, we agree, at our option to: (i) re-perform the defective Instrument Services, or (ii) refund to you the fee you paid to us for the defective Instrument Services, if applicable. This section states our entire liability for a valid warranty claim under this Contract.

4. Limitations: Our warranties extend only to you, the original purchaser, and you cannot transfer them. With respect to instrument services, except as expressly stated, we disclaim all other warranties of any kind, whether express or implied, oral or written, including but not limited to warranties of fitness for a particular purpose or merchantability.

H. Intentionally Omitted.

I. Assignment: The terms, covenants, and conditions contained herein shall apply to and bind the heirs, successors, executors, administrators and assigns of the parties. Furthermore, neither the performance of this Contract nor any portion thereof may be assigned by Contractor without the express written consent of County. Any attempt by Contractor to assign the performance or any portion thereof of this Contract without the express written consent of County shall be invalid and shall constitute a breach of this Contract.

J. Non-Discrimination: In the performance of this Contract, Contractor agrees that it will comply with the requirements of Section 1735 of the California Labor Code and not engage nor permit any subcontractors to engage in discrimination in employment of persons because of the race, religious creed, color, national origin, ancestry, physical disability, mental disability, medical condition, marital status, or sex of such persons. Contractor acknowledges that a violation of this provision shall subject Contractor to penalties pursuant to Section 1741 of the California Labor Code.

K. Termination: In addition to any other remedies or rights it may have by law:

- a. County or Contractor have the right to immediately terminate this Contract without penalty for cause if a Party materially breaches a term or condition of this Contract and fails to cure such breach within ninety (90) days after written notice of breach is received or after ninety (90) days' written notice without cause. Cause shall be defined as any material breach of contract, any misrepresentation or fraud on the part of a Party.
- b. Contractor may immediately terminate this Contract if the instrument covered by the Contract is transferred to another location without the Contractor's advance written consent, or the Parties may mutually agree to adjust the cost of providing the services at the new location provided the County agrees in writing to pay the new rate which may be higher. Any such adjustments shall be in accordance with Section 3 [Adjustments – Scope of Work] of the Additional Terms and Conditions of this Contract.

Exercise by County of its right to terminate the Contract shall relieve County of all further obligation with the following exception: Payment shall be made by County to Contractor if any payments to Contractor are due pursuant to Section 22 [Termination – Orderly].

- L. Consent to Breach Not Waiver: No term or provision of this Contract shall be deemed waived and no breach excused, unless such waiver or consent shall be in writing and signed by the party claimed to have waived or consented. Any consent by any party to, or waiver of, a breach by the other, whether express or implied, shall not constitute consent to, waiver of, or excuse for any other different or subsequent breach.
- M. Independent Contractor: Contractor shall be considered an independent contractor and neither Contractor, its employees, nor anyone working under Contractor shall be considered an agent or an employee of County. Neither Contractor, its employees nor anyone working under Contractor shall qualify for workers' compensation or other fringe benefits of any kind through County.
- N. Performance: Contractor shall perform all work under this Contract, taking necessary steps and precautions to perform the work to County's satisfaction that the instrument services meet County's regulation or certification documents. Contractor shall be responsible for the professional quality, technical assurance, timely completion and coordination of all documentation and other goods/services furnished by the Contractor under this Contract. Contractor shall perform all work diligently, carefully, and in a good and workmanlike manner; shall furnish all necessary labor, supervision, machinery, equipment, materials, and supplies, shall at its sole expense obtain and maintain all applicable permits and licenses required by public authorities, including those of County required in its governmental capacity, in connection with performance of the work. If permitted to subcontract, Contractor shall be fully responsible for all work performed by subcontractors. Notwithstanding the foregoing, the Parties agree that Contractor makes no representation that the instrument services that Contractor provides to the County will meet or satisfy standards of any government body. County agrees that it is County's responsibility to ensure that such services are adequate to meet County's regulation or certification documents.
- O. Insurance Requirements: Prior to the provision of services under this Contract, the Contractor agrees to purchase all required insurance at Contractor's expense, including all endorsements required herein, necessary to satisfy the County that the insurance provisions of this Contract have been complied with. Contractor agrees to keep such insurance coverage, provide Certificates of Insurance, and endorsements the County during the entire term of this Contract.

Insurance is not required of any subcontractors as Contractor agrees no subcontractors will be used in the performance of this contract.

All self-insured retentions (SIRs) shall be the responsibility of the Contractor and shall be clearly

stated on the Certificate of Insurance.

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

Qualified Insurer

The policy or policies of insurance must be issued by an insurer with a minimum rating of A- (Secure A.M. Best's Rating) and VIII (Financial Size Category as determined by the most current edition of the **Best's Key Rating Guide/Property-Casualty/United States or ambest.com**).

If the insurance carrier does not have an A.M. Best Rating of A-/VIII, the CEO/ Office of CRisk Management retains the right to approve or reject a carrier after a review of the company's performance and financial ratings.

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

<u>Coverage</u>	<u>Minimum Limits</u>
Commercial General Liability	\$1,000,000 per occurrence \$2,000,000 aggregate
Automobile Liability including coverage scheduled, non-owned and hired vehicles	\$1,000,000 per occurrence owned or non-owned
Workers Compensation	Statutory
Employers Liability Insurance	\$1,000,000 per occurrence

Required Coverage Forms

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

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

Required Endorsements

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

- 1) An Additional Insured endorsement using ISO form CG 20 26 04 13, or a form at least as broad naming the ***County of Orange its elected and appointed officials, officers, agents, and employees*** as Additional Insureds, or provide blanket coverage, which will state ***AS REQUIRED BY WRITTEN CONTRACT.***

- 2) A primary non-contributory endorsement using ISO form CG 20 01 04 13, or a form at least as broad evidencing that the Contractor's insurance is primary and any insurance or self-insurance maintained by the County of Orange shall be excess and non-contributing.

The Workers' Compensation policy shall contain a waiver of subrogation endorsement waiving all rights of subrogation against the *County of Orange, its elected and appointed officials, officers, agents, and employees* or provide blanket coverage, which will state **AS REQUIRED BY WRITTEN CONTRACT.**

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

Contractor shall provide thirty (30) days prior written notice to the County of any policy cancellation or non-renewal and ten (10) days prior written notice where cancellation is due to non-payment of premium and provide a copy of the cancellation notice to County. Failure to provide written notice of cancellation may constitute a material breach of the Contract, upon which the County may suspend or terminate this Contract.

The Commercial General Liability policy shall contain a severability of interests clause also known as a "separation of insureds" clause (standard in the ISO CG 0001 policy).

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

If the Contractor fails to provide the insurance certificates and endorsements within seven (7) days of notification by CEO/Purchasing or the agency/department purchasing division, then County may terminate the Contract.

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

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

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

- P. Changes: Contractor shall make no changes in the work or perform any additional work without the County's specific written approval.
- Q. Change of Ownership/Name, Litigation Status, Conflict with County Interests: Contractor agrees that if there is a change or transfer in ownership of Contractor's business prior to completion of this Contract, and the County agrees to an assignment of the Contract, the new owners shall be required under the terms of sale or other instruments of transfer to assume Contractor's duties and obligations contained in this Contract and complete them in accordance with Attachment A (Scope of Work).

County reserves the right to immediately terminate the Contract in the event the County determines that the assignee is not qualified or is otherwise unacceptable to the County for the provision of services under the Contract.

In addition, Contractor has the duty to notify the County in writing of any change in the Contractor's status with respect to name changes that do not require an assignment of the Contract. The Contractor is also obligated to notify the County in writing if the Contractor becomes a party to any litigation against the County, or a party to litigation that may reasonably affect the Contractor's performance under the Contract, as well as any potential conflicts of interest between Contractor and County that may arise prior to or during the period of Contract performance. While Contractor will be required to provide this information without prompting from the County any time there is a change in Contractor's name, conflict of interest or litigation status, Contractor must also provide an update to the County of its status in these areas whenever requested by the County.

The Contractor shall exercise reasonable care and diligence to prevent any actions or conditions that could result in a conflict with County interests. In addition to the Contractor, this obligation shall apply to the Contractor's employees, agents, and subcontractors associated with the provision of goods and services provided under this Contract. The Contractor's efforts shall include, but not be limited to establishing rules and procedures preventing its employees, agents, and subcontractors from providing or offering gifts, entertainment, payments, loans or other considerations which could be deemed to influence or appear to influence County staff or elected officers in the performance of their duties.

- R. Force Majeure: Contractor shall not be liable for damages caused by any act of God, war, civil disorder, employment strike or other cause beyond its reasonable control, provided Contractor gives written notice of the cause of the delay to County as soon as commercially reasonable from the time Contractor becomes aware of such delay .
- S. Confidentiality: Each Party agrees to maintain the confidentiality of the other Party's records and information pursuant to all statutory laws relating to privacy and confidentiality that currently exist or exist at any time during the term of this Contract. All such records and information shall be considered confidential and kept confidential by the receiving Party's staff, agents and employees. Such obligation shall not apply to information that is (a) in the public domain at the time of its disclosure through no fault of the receiving party; (b) was lawfully in the receiving party's possession prior to its receipt from disclosing party, or (c) becomes known to the receiving party from a third party, who is not subject to an obligation of confidentiality towards the other disclosing party. To the extent that a party believes certain information is confidential, it shall make the other party aware of such claims. In case a party is required to disclose confidential information by virtue of a court order or statutory duty, then the party shall be allowed to do so, provided that the party shall, without delay, inform the other party in writing of receipt of such order or coming into existence of such duty and enable the other party reasonably to seek protection against such order or duty.
- T. Compliance with Laws: Contractor represents and warrants that services to be provided under this Contract shall fully comply, at Contractor's expense, with all applicable industry standards, laws, statutes, and regulations (collectively "laws"), including, but not limited to those issued by County in its governmental capacity and all other laws applicable to the services at the time services are provided to and accepted by County. Contractor acknowledges that County is relying on Contractor to ensure such compliance, and pursuant to the requirements of paragraph "Z" below, Contractor agrees that it shall defend, indemnify and hold County and County INDEMNITEES harmless from all liability, damages, costs and expenses arising from or related to a violation of such laws.
- U. Freight: Contractor will ship goods to the County's United States destination specified in the County's orders as FOB Destination. Contractor assumes full responsibility for all transportation costs, transportation scheduling, packing, handling, insurance, and other services associated with delivery of all goods deemed necessary under this Contract. Title to goods will pass to County (except software incorporated within or forming part of a goods, which Contractor or Contractor's licensors continue to own) when Contractor delivers goods to the County's United States destination.

- V. Severability: If any term, covenant, condition or provision of this Contract is held by a court of competent jurisdiction to be invalid, void, or unenforceable, the remainder of the provisions hereof shall remain in full force and effect and shall in no way be affected, impaired or invalidated thereby.
- W. Attorney Fees: In any action or proceeding to enforce or interpret any provision of this Contract, each party shall bear their own attorney's fees, costs and expenses.
- X. Interpretation: This Contract has been negotiated at arm's length and between persons sophisticated and knowledgeable in the matters dealt with in this Contract. In addition, each party had been represented by experienced and knowledgeable independent legal counsel of their own choosing or has knowingly declined to seek such counsel despite being encouraged and given the opportunity to do so. Each party further acknowledges that they have not been influenced to any extent whatsoever in executing this Contract by any other party hereto or by any person representing them, or both. Accordingly, any rule or law (including California Civil Code Section 1654) or legal decision that would require interpretation of any ambiguities in this Contract against the party that has drafted it is not applicable and is waived. The provisions of this Contract shall be interpreted in a reasonable manner to effect the purpose of the parties and this Contract.
- Y. Employee Eligibility Verification: The Contractor warrants that it fully complies with all Federal and State statutes and regulations regarding the employment of aliens and others and that all its employees performing work under this Contract meet the citizenship or alien status requirement set forth in Federal statutes and regulations. The Contractor shall obtain, from all employees performing work hereunder, all verification and other documentation of employment eligibility status required by Federal or State statutes and regulations including, but not limited to, the Immigration Reform and Control Act of 1986, 8 U.S.C. §1324 et seq., as they currently exist and as they may be hereafter amended. The Contractor shall retain all such documentation for all covered employees for the period prescribed by the law. The Contractor shall indemnify, defend with counsel approved in writing by County, and hold harmless, the County, its agents, officers, and employees from employer sanctions and any other liability which may be assessed against the Contractor or the County or both in connection with any alleged violation of any Federal or State statutes or regulations pertaining to the eligibility for employment of any persons performing work under this Contract.
- Z. Indemnification: Contractor agrees to indemnify, defend with counsel approved in writing by County (such approval not be be unreasonably delayed or withheld), and hold County, its elected and appointed officials, officers, employees, agents and those special districts and agencies which County's Board of Supervisors acts as the governing Board ("County Indemnitees") harmless from any third-party claims, demands or liability of any kind or nature, including but not limited to personal injury or property damage, to the extent arising from or related to the negligence or willful misconduct of the Contractor and its agents, employees or subcontractors in the performance of this Contract. If judgment is entered against Contractor and County by a court of competent jurisdiction because of the concurrent active negligence of County or County Indemnitees, Contractor and County agree that liability will be apportioned as determined by the court. Neither party shall request a jury apportionment.
- AA. Audits/Inspections: Contractor agrees to permit the County's Auditor-Controller or the Auditor-Controller's authorized representative (including auditors from a private auditing firm hired by the County) access during normal working hours to all books, accounts, records, reports, files, financial records, supporting documentation, including payroll and accounts payable/receivable records, and other papers or property of Contractor for the purpose of auditing or inspecting any aspect of performance under this Contract. The inspection and/or audit will be confined to those matters connected with the performance of the Contract including, but not limited to, the costs of administering the Contract. The County will provide reasonable notice of such an audit or inspection. For inspections taking place on the Contractor's premises, any non-affiliate private third party,

professional advisors/auditing firm, shall be first required to sign an appropriate, mutually agreed confidentiality agreement for such inspection.

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

Contractor agrees to maintain such records for possible audit for a minimum of three years after final payment, unless a longer period of records retention is stipulated under this Contract or by law. Contractor agrees to allow interviews of any employees or others who might reasonably have information related to such records. Further, Contractor agrees to include a similar right to the County to audit records and interview staff of any subcontractor related to performance of this Contract.

Should the Contractor cease to exist as a legal entity, the Contractor's records pertaining to this Contract shall be forwarded to the County's project manager.

- BB. Contingency of Funds: Contractor acknowledges that funding or portions of funding for this Contract may be contingent upon state budget approval; receipt of funds from, and/or obligation of funds by, the state of California to County; and inclusion of sufficient funding for the services hereunder in the budget approved by County's Board of Supervisors for each fiscal year covered by this Contract. If such approval, funding or appropriations are not forthcoming, or are otherwise limited, County may immediately terminate or modify this Contract without penalty.
- CC. Expenditure Limit: Intentionally Left Blank.
- DD. Limitation of Liability: To the maximum extent permitted by applicable law, contractor will not be liable under any legal theory (including but not limited to contract, negligence, strict liability in tort or warranty of any kind) for any indirect, special, incidental, punitive, multiple, exemplary or consequential damages (including but not limited to costs of cover, lost profits, lost data, loss of business, loss of goodwill or loss of revenue) that county might incur under the contract, or that may arise from or in connection with contractor's goods or services, even if contractor had notice of the possibility of such damages. In addition, except for contractor's indemnification obligations in sections H and Z, Contractor's maximum aggregate liability arising out of or in connection with the contract, or any good or service, is limited to four (4) times the amount County paid to Contractor for the good or service purchased. However, these provisions do not limit Contractor's liability for death or personal injury caused by Contractor's negligence or fraud, fraudulent misrepresentation or any other liability that cannot be excluded by law.
- EE. Intellectual Property: County acknowledges that all intellectual property rights relating to Contractor's goods and services, as between County and Contractor, are solely and exclusively owned by Contractor. Contractor's sale of goods to County only grants the County a limited, non-transferable right under such intellectual property, for only County to use the quantity of the goods that County has bought from Contractor only for County's internal research purposes. No right to resell Contractor's goods or any of their components is conveyed expressly, by implication, or by estoppel. Unless Contractor expressly states otherwise in writing, Contractor provides no rights to use its goods in commercial applications of any kind, including, without limitation, manufacturing, quality control or commercial services such as reporting the results of County's activities for a fee or other form of consideration. If County needs commercial use rights to Contractor's goods (including the right to perform fee for services), please contact Contractor's out-licensing department at outlicensing@lifetech.com. To the extent that County's use of Contractor's goods is outside the scope of the Contract, it is solely County's responsibility to acquire additional intellectual property rights related to such use ("Additional Rights"). Nothing in the Contract limits Contractor's ability to enforce Contractor's intellectual property rights.

- FF. **Export Control:** Goods and information that the County receives from Contractor are subject to United States, European Union and local export control laws and regulations. The County may not, directly or indirectly, sell, export, re-export, transfer, divert, or otherwise dispose of any such product or information (including products derived from or based on Contractor's products or information) to any destination, entity, or person prohibited by United States, European Union or local laws or regulations.
- GG. **Decontamination and Safe Working Environment:** Before Contractor performs services on the County's instrument, the County will fully decontaminate the instrument or its components of radioactive, biological, toxic or other dangerous materials before Contractor performs services on the County's instrument. If Contractor requests, the County will submit to Contractor an accurate and completed certificate of decontamination substantially similar in form and content to the form found on <https://www.thermofisher.com/us/home/technical-resources/instrumentsupport/decontaminationform.html> (ThermoFisher Scientific Certificate of Instrument Decontamination).

If Contractor reasonably requests, the County will agree to move the instrument to another location that Contractor reasonably deems is safe for Contractor's employees to perform the instrument services.

Contractor does not service instruments in biosafety level-3 laboratories, unless Contractor agrees otherwise in writing in advance. There may be an additional charge and additional terms for services in such facilities. Contractor does not service instruments in biosafety level-4 laboratories.

Additional Terms and Conditions

1. **Scope of Contract:** This Contract specifies the contractual terms and conditions by which Contractor shall provide the Services to County, as further detailed in the Scope of Work identified and incorporated herein by this reference as Attachment A.
2. **Term of Contract:** This Contract shall commence on November 1, 2023 and continue for two (2) calendar years from that date, unless otherwise this Contract is earlier terminated by the Parties. This Contract may be renewed as set forth in paragraph 3 below.
3. **Renewal:** This Contract may be renewed by mutual written agreement of both Parties for three (3) additional one (1) year terms. The County does not have to give reason if it elects not to renew. Renewal periods may be subject to approval by the County of Orange Board of Supervisors.
4. **Adjustments – Scope of Work:** No adjustments made to the Scope of Work will be authorized without prior written approval of the County assigned Deputy Purchasing Agent and prior written approval of the Contractor in the form of an amendment to this Contract.
5. **Breach of Contract:** The failure of the Contractor to comply with any of the provisions, covenants or conditions of this Contract shall be a material breach of this Contract. In such event the County may, and in addition to any other remedies available at law, in equity, or otherwise specified in this Contract:
 - a) Terminate the Contract immediately, pursuant to Section K herein;

- b) Afford the Contractor written notice of the breach and thirty (30) calendar days or such shorter time that may be specified in this Contract within which to cure the breach;
 - c) Discontinue payment to the Contractor for and during the period in which the Contractor is in breach; and
 - d) Offset against any monies billed by the Contractor but yet unpaid by the County those monies disallowed pursuant to the above.
6. Civil Rights: Contractor attests that services provided shall be in accordance with the provisions of Title VI and Title VII of the Civil Rights Act of 1964, as amended; Section 504 of the Rehabilitation Act of 1973, as amended; the Age Discrimination Act of 1975 as amended; Title II of the Americans with Disabilities Act of 1990, and other applicable State and federal laws and regulations prohibiting discrimination on the basis of race, color, national origin, ethnic group identification, age, religion, marital status, sex or disability.
 7. Conflict of Interest – Contractor’s Personnel: The Contractor shall exercise reasonable care and diligence to prevent any actions or conditions that could result in a conflict with the best interests of the County. This obligation shall apply to the Contractor; the Contractor’s employees, agents, and subcontractors associated with accomplishing work and services hereunder. The Contractor’s efforts shall include, but not be limited to establishing precautions to prevent its employees, agents, and subcontractors from providing or offering gifts, entertainment, payments, loans or other considerations which could be deemed to influence or appear to influence County staff or elected officers from acting in the best interests of the County.
 8. Conflict of Interest – County Personnel: The County of Orange Board of Supervisors policy prohibits its employees from engaging in activities involving a conflict of interest. The Contractor shall not, during the period of this Contract, employ any County employee for any purpose.
 9. Contractor’s Project Manager and Key Personnel: Contractor shall appoint a Project Manager to direct the Contractor’s efforts in fulfilling Contractor’s obligations under this Contract. This Project Manager shall be subject to approval by the County and shall not be changed without the written consent of the County’s Project Manager, which consent shall not be unreasonably withheld.
- The Contractor’s Project Manager shall be assigned to this project for the duration of the Contract and shall diligently pursue all work and services to meet the project time lines. The County’s Project Manager shall have the right to require the removal and replacement of the Contractor’s Project Manager from providing services to the County under this Contract. The County’s Project manager shall notify the Contractor in writing of such action. The Contractor shall accomplish the removal within five (5) business days after written notice by the County’s Project Manager. The County’s Project Manager shall review and approve the appointment of the replacement for the Contractor’s Project Manager. The County is not required to provide any additional information, reason or rationale in the event it The County is not required to provide any additional information, reason or rationale in the event it requires the removal of Contractor’s Project Manager from providing further services under the Contract.
10. Contractor Personnel – Reference Checks: The Contractor warrants that all persons employed to provide service under this Contract have satisfactory past work records indicating their ability to adequately perform the work under this Contract. Contractor’s employees assigned to this project must meet character standards as demonstrated by background investigation and reference checks, coordinated by the agency/department issuing this Contract.
 11. Contractor’s Expense: The Contractor will be responsible for all costs related to photo copying, telephone communications, fax communications, and parking while on County sites during the

performance of work and services under this Contract. The County will not provide free parking for any service in the County Civic Center.

12. Contractor Personnel – Uniform/Badges/Identification: The Contractor warrants that all persons employed to provide service under this Contract have satisfactory past work records indicating their ability to accept the kind of responsibility under this Contract.

All Contractor's employees shall be required to wear uniforms, badges, or other means of identification which are to be furnished by the Contractor and must be worn at all times while working on County property. The assigned Deputy Purchasing Agent must be notified in writing, within seven (7) days of notification of award of Contract of the uniform and/or badges and/or other identification to be worn by employees prior to beginning work and notified in writing seven (7) days prior to any changes in this procedure.

13. Contractor's Records: The Contractor shall keep true and accurate accounts, records, books and data which shall correctly reflect the business transacted by the Contractor in accordance with generally accepted accounting principles. These records shall be maintained by Contractor for a period of three (3) years after final payment is received from the County.

14. Conditions Affecting Work: The Contractor shall be responsible for taking all steps reasonably necessary to ascertain the nature and location of the work to be performed under this Contract and to know the general conditions which can affect the work or the cost thereof. Any failure by the Contractor to do so will not relieve Contractor from responsibility for successfully performing the work without additional cost to the County. The County assumes no responsibility for any understanding or representations concerning the nature, location(s) or general conditions made by any of its officers or agents prior to the execution of this Contract, unless such understanding or representations by the County are expressly stated in the Contract.

15. Data – Title To: All materials, documents, data or information obtained from the County data files or any County medium furnished to the Contractor in the performance of this Contract will at all times remain the property of the County. Such data or information may not be used or copied for direct or indirect use by the Contractor after completion or termination of this Contract without the express written consent of the County. All materials, documents, data or information, including copies, must be returned to the County at the end of this Contract.

16. Disputes – Contract:

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

1. The Contractor shall submit to the agency/department assigned Deputy Purchasing Agent a written demand for a final decision regarding the disposition of any dispute between the parties arising under, related to, or involving this Contract, unless the County, on its own initiative, has already rendered such a final decision.
2. The Contractor's written demand shall be fully supported by factual information, and, if such demand involves a cost adjustment to the Contract, the Contractor shall include with the demand a written statement

signed by a senior official indicating that the demand is made in good faith, that the supporting data are accurate and complete, and that the amount requested accurately reflects the Contract adjustment for which the Contractor believes the County is liable.

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

Any final decision of the County shall be expressly identified as such, shall be in writing, and shall be signed by the County Deputy Purchasing Agent or his designee. If the County fails to render a decision within 90 days after receipt of the Contractor's demand, it shall be deemed a final decision adverse to the Contractor's contentions. Nothing in this section shall be construed as affecting the County's right to terminate the Contract for cause or termination for convenience as stated in section K herein.

- 16. Drug-Free Workplace: The Contractor hereby certifies compliance with Government Code Section 8355 in matters relating to providing a drug-free workplace. The Contractor will:

- A. Publish a statement notifying employees that unlawful manufacture, distribution, dispensation, possession, or use of a controlled substance is prohibited and specifying actions to be taken against employees for violations, as required by Government Code Section 8355(a)(1).
- B.. Establish a drug-free awareness program as required by Government Code Section 8355(a)(2) to inform employees about all of the following:
 - 1. The dangers of drug abuse in the workplace;
 - 2. The organization's policy of maintaining a drug-free workplace;
 - 3. Any available counseling, rehabilitation and employee assistance programs; and
 - 4. Penalties that may be imposed upon employees for drug abuse violations.
- C. Provide as required by Government Code Section 8355(a)(3) that every employee who works under this Contract:
 - 1. Will receive a copy of the company's drug-free policy statement; and
 - 2. Will agree to abide by the terms of the company's statement as a condition of employment under this Contract.
- D. Failure to comply with these requirements may result in suspension of payments under the Contract or termination of the Contract or both, and the Contractor may

be ineligible for award of any future County contracts if the County determines that any of the following has occurred:

1. The Contractor has made false certification, or
 2. The Contractor violates the certification by failing to carry out the requirements as noted above.
17. **Emergency/Declared Disaster Requirements:** In the event of an emergency or if Orange County is declared a disaster area by the County, state or federal government, this Contract may be subjected to unusual usage. The Contractor shall service the County during such an emergency or declared disaster under the same terms and conditions that apply during non-emergency/disaster conditions. The pricing quoted by the Contractor shall apply to serving the County's needs regardless of the circumstances. If the Contractor is unable to supply the goods/services under the terms of the Contract, then the Contractor shall provide proof of such disruption and a copy of the invoice for the goods/services from the Contractor's supplier(s). Additional profit margin as a result of supplying goods/services during an emergency or a declared disaster shall not be permitted. In the event of an emergency or declared disaster, emergency purchase order numbers will be assigned. All applicable invoices from the Contractor shall show both the emergency purchase order number and the Contract number.
18. **Errors and Omissions:** All reports, files and other documents prepared and submitted by Contractor shall be complete and shall be carefully checked by the professional(s) identified by Contractor as project manager and key personnel attached hereto, prior to submission to the County. Contractor agrees that County review is discretionary and Contractor shall not assume that the County will discover errors and/or omissions. If the County discovers any errors or omissions prior to approving Contractor's reports, files and other written documents, the reports, files or documents will be returned to Contractor for correction. Should the County or others discover errors or omissions in the reports, files or other written documents submitted by the Contractor after County approval thereof, County approval of Contractor's reports, files or documents shall not be used as a defense by Contractor in any action between the County and Contractor, and the reports, files or documents will be returned to Contractor for correction.
19. **Equal Employment Opportunity:** The Contractor shall comply with U.S. Executive Order 11246 entitled, "Equal Employment Opportunity" as amended by Executive Order 11375 and as supplemented in Department of Labor regulations (41 CFR, Part 60) and applicable state of California regulations as may now exist or be amended in the future. The Contractor shall not discriminate against any employee or applicant for employment on the basis of race, color, national origin, ancestry, religion, sex, marital status, political affiliation or physical or mental condition.

Regarding handicapped persons, the Contractor will not discriminate against any employee or applicant for employment because of physical or mental handicap in regard to any position for which the employee or applicant for employment is qualified. The Contractor agrees to provide equal opportunity to handicapped persons in employment or in advancement in employment or otherwise treat qualified handicapped individuals without discrimination based upon their physical or mental handicaps in all employment practices such as the following: employment, upgrading, promotions, transfers, recruitments, advertising, layoffs, terminations, rate of pay or other forms of compensation, and selection for training, including apprenticeship. The Contractor agrees to comply with the provisions of Sections 503 and 504 of the Rehabilitation Act of 1973, as amended, pertaining to prohibition of discrimination against qualified handicapped persons in all programs and/or activities as detailed in regulations signed by the Secretary of the Department of Health and Human Services effective June 3, 1977, and found in the Federal Register, Volume 42, No. 68 dated May 4, 1977, as may now exist or be amended in the future.

Regarding Americans with disabilities, Contractor agrees to comply with applicable provisions of Title 1 of the Americans with Disabilities Act enacted in 1990 as may now exist or be amended in the future.

20. News/Information Release: The Contractor agrees that it will not issue any news releases in connection with either the award of this Contract or any subsequent amendment of or effort under this Contract without first obtaining review and written approval of said news releases from the County through the County's Project Manager.
21. Notices: Any and all notices, requests demands and other communications contemplated, called for, permitted, or required to be given hereunder shall be in writing with a copy provided to the assigned Deputy Purchasing Agent (DPA), and County Project Manager (CPM, as set forth below, except through the course of the parties' project managers' routine exchange of information and cooperation during the terms of the work and services. Any written communications shall be deemed to have been duly given upon a) actual in-person delivery, if delivery is by direct hand, b) upon delivery on the actual day of receipt or no greater than four (4) calendar days after being mailed by US certified or registered mail, return receipt requested, postage prepaid, whichever occurs first or c) by nationally recognized overnight courier service, with proof of delivery, to the address specified below. The date of mailing shall count as the first day. All communications shall be addressed to the appropriate party at the address stated herein or such other address as the parties hereto may designate by written notice from time to time in the manner aforesaid.

Contractor: Life Technologies Corporation
5781 Van Allen Way
Carlsbad, CA 92008
Attn: Bids & Contracts
Email: NA_BidLegalNotices@lifetech.com

With a copy to: Life Technologies Corporation
North American Sales and Services
Attn: Service Contract Administration
Mail Stop: PLE C-1
5781 Van Allen Way
Carlsbad, CA 92008
Fax: 925-426-2051
Email: Service.Sales@lifetech.com

County: Sheriff-Coroner Department/OC Crime Lab
320 N. Flower Street, 5th Floor
Santa Ana, CA 92703
Attn: Maria Manriquez
Ph: 714-834-6301
Email: MManriquez@ocsheriff.gov

Assigned DPA: County of Orange
Sheriff-Coroner Department/Purchasing Services Unit
320 N. Flower Street, 2nd Floor
Santa Ana, CA 92703
Attn: Erika Lara
Ph: 714-834-4327
Email: Elara@ocsheriff.gov

22. Precedence: The Contract documents consist of this Contract and its exhibits and attachments. In the event of a conflict between or among the Contract documents, the order of precedence shall be the provisions of the main body of this Contract, i.e., those provisions set forth in the recitals and articles of this Contract, and then the exhibits and attachments.
23. Termination – Orderly: After receipt of a termination notice from the County of Orange or upon issuing a notice of termination to the County, the Contractor may submit to the County a termination claim, if applicable. Such claim shall be submitted promptly, but in no event later than 60 days from the effective date of the termination, unless one or more extensions in writing are granted by the County upon written request of the Contractor. Upon termination County agrees to pay the Contractor for all services actually performed prior to termination which meet the requirements of the Contract, provided, however, that such compensation combined with previously paid compensation shall not exceed the total compensation set forth in the Contract. Upon termination or other expiration of this Contract, each party shall promptly return to the other party all papers, materials, and other properties of the other held by each for purposes of performance of the Contract.
24. Usage: No guarantee is given by the County to the Contractor regarding usage of this Contract. Usage figures, if provided, are approximations. The Contractor agrees to supply services and/or commodities requested, as needed by the County of Orange, at rates/prices listed in the Contract, regardless of quantity requested.
25. Usage Reports: Intentionally Left Blank
26. Sub-Contracting: No performance of this Contract or any portion thereof may be subcontracted by the Contractor without the express written consent of the County. Any attempt by the Contractor to subcontract any performance of this Contract without the express written consent of the County shall be invalid and shall constitute a breach of this Contract.

In the event that the Contractor is authorized by the County to subcontract, this Contract shall take precedence over the terms of the Contract between Contractor and subcontractor, and shall incorporate by reference the terms of this Contract. The County shall look to the Contractor for performance and indemnification and not deal directly with any subcontractor. All work performed by a subcontractor must meet the approval of the County of Orange.

-Signature Page Follows-

Signature Page

The Parties hereto have executed this Contract# MA-060-23011532 for the Maintenance of Genetic Analyzers on the dates shown opposite their respective signatures below.

Contractor*: Life Technologies Corporation

By: Gigi S. Chapman Title: Contracts Specialist

Print Name: Gigi S. Chapman Date: October 17, 2023

NOTE: Per the Board of Directors of Life Technologies Corporation, the signatory herein is hereby authorized to legally bind Life Technologies Corporation. Please see the attached "Certificate of Assistant Secretary - Signature Authority dtd 02-21-2023 issued by the

Contractor*: Life Technologies Corporation Corporate Board of Directors.

By: _____ Title: _____

Print Name: _____ Date: _____

**If the contracting party is a corporation, (2) two signatures are required: (1) signature by the Chairman of the Board, the President or any Vice President; and one (1) signature by the Secretary, any Assistant Secretary, the Chief Financial Officer or any Assistant Treasurer. The signature of one person alone is sufficient to bind a corporation, as long as he or she holds corporate offices in each of the two categories described above. For County purposes, proof of such dual office holding will be satisfied by having the individual sign the instrument twice, each time indicating his or her office that qualifies under the above described provision.*

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

County Of Orange

A political subdivision of the State of California



Sheriff-Coroner Department

By: _____ Title: _____

Print Name: _____ Date: _____

Approved by the Board of Supervisors: _____

Approved as to Form

Office of the County Counsel
Orange County, California

By: Liz Pejeau
Deputy

LIFE TECHNOLOGIES CORPORATION

CERTIFICATE OF ASSISTANT SECRETARY SIGNATURE AUTHORITY

I HEREBY CERTIFY:

That I am Assistant Secretary of Life Technologies Corporation, a corporation organized and existing under the laws of the State of Delaware and having its principal place of business in Carlsbad, California. Acting in such capacity, I hereby further certify that each of the following employees of Life Technologies Corporation has been duly delegated the authority to sign in the name and on behalf of Life Technologies Corporation and its subsidiaries Applied Biosystems, LLC and Life Technologies Inc. (collectively, the Company), purchase orders, purchase and sale agreements, responses to and agreements entered into in connection with bids and requests for proposals, and other agreements, in each case for or relating to (i) the purchase of the Company's instruments, consumables, or other products that are offered for sale or distributed by the Company, or (ii) the performance of repair, maintenance, or other services by the Company with respect to such instruments or other products (all of the above, collectively, "Agreements"), each of a value, as determined in good faith by the authorized individual named below executing same, not to exceed the amount set forth opposite each such individual's name in the table below, provided that such Agreement(s) to be executed is/are in compliance with all necessary and applicable company requirements. The execution in the name and on behalf of the Company of any such Agreements by the persons named below prior to the date of this instrument that were within the authority herein granted is hereby ratified, confirmed and adopted in all respects.

Such Agreements may contain, subject to any limitations set forth above, such terms and conditions as the authorized persons signing same may approve in his or her sole discretion, each such person's execution and delivery of any Agreements to be conclusive evidence of his or her approval thereof.

The authority herein granted to may be revoked at any time with respect to any individual named below until revoked or until such individual is no longer an employee of Life Technologies Corporation or any of its affiliated entities. Upon the occurrence of either such event, the authority herein granted to the subject individual shall be and is revoked.

Approved Signatories and Limitations:

<u>Name of Employee</u>	<u>Title</u>	<u>Limitation</u>
Joseph Bozzuti	Contracts Counsel	\$1,000,000
Raquel Feitosa	Contracts Counsel	\$1,000,000
Jennifer Rowland	Contracts Counsel	\$1,000,000
Jorge C. Barreno	Gov't Contracts Counsel	\$1,000,000
Patricia A. Trigueiro*	Manager, Contracts	\$500,000
Lori Drapeau*	Contracts Specialist	\$500,000
Gigi Chapman*	Contracts Specialist	\$500,000
Iliana Vazquez*	Contracts Specialist	\$500,000
Brooke Gambone*	Contracts Specialist	\$500,000
Matt Quinn	Government Contracts Manager	\$500,000
Katherine McGregor	Government Contracts Manager	\$500,000
Mark Spellman	Government Contracts Manager	\$500,000

** Two of any combination of the asterisks (*) individuals may be combined for a signature authority limit of \$1,000,000.*

IN WITNESS WHEREOF, I have hereunto set my hand and affixed the seal of Life Technologies Corporation as of the 21 day of February, 2023.

Genoffir MacLeod

Genoffir MacLeod
 Assistant Secretary
 Life Technologies Corporation

ATTACHMENT A

Scope of Work

1. Contractor shall provide the following for the maintenance and repairs of the Genetic Analyzers, Real Time PCR Instruments, RapidHIT DNA instruments, Massive Parallel Sequencers, and KingFisher Presto Magnetic Particle Processors, hereafter referred to as "Instrument(s)", that are in service at the OC Crime Laboratory (OCCL).
 - A. Contractor shall provide Services to County between the business hours of 8:00 a.m. through 5:00 p.m. (Pacific Time), Monday through Friday, excluding all Contractor holidays. Pursuant to the County Project Manager's request, Contractor shall provide the County Project Manager a schedule of the Contractor's company holidays.
 - B. Contractor shall supply parts, labor, and instrument service expenses. Consumables are not included in this contract, except those consumable parts replaced during preventative maintenance/repair visits.
 - C. Emergency calls need a response within 24 hours to 1 business day of initial contact. Contractor does not need to schedule a visit, but needs to speak with someone in the Laboratory within 24 hours to 1 business day. At that time the Lab may set up an appointment with Contractor to come out for emergency service as part of the service included in the agreement with no additional charge for onsite labor, travel time, or travel expenses during the business hours of 8 a.m. to 5 p.m. Monday through Friday.
 - D. Contractor shall provide one (1) planned preventative maintenance (PM) call per instrument per one Contract year in accordance with its PM procedures for the instrument Contractor is servicing.
 - E. Scheduled preventative maintenance shall include cleaning, inspecting adjustment and calibration to published factory specifications. This PM visit ensures optimal performance of your instrument, often preventing major breakdowns before they happen.
 - F. Off-site maintenance or service is included in this Contract at no extra charges. When an instrument needs to be taken from the County premises, the County Project Manager or their authorized representative must be notified, and a signed receipt must be left for the instrument prior to its removal.
 - G. OC Crime Lab agrees to maintain the instrument in good repair in accordance with prescribed maintenance schedules.

2. Delivery Location:

County of Orange
Sheriff's Department / Crime Lab
320 N. Flower St, 7th Floor
Santa Ana, CA 92703

ATTACHMENT B

Compensation and Pricing Provisions

1. Compensation: This is a firm-fixed fee Contract between the County and Contractor for Maintenance of Genetic Analyzers as set forth in Attachment A, "Scope of Work".

The Contractor agrees to accept the specified compensation as set forth in this Contract as full payment for performing all services and furnishing all staffing and materials required, for any reasonably unforeseen difficulties which may arise or be encountered in the execution of the services until acceptance, for risks connected with the services, and for performance by the Contractor of all its duties and obligations hereunder. The Contractor shall only be compensated as set forth herein for work performed in accordance with the Scope of Work. The County shall have no obligation to pay any sum in excess of the fixed rates specified herein unless authorized by amendment in accordance with Articles C. Amendments of the County Contract Terms and Conditions.

2. Fees and Charges: County will pay the following fees in accordance with the provisions of this Contract. Payment shall be as follows:

Item#	Qty	Instrument	Serial Number	Coverage	Year 1 From 11/01/2023 To 10/31/2024	Year 2 From 11/01/2024 To 10/31/2025
0010	1	3500 Genetic Analyzer	25186-040	AB Assurance 1 PM	\$13,050.00	\$13,050.00
0020	1	3500 Genetic Analyzer	22118-201	AB Assurance 1 PM	\$13,050.00	\$13,050.00
0030	1	3500 Genetic Analyzer	30158-020	AB Assurance 1 PM	\$13,050.00	\$13,050.00
0040	1	7500 Real Time PCR System	275009752	AB Assurance 1PM	\$8,229.96	\$8,229.96
0050	1	7500 Real Time PCR System^	2750011730	AB Assurance 1PM	-	\$6,349.46
0060	1	7500 Real Time PCR System^	2750011734	AB Assurance 1PM	-	\$6,349.46
0070	1	ION Chef SVC	242471528	AB Assurance 1PM	\$9,000.00	\$9,000.00
0080	1	ION S5 Sequencer	2772718090606	AB Assurance 1PM	\$10,749.96	\$10,749.96
0090	1	RapidHIT ID System	RHID-0785	AB Assurance 1PM	\$16,838.50	\$16,980.00

0100	1	KingFisher Presto 96 Deepwell Head*	713-80682	AB Assurance 1PM	\$3,755.17	\$5,400.00
0110	1	KingFisher Presto 96 Deepwell Head*	713-80866	AB Assurance 1PM	\$3,755.17	\$5,400.00
0120	1	KingFisher Presto 96 Deepwell Head*	713-8G0087	AB Assurance 1PM	\$3,755.17	\$5,400.00
0130	1	KingFisher Presto 96 Deepwell Head*	713-8G0237	AB Assurance 1PM	\$3,755.17	\$5,400.00
Contract Year Shall Not Exceed					\$98,989.10	\$118,408.84

*Instrument covered under the initial purchase agreement through 02/19/2024. Service period price for Year 1: 02/20/2024 – 10/31/2024 (Prorated Price)

^Instrument covered under the initial purchase/extended service agreement through 01/23/2025. Service period for Year 1: N/A. Service Period for Year 2: 01/24/2025 – 10/31/2025 (Prorated Price)

Contract Shall Not Exceed \$217,397.94 for the Initial Term of Two (2) Years.

3. Price Increase/Decreases: No price increases will be permitted during the initial two year term of the contract. The County requires documented proof of cost increases on Contracts prior to any price adjustment. A minimum of 30-days advance notice in writing is required to secure such adjustment. No retroactive price adjustments will be considered. All price decreases will automatically be extended to the County of Orange. The County may enforce, negotiate, or cancel escalating price Contracts or take any other action it deems appropriate, as it sees fit. The net dollar amount of profit will remain firm during the period of the Contract. Adjustments increasing the Contractor's profit will not be allowed.
4. Contractor's Expense: The Contractor will be responsible for all costs related to photo copying, telephone communications and fax communications while on County sites during the performance of work and services under this Contract.
5. Payment Terms: Invoices are to be submitted in annually in advance to the user agency/department on the ship-to address, unless otherwise directed in this Contract. Vendor shall reference Contract number on invoice. Payment of invoice will be net 30 calendar days after receipt of an invoice in a format acceptable to the County of Orange and verified and approved by the department and subject to routine processing requirements. The responsibility for providing an acceptable invoice rests with the Contractor. For the avoidance of doubt, "acceptable invoice" shall mean an invoice that meets the requirements of Section 7 below titled Payment – Invoicing Instructions and contains accurate information.

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

Payments made by the County does not preclude the right of the County from thereafter disputing the services billed as permitted under this Contract and shall not be construed as acceptance of the services.

6. **Taxpayer ID Number:** The Contractor shall include its taxpayer ID number on all invoices submitted to the County for payment to ensure compliance with IRS requirements and to expedite payment processing.
7. **Payment – Invoicing Instructions:** The Contractor will provide an invoice on the Contractor's letterhead for goods delivered and/or services rendered. In the case of goods, the Contractor will leave an invoice with each delivery. Each invoice will have a number and will include the following information:
 - a. Contractor's name and address
 - b. Contractor's remittance address, if different from 1 above
 - c. Contractor's Taxpayer ID Number
 - d. Name of County Department
 - e. Delivery/service address
 - f. Master Agreement (MA) number
 - g. Department's Account Number, if applicable
 - h. Date of invoice
 - i. Product/service description, quantity, and prices
 - j. Sales tax, if applicable
 - k. Freight/delivery charges, if applicable
 - l. Total

Invoice and support documentation are to be forwarded to:

Orange County Sheriff's Department/Crime Lab
Attn: Maria Manriquez
320 N. Flower Street, 5th Floor
Santa Ana, CA 92703
Email: occlpurchasing@ocsheriff.com and mmanriquez@ocsheriff.gov

9. **Payment (Electronic Funds Transfer (EFT))**
The County of Orange offers Contractors the option of receiving payment directly to its bank account via an Electronic Fund Transfer (EFT) process in lieu of a check payment. Payments made via EFT shall also receive an Electronic Remittance Advice with the payment details via e-mail. An e-mail address shall need to be provided to the County of Orange via an EFT Authorization Form. Contractor may request a form from the department representative listed in the contract.

~~AMENDMENT NUMBER THREE~~
~~TO~~
~~CONTRACT NUMBER MA 060 19010584~~
~~BETWEEN THE~~
~~COUNTY OF ORANGE~~
~~AND~~
~~LIFE TECHNOLOGIES CORPORATION~~

~~This AMENDMENT NUMBER THREE to Contract MA 060 19010584 (hereinafter "AMENDMENT NUMBER THREE") between the County of Orange, a political subdivision of the State of California (hereinafter "COUNTY"), and Life Technologies Corporation (hereinafter "CONTRACTOR"), with a business address of 5791 Van Allen Way, Carlsbad, CA 92008, is made and entered upon execution of all necessary signatures.~~

~~RECITALS:~~

~~WHEREAS, COUNTY and CONTRACTOR executed a Contract for Maintenance of Genetic Analyzers and Real Time PCR Instruments on November 6, 2018, for a term of November 6, 2018 through and including October 31, 2020, renewable for three (3) additional one year terms (hereinafter "ORIGINAL CONTRACT"); and~~

~~WHEREAS, COUNTY and CONTRACTOR renewed the ORIGINAL CONTRACT on September 22, 2020, for a one year term of November 1, 2020 through and including October 31, 2021 in an amount not to exceed \$21,162.05, amended Attachment B, Compensation and Pricing Provisions, Section 2. Fees and Charges in its entirety, and amended Paragraph X., Change of Ownership of the ORIGINAL CONTRACT in its entirety (hereinafter "AMENDMENT NUMBER ONE"); and~~

~~WHEREAS, COUNTY and CONTRACTOR renewed the ORIGINAL CONTRACT on October 5, 2021 for a one (1) year term of November 1, 2021 through and including October 31, 2022 in an amount not to exceed \$60,275.78, and amended Attachment B, Compensation and Pricing Provisions, Section 2. Fees and Charges in its entirety to add two (2) additional Instruments (hereinafter "AMENDMENT NUMBER TWO"); and~~

~~WHEREAS, COUNTY desires to renew the ORIGINAL CONTRACT for a one (1) year term of November 1, 2022 through and including October 31, 2023 in an amount not to exceed \$59,180.04, as well as amend Attachment B, Compensation and Pricing Provisions, Section 2. Fees and Charges in its entirety due to a price increase and to remove Item #0030, and the CONTRACTOR has agreed to provide those services at the rates set forth in this AMENDMENT NUMBER THREE;~~

~~NOW THEREFORE, in consideration of the mutual obligations set forth herein, both COUNTY and CONTRACTOR agree as follows:~~

~~1. ARTICLES~~

~~a. Additional Terms and Conditions, Section 2, Term of Contract, of the ORIGINAL CONTRACT is amended to read in its entirety as follows:~~

~~2. Term of Contract:~~

~~This Contract shall commence upon execution of all necessary signatures, and continue in effect from 11/06/2018 through and including 10/31/2023, unless otherwise terminated by COUNTY.~~

~~b. Additional Terms and Conditions, Section 3 Renewals, of the ORIGINAL CONTRACT is amended in its entirety as follows:~~

~~3. Renewal: This Contract may not be renewed.~~

~~e. Attachment B, Pricing, Section 2. Fees and Charges of the ORIGINAL CONTRACT is amended in its entirety as follows:~~

~~ATTACHMENT B
COMPENSATION AND PRICING PROVISIONS~~

~~1. Fees and Charges: County will pay the following fees in accordance with the provisions of this Contract. Payment shall be as follows:~~

Item#	Qty	Instrument	Serial Number	Coverage	Price
0010	1	3500-Genetic Analyzer	25186-040	AB-Assurance 1 PM 11/01/2022 to 10/31/2023	\$11,550.00
0020	1	3500-Genetic Analyzer	22118-201	AB-Assurance 1 PM 11/01/2022 to 10/31/2023	\$11,550.00
0040	1	7500-Real Time PCR System	275009752	AB-Assurance 1 PM 11/01/2022 to 10/31/2023	\$7,350.00
0050	1	3500-Genetic Analyzer	30158-020	AB-Assurance 1 PM 11/01/22 to 10/31/2023	\$11,550.00
0060	1	ION-Chef SVC	242471528	AB-Assurance 1PM 12/19/2022 to 10/31/2023	\$7,830.00
0070	1	ION-S5-Sequencer	2772718090606	AB-Assurance 1PM 12/19/2022-10/31/2023	\$9,350.04
Contract Shall Not Exceed for the term of 11/1/22 through and including 10/31/23					\$ 59,180.04

~~2. All other terms and conditions in this Contract shall remain unchanged and with full force and effect.~~

(Signature page to follow)

~~IN WITNESS WHEREOF, the Parties have executed AMENDMENT NUMBER THREE to Contract Number MA-060-19010584.~~

~~*Contractor: Life Technologies Corporation~~

~~By: _____ Title: _____
Print Name: _____ Date: _____~~

~~*Contractor: Life Technologies Corporation~~

~~By: _____ Title: _____
Print Name: _____ Date: _____~~

~~*If the contracting party is a corporation, (2) two signatures are required: (1) signature by the Chairman of the Board, the President or any Vice President; and one (1) signature by the Secretary, any Assistant Secretary, the Chief Financial Officer or any Assistant Treasurer. The signature of one person alone is sufficient to bind a corporation, as long as he or she holds corporate offices in each of the two categories described above. For County purposes, proof of such dual office holding will be satisfied by having the individual sign the instrument twice, each time indicating his or her office that qualifies under the above described provision.*~~

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

County of Orange

A political subdivision of the State of California



Sheriff-Coroner Department

By: _____ Title: _____
Print Name: _____ Date: _____

Approved by the Board of Supervisors: _____

Approved as to Form
Office of the County Counsel
Orange County, California

by _____
—Deputy

Contract MA-060-23011532
with
Life Technologies Corporation
for
Maintenance of Genetic Analyzers

This Contract MA-060-23011532 for Maintenance of Genetic Analyzers (hereinafter referred to as "Contract") is made and entered into as of the date fully executed by and between the County of Orange, a political subdivision of the State of California (hereinafter referred to as "County") and Life Technologies Corporation, with a place of business at 5791 Van Allen Way, Carlsbad, CA 92008 (hereinafter referred to as "Contractor"), with a County and Contractor sometimes referred to as "Party" or collectively as "Parties".

ATTACHMENTS

This Contract is comprised of this document and the following Attachments, which are attached hereto and incorporated by reference into this Contract:

Attachment A – Scope of Work
Attachment B – Compensation and Pricing Provision

RECITALS

WHEREAS, Contractor and County are entering into this Contract for Maintenance of Genetic Analyzers under a firm fixed fee Contract; and

WHEREAS, Contractor agrees to provide Maintenance of Genetic Analyzers to the County as further set forth in the Scope of Work, attached hereto as Attachment A; and

WHEREAS, County agrees to pay Contractor based on the schedule of fees set forth in Compensation and Pricing Provision, attached hereto as Attachment B; and

WHEREAS, the County Board of Supervisors has authorized the Purchasing Agent or designee to enter into a Contract for Maintenance of Genetic Analyzers with the Contractor;

NOW, THEREFORE, the Parties mutually agree as follows:

ARTICLES

General Terms and Conditions:

- A. Governing Law and Venue: This Contract has been negotiated and executed in the state of California and shall be governed by and construed under the laws of the state of California. In the event of any legal action to enforce or interpret this Contract, the sole and exclusive venue shall be a court of competent jurisdiction located in Orange County, California, and the parties hereto agree to and do hereby submit to the jurisdiction of such court, notwithstanding Code of Civil Procedure Section 394.
- B. Entire Contract: This Contract contains the entire Contract between the parties with respect to the matters herein, and there are no restrictions, promises, warranties or undertakings other than those set forth herein or referred to herein. No exceptions, alternatives, substitutes or revisions are valid or binding on County unless authorized by County in writing. Electronic acceptance of any additional terms, conditions or supplemental Contracts by any County employee or agent, except by installers of software that relates to the functional and/or application software required by a product to meet

the County's requirements, shall not be valid or binding on County unless accepted in writing by County's Purchasing Agent or designee.

- C. Amendments: No alteration or variation of the terms of this Contract shall be valid unless made in writing and signed by the parties; no oral understanding or agreement not incorporated herein shall be binding on either of the parties; and no exceptions, alternatives, substitutes or revisions are valid or binding on County unless authorized by County in writing.
- D. Taxes: Unless otherwise provided herein or by law, price quoted does not include California state sales or use tax. Out-of-state Contractors shall indicate California Board of Equalization permit number and sales permit number on invoices, if California sales tax is added and collectable. If no permit numbers are shown, sales tax will be deducted from payment. The Auditor-Controller will then pay use tax directly to the State of California in lieu of payment of sales tax to the Contractor.
- E. Delivery: Contractor provides services Monday through Friday, 8:00 a.m. through 5:00 p.m. Contractor will work with the County to schedule services at a time that is mutually convenient and the Contractor shall use commercially reasonable efforts to comply with County's requested time of delivery of services. Should any delay be anticipated, the Contractor shall notify the County as soon as possible. County reserves the right to refuse any goods or services and to cancel all or any part of the goods not conforming to manufacturer's specifications, drawings, samples or descriptions or services that do not conform to Attachment A – Scope of Work. Acceptance of any part of the order for goods shall not bind County to accept future shipments. Over shipments and under shipments of goods shall be only as agreed to in writing by County. Delivery shall not be deemed to be complete until all goods or services have actually been received and accepted by County as set forth in Section F [Acceptance/Payment].
- F. Acceptance Payment: Unless otherwise agreed to in writing by County and Contractor, 1) acceptance of the laboratory instrument services to be performed by Contractor shall be deemed complete when Contractor performs services in accordance with service plan specification, Attachment A – Scope of Work, and the generally accepted standards prevailing in the instrument service industry. Upon acceptance, the County will not lose any warranty rights and 2) payment shall be made as set forth in Attachment B [Payment/Compensation].
- G. Warranty: Contractor expressly warrants that the goods covered by this Contract are 1) free of liens or encumbrances, and that Contractor will comply with any applicable state or federal codes, ordinances, orders, or statutes which may relate to Contractor's activities under this Contract, including the Occupational Safety and Health Act (OSHA) and the California Industrial Safety Act, 2) will conform to Attachment A – Scope of Work, and 3) are provided with Contractor's standard limited warranty for instrument services, which reads in its entirety as follows:

As used in this Section: – “we” “us” or “our” refers to Contractor, and “you” and “your” refers to the County. – “Instrument Services” refers to the Contractor's laboratory instruments services provided under this Contract.

Limited Warranty for Instrument Services.

1. Limited Warranty: We warrant that the Instrument Services we provide to you will be in accordance with the generally accepted standards prevailing in the Instrument Service industry. You must make any claim for breach of this warranty within 90 days of the date the Instrument Services were performed and prior to any unauthorized repair, change, or modification has been made to any part of the instrument.

2. Exclusions: Our warranties do not apply to (i) your neglect, carelessness, or misuse, such as but not limited to, connecting the instrument to electrical services or other utilities not in accordance with the installation requirements for the instrument, using incompatible solvents or samples with the instrument, operating the instrument not in conformance with our instructions or specifications, or your improper or inadequate maintenance of the instrument; (ii) installation of software or use in combination with software or products that we did not supply or authorize; (iii) modification, repair, service transfer to another location of the instrument that you or your employees, agents or an unauthorized contractor made; (iv) intrusive activity, including without limitation computer viruses, hackers or other unauthorized interactions with instrument or software that detrimentally affects normal operations; from acts of nature or accident; or (v) any defects or damage that we did not cause. ADDITIONALLY, ANY INSTALLATION, RELOCATION, MAINTENANCE, REPAIR, SERVICE OR ALTERATION TO OR OF, OR OTHER TAMPERING WITH, THE PRODUCTS PERFORMED BY ANY PERSON OR ENTITY OTHER THAN US WITHOUT OUR PRIOR WRITTEN APPROVAL, OR ANY USE OF REPLACEMENT PARTS WE HAVE NOT SUPPLIED, WILL IMMEDIATELY VOID AND CANCEL ALL WARRANTIES WITH RESPECT TO THESE INSTRUMENT SERVICES AND THE AFFECTED PRODUCTS.

3. Remedies: During the applicable warranty period only, for services not meeting our warranty, we agree, at our option to: (i) re-perform the defective Instrument Services, or (ii) refund to you the fee you paid to us for the defective Instrument Services, if applicable. This section states our entire liability for a valid warranty claim under this Contract.

4. Limitations: Our warranties extend only to you, the original purchaser, and you cannot transfer them. With respect to instrument services, except as expressly stated, we disclaim all other warranties of any kind, whether express or implied, oral or written, including but not limited to warranties of fitness for a particular purpose or merchantability.

H. Intentionally Omitted.

I. Assignment: The terms, covenants, and conditions contained herein shall apply to and bind the heirs, successors, executors, administrators and assigns of the parties. Furthermore, neither the performance of this Contract nor any portion thereof may be assigned by Contractor without the express written consent of County. Any attempt by Contractor to assign the performance or any portion thereof of this Contract without the express written consent of County shall be invalid and shall constitute a breach of this Contract.

J. Non-Discrimination: In the performance of this Contract, Contractor agrees that it will comply with the requirements of Section 1735 of the California Labor Code and not engage nor permit any subcontractors to engage in discrimination in employment of persons because of the race, religious creed, color, national origin, ancestry, physical disability, mental disability, medical condition, marital status, or sex of such persons. Contractor acknowledges that a violation of this provision shall subject Contractor to penalties pursuant to Section 1741 of the California Labor Code.

K. Termination: In addition to any other remedies or rights it may have by law:

- a. County or Contractor have the right to immediately terminate this Contract without penalty for cause if a Party materially breaches a term or condition of this Contract and fails to cure such breach within ninety (90) days after written notice of breach is received or after ninety

(90) days' written notice without cause. Cause shall be defined as any material breach of contract, any misrepresentation or fraud on the part of a Party.

- b. Contractor may immediately terminate this Contract if the instrument covered by the Contract is transferred to another location without the Contractor's advance written consent, or the Parties may mutually agree to adjust the cost of providing the services at the new location provided the County agrees in writing to pay the new rate which may be higher. Any such adjustments shall be in accordance with Section 3 [Adjustments – Scope of Work] of the Additional Terms and Conditions of this Contract.

Exercise by County of its right to terminate the Contract shall relieve County of all further obligation with the following exception: Payment shall be made by County to Contractor if any payments to Contractor are due pursuant to Section 22 [Termination – Orderly].

- L. Consent to Breach Not Waiver: No term or provision of this Contract shall be deemed waived and no breach excused, unless such waiver or consent shall be in writing and signed by the party claimed to have waived or consented. Any consent by any party to, or waiver of, a breach by the other, whether express or implied, shall not constitute consent to, waiver of, or excuse for any other different or subsequent breach.
- M. Independent Contractor: Contractor shall be considered an independent contractor and neither Contractor, its employees, nor anyone working under Contractor shall be considered an agent or an employee of County. Neither Contractor, its employees nor anyone working under Contractor shall qualify for workers' compensation or other fringe benefits of any kind through County.
- N. Performance: Contractor shall perform all work under this Contract, taking necessary steps and precautions to perform the work to County's satisfaction that the instrument services meet County's regulation or certification documents. Contractor shall be responsible for the professional quality, technical assurance, timely completion and coordination of all documentation and other goods/services furnished by the Contractor under this Contract. Contractor shall perform all work diligently, carefully, and in a good and workmanlike manner; shall furnish all necessary labor, supervision, machinery, equipment, materials, and supplies, shall at its sole expense obtain and maintain all applicable permits and licenses required by public authorities, including those of County required in its governmental capacity, in connection with performance of the work. If permitted to subcontract, Contractor shall be fully responsible for all work performed by subcontractors. Notwithstanding the foregoing, the Parties agree that Contractor makes no representation that the instrument services that Contractor provides to the County will meet or satisfy standards of any government body. County agrees that it is County's responsibility to ensure that such services are adequate to meet County's regulation or certification documents.
- O. Insurance Requirements: Prior to the provision of services under this Contract, the Contractor agrees to purchase all required insurance at Contractor's expense, including all endorsements required herein, necessary to satisfy the County that the insurance provisions of this Contract have been complied with. Contractor agrees to keep such insurance coverage, provide Certificates of Insurance, and endorsements the County during the entire term of this Contract.

Insurance is not required of any subcontractors as Contractor agrees no subcontractors will be used in the performance of this contract.

All self-insured retentions (SIRs) shall be the responsibility of the Contractor and shall be clearly stated on the Certificate of Insurance.

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

Qualified Insurer

The policy or policies of insurance must be issued by an insurer with a minimum rating of A- (Secure A.M. Best's Rating) and VIII (Financial Size Category as determined by the most current edition of the **Best's Key Rating Guide/Property-Casualty/United States or ambest.com**).

If the insurance carrier does not have an A.M. Best Rating of A-/VIII, the CEO/ Office of CRisk Management retains the right to approve or reject a carrier after a review of the company's performance and financial ratings.

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

<u>Coverage</u>	<u>Minimum Limits</u>
Commercial General Liability	\$1,000,000 per occurrence \$2,000,000 aggregate
Automobile Liability including coverage scheduled, non-owned and hired vehicles	\$1,000,000 per occurrence owned or non-owned
Workers Compensation	Statutory
Employers Liability Insurance	\$1,000,000 per occurrence

Required Coverage Forms

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

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

Required Endorsements

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

- 1) An Additional Insured endorsement using ISO form CG 20 26 04 13, or a form at least as broad naming the ***County of Orange its elected and appointed officials, officers, agents, and employees*** as Additional Insureds, or provide blanket coverage, which will state ***AS REQUIRED BY WRITTEN CONTRACT***.
- 2) A primary non-contributory endorsement using ISO form CG 20 01 04 13, or a form at least as broad evidencing that the Contractor's insurance is primary and any insurance or self-insurance maintained by the County of Orange shall be excess and non-contributing.

The Workers' Compensation policy shall contain a waiver of subrogation endorsement waiving all rights of subrogation against the ***County of Orange, its elected and appointed officials, officers, agents, and employees*** or provide blanket coverage, which will state ***AS REQUIRED BY WRITTEN***

CONTRACT.

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

Contractor shall provide thirty (30) days prior written notice to the County of any policy cancellation or non-renewal and ten (10) days prior written notice where cancellation is due to non-payment of premium and provide a copy of the cancellation notice to County. Failure to provide written notice of cancellation may constitute a material breach of the Contract, upon which the County may suspend or terminate this Contract.

The Commercial General Liability policy shall contain a severability of interests clause also known as a "separation of insureds" clause (standard in the ISO CG 0001 policy).

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

If the Contractor fails to provide the insurance certificates and endorsements within seven (7) days of notification by CEO/Purchasing or the agency/department purchasing division, then County may terminate the Contract.

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

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

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

- P. Changes: Contractor shall make no changes in the work or perform any additional work without the County's specific written approval.
- Q. Change of Ownership/Name, Litigation Status, Conflict with County Interests: Contractor agrees that if there is a change or transfer in ownership of Contractor's business prior to completion of this Contract, and the County agrees to an assignment of the Contract, the new owners shall be required under the terms of sale or other instruments of transfer to assume Contractor's duties and obligations contained in this Contract and complete them in accordance with Attachment A (Scope of Work).

County reserves the right to immediately terminate the Contract in the event the County determines that the assignee is not qualified or is otherwise unacceptable to the County for the provision of services under the Contract.

In addition, Contractor has the duty to notify the County in writing of any change in the Contractor's status with respect to name changes that do not require an assignment of the Contract. The Contractor is also obligated to notify the County in writing if the Contractor becomes a party to any litigation against the County, or a party to litigation that may reasonably affect the Contractor's performance under the Contract, as well as any potential conflicts of interest between Contractor and County that may arise prior to or during the period of Contract performance. While Contractor will be required to provide this information without prompting from the County any time there is a change in Contractor's name, conflict of interest or litigation status, Contractor must also provide an update to

the County of its status in these areas whenever requested by the County.

The Contractor shall exercise reasonable care and diligence to prevent any actions or conditions that could result in a conflict with County interests. In addition to the Contractor, this obligation shall apply to the Contractor's employees, agents, and subcontractors associated with the provision of goods and services provided under this Contract. The Contractor's efforts shall include, but not be limited to establishing rules and procedures preventing its employees, agents, and subcontractors from providing or offering gifts, entertainment, payments, loans or other considerations which could be deemed to influence or appear to influence County staff or elected officers in the performance of their duties.

- R. **Force Majeure:** Contractor shall not be liable for damages caused by any act of God, war, civil disorder, employment strike or other cause beyond its reasonable control, provided Contractor gives written notice of the cause of the delay to County as soon as commercially reasonable from the time Contractor becomes aware of such delay .
- S. **Confidentiality:** Each Party agrees to maintain the confidentiality of the other Party's records and information pursuant to all statutory laws relating to privacy and confidentiality that currently exist or exist at any time during the term of this Contract. All such records and information shall be considered confidential and kept confidential by the receiving Party's staff, agents and employees. Such obligation shall not apply to information that is (a) in the public domain at the time of its disclosure through no fault of the receiving party; (b) was lawfully in the receiving party's possession prior to its receipt from disclosing party, or (c) becomes known to the receiving party from a third party, who is not subject to an obligation of confidentiality towards the other disclosing party. To the extent that a party believes certain information is confidential, it shall make the other party aware of such claims. In case a party is required to disclose confidential information by virtue of a court order or statutory duty, then the party shall be allowed to do so, provided that the party shall, without delay, inform the other party in writing of receipt of such order or coming into existence of such duty and enable the other party reasonably to seek protection against such order or duty.
- T. **Compliance with Laws:** Contractor represents and warrants that services to be provided under this Contract shall fully comply, at Contractor's expense, with all applicable industry standards, laws, statutes, and regulations (collectively "laws"), including, but not limited to those issued by County in its governmental capacity and all other laws applicable to the services at the time services are provided to and accepted by County. Contractor acknowledges that County is relying on Contractor to ensure such compliance, and pursuant to the requirements of paragraph "Z" below, Contractor agrees that it shall defend, indemnify and hold County and County INDEMNITEES harmless from all liability, damages, costs and expenses arising from or related to a violation of such laws.
- U. **Freight:** Contractor will ship goods to the County's United States destination specified in the County's orders as FOB Destination. Contractor assumes full responsibility for all transportation costs, transportation scheduling, packing, handling, insurance, and other services associated with delivery of all goods deemed necessary under this Contract. Title to goods will pass to County (except software incorporated within or forming part of a goods, which Contractor or Contractor's licensors continue to own) when Contractor delivers goods to the County's United States destination.
- V. **Severability:** If any term, covenant, condition or provision of this Contract is held by a court of competent jurisdiction to be invalid, void, or unenforceable, the remainder of the provisions hereof shall remain in full force and effect and shall in no way be affected, impaired or invalidated thereby.
- W. **Attorney Fees:** In any action or proceeding to enforce or interpret any provision of this Contract, each party shall bear their own attorney's fees, costs and expenses.
- X. **Interpretation:** This Contract has been negotiated at arm's length and between persons sophisticated and knowledgeable in the matters dealt with in this Contract. In addition, each party had been

represented by experienced and knowledgeable independent legal counsel of their own choosing or has knowingly declined to seek such counsel despite being encouraged and given the opportunity to do so. Each party further acknowledges that they have not been influenced to any extent whatsoever in executing this Contract by any other party hereto or by any person representing them, or both. Accordingly, any rule or law (including California Civil Code Section 1654) or legal decision that would require interpretation of any ambiguities in this Contract against the party that has drafted it is not applicable and is waived. The provisions of this Contract shall be interpreted in a reasonable manner to effect the purpose of the parties and this Contract.

- Y. **Employee Eligibility Verification:** The Contractor warrants that it fully complies with all Federal and State statutes and regulations regarding the employment of aliens and others and that all its employees performing work under this Contract meet the citizenship or alien status requirement set forth in Federal statutes and regulations. The Contractor shall obtain, from all employees performing work hereunder, all verification and other documentation of employment eligibility status required by Federal or State statutes and regulations including, but not limited to, the Immigration Reform and Control Act of 1986, 8 U.S.C. §1324 et seq., as they currently exist and as they may be hereafter amended. The Contractor shall retain all such documentation for all covered employees for the period prescribed by the law. The Contractor shall indemnify, defend with counsel approved in writing by County, and hold harmless, the County, its agents, officers, and employees from employer sanctions and any other liability which may be assessed against the Contractor or the County or both in connection with any alleged violation of any Federal or State statutes or regulations pertaining to the eligibility for employment of any persons performing work under this Contract.
- Z. **Indemnification:** Contractor agrees to indemnify, defend with counsel approved in writing by County (such approval not be be unreasonably delayed or withheld), and hold County, its elected and appointed officials, officers, employees, agents and those special districts and agencies which County's Board of Supervisors acts as the governing Board ("County Indemnitees") harmless from any third-party claims, demands or liability of any kind or nature, including but not limited to personal injury or property damage, to the extent arising from or related to the negligence or willful misconduct of the Contractor and its agents, employees or subcontractors in the performance of this Contract. If judgment is entered against Contractor and County by a court of competent jurisdiction because of the concurrent active negligence of County or County Indemnitees, Contractor and County agree that liability will be apportioned as determined by the court. Neither party shall request a jury apportionment.
- AA. **Audits/Inspections:** Contractor agrees to permit the County's Auditor-Controller or the Auditor-Controller's authorized representative (including auditors from a private auditing firm hired by the County) access during normal working hours to all books, accounts, records, reports, files, financial records, supporting documentation, including payroll and accounts payable/receivable records, and other papers or property of Contractor for the purpose of auditing or inspecting any aspect of performance under this Contract. The inspection and/or audit will be confined to those matters connected with the performance of the Contract including, but not limited to, the costs of administering the Contract. The County will provide reasonable notice of such an audit or inspection. For inspections taking place on the Contractor's premises, any non-affiliate private third party, professional advisors/auditing firm, shall be first required to sign an appropriate, mutually agreed confidentiality agreement for such inspection.

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

Contractor agrees to maintain such records for possible audit for a minimum of three years after final payment, unless a longer period of records retention is stipulated under this Contract or by law. Contractor agrees to allow interviews of any employees or others who might reasonably have information related to such records. Further, Contractor agrees to include a similar right to the County

to audit records and interview staff of any subcontractor related to performance of this Contract.

Should the Contractor cease to exist as a legal entity, the Contractor's records pertaining to this Contract shall be forwarded to the County's project manager.

- BB. Contingency of Funds: Contractor acknowledges that funding or portions of funding for this Contract may be contingent upon state budget approval; receipt of funds from, and/or obligation of funds by, the state of California to County; and inclusion of sufficient funding for the services hereunder in the budget approved by County's Board of Supervisors for each fiscal year covered by this Contract. If such approval, funding or appropriations are not forthcoming, or are otherwise limited, County may immediately terminate or modify this Contract without penalty.
- CC. Expenditure Limit: Intentionally Left Blank.
- DD. Limitation of Liability: To the maximum extent permitted by applicable law, contractor will not be liable under any legal theory (including but not limited to contract, negligence, strict liability in tort or warranty of any kind) for any indirect, special, incidental, punitive, multiple, exemplary or consequential damages (including but not limited to costs of cover, lost profits, lost data, loss of business, loss of goodwill or loss of revenue) that county might incur under the contract, or that may arise from or in connection with contractor's goods or services, even if contractor had notice of the possibility of such damages. In addition, except for contractor's indemnification obligations in sections H and Z, Contractor's maximum aggregate liability arising out of or in connection with the contract, or any good or service, is limited to four (4) times the amount County paid to Contractor for the good or service purchased. However, these provisions do not limit Contractor's liability for death or personal injury caused by Contractor's negligence or fraud, fraudulent misrepresentation or any other liability that cannot be excluded by law.
- EE. Intellectual Property: County acknowledges that all intellectual property rights relating to Contractor's goods and services, as between County and Contractor, are solely and exclusively owned by Contractor. Contractor's sale of goods to County only grants the County a limited, non-transferable right under such intellectual property, for only County to use the quantity of the goods that County has bought from Contractor only for County's internal research purposes. No right to resell Contractor's goods or any of their components is conveyed expressly, by implication, or by estoppel. Unless Contractor expressly states otherwise in writing, Contractor provides no rights to use its goods in commercial applications of any kind, including, without limitation, manufacturing, quality control or commercial services such as reporting the results of County's activities for a fee or other form of consideration. If County needs commercial use rights to Contractor's goods (including the right to perform fee for services), please contact Contractor's out-licensing department at outlicensing@lifetech.com. To the extent that County's use of Contractor's goods is outside the scope of the Contract, it is solely County's responsibility to acquire additional intellectual property rights related to such use ("Additional Rights"). Nothing in the Contract limits Contractor's ability to enforce Contractor's intellectual property rights.
- FF. Export Control: Goods and information that the County receives from Contractor are subject to United States, European Union and local export control laws and regulations. The County may not, directly or indirectly, sell, export, re-export, transfer, divert, or otherwise dispose of any such product or information (including products derived from or based on Contractor's products or information) to any destination, entity, or person prohibited by United States, European Union or local laws or regulations.
- GG. Decontamination and Safe Working Environment: Before Contractor performs services on the County's instrument, the County will fully decontaminate the instrument or its components of radioactive, biological, toxic or other dangerous materials before Contractor performs services on the

County's instrument. If Contractor requests, the County will submit to Contractor an accurate and completed certificate of decontamination substantially similar in form and content to the form found on <https://www.thermofisher.com/us/home/technical-resources/instrumentsupport/decontaminationform.html> (ThermoFisher Scientific Certificate of Instrument Decontamination).

If Contractor reasonably requests, the County will agree to move the instrument to another location that Contractor reasonably deems is safe for Contractor's employees to perform the instrument services.

Contractor does not service instruments in biosafety level-3 laboratories, unless Contractor agrees otherwise in writing in advance. There may be an additional charge and additional terms for services in such facilities. Contractor does not service instruments in biosafety level-4 laboratories.

Additional Terms and Conditions

1. **Scope of Contract:** This Contract specifies the contractual terms and conditions by which Contractor shall provide the Services to County, as further detailed in the Scope of Work identified and incorporated herein by this reference as Attachment A.
2. **Term of Contract:** This Contract shall commence on November 1, 2023 and continue for two (2) calendar years from that date, unless otherwise this Contract is earlier terminated by the Parties. This Contract may be renewed as set forth in paragraph 3 below.
3. **Renewal:** This Contract may be renewed by mutual written agreement of both Parties for three (3) additional one (1) year terms. The County does not have to give reason if it elects not to renew. Renewal periods may be subject to approval by the County of Orange Board of Supervisors.
4. **Adjustments – Scope of Work:** No adjustments made to the Scope of Work will be authorized without prior written approval of the County assigned Deputy Purchasing Agent and prior written approval of the Contractor in the form of an amendment to this Contract.
5. **Breach of Contract:** The failure of the Contractor to comply with any of the provisions, covenants or conditions of this Contract shall be a material breach of this Contract. In such event the County may, and in addition to any other remedies available at law, in equity, or otherwise specified in this Contract:
 - a) Terminate the Contract immediately, pursuant to Section K herein;
 - b) Afford the Contractor written notice of the breach and thirty (30) calendar days or such shorter time that may be specified in this Contract within which to cure the breach;
 - c) Discontinue payment to the Contractor for and during the period in which the Contractor is in breach; and
 - d) Offset against any monies billed by the Contractor but yet unpaid by the County those monies disallowed pursuant to the above.
6. **Civil Rights:** Contractor attests that services provided shall be in accordance with the provisions of Title VI and Title VII of the Civil Rights Act of 1964, as amended, Section 504 of the Rehabilitation Act of 1973, as amended; the Age Discrimination Act of 1975 as amended; Title II of the Americans with Disabilities Act of 1990, and other applicable State and federal laws and regulations prohibiting

discrimination on the basis of race, color, national origin, ethnic group identification, age, religion, marital status, sex or disability.

7. **Conflict of Interest – Contractor’s Personnel:** The Contractor shall exercise reasonable care and diligence to prevent any actions or conditions that could result in a conflict with the best interests of the County. This obligation shall apply to the Contractor; the Contractor’s employees, agents, and subcontractors associated with accomplishing work and services hereunder. The Contractor’s efforts shall include, but not be limited to establishing precautions to prevent its employees, agents, and subcontractors from providing or offering gifts, entertainment, payments, loans or other considerations which could be deemed to influence or appear to influence County staff or elected officers from acting in the best interests of the County.
8. **Conflict of Interest – County Personnel:** The County of Orange Board of Supervisors policy prohibits its employees from engaging in activities involving a conflict of interest. The Contractor shall not, during the period of this Contract, employ any County employee for any purpose.
9. **Contractor’s Project Manager and Key Personnel:** Contractor shall appoint a Project Manager to direct the Contractor’s efforts in fulfilling Contractor’s obligations under this Contract. This Project Manager shall be subject to approval by the County and shall not be changed without the written consent of the County’s Project Manager, which consent shall not be unreasonably withheld.

The Contractor’s Project Manager shall be assigned to this project for the duration of the Contract and shall diligently pursue all work and services to meet the project time lines. The County’s Project Manager shall have the right to require the removal and replacement of the Contractor’s Project Manager from providing services to the County under this Contract. The County’s Project manager shall notify the Contractor in writing of such action. The Contractor shall accomplish the removal within five (5) business days after written notice by the County’s Project Manager. The County’s Project Manager shall review and approve the appointment of the replacement for the Contractor’s Project Manager. The County is not required to provide any additional information, reason or rationale in the event it The County is not required to provide any additional information, reason or rationale in the event it requires the removal of Contractor’s Project Manager from providing further services under the Contract.

10. **Contractor Personnel – Reference Checks:** The Contractor warrants that all persons employed to provide service under this Contract have satisfactory past work records indicating their ability to adequately perform the work under this Contract. Contractor’s employees assigned to this project must meet character standards as demonstrated by background investigation and reference checks, coordinated by the agency/department issuing this Contract.
11. **Contractor’s Expense:** The Contractor will be responsible for all costs related to photo copying, telephone communications, fax communications, and parking while on County sites during the performance of work and services under this Contract. The County will not provide free parking for any service in the County Civic Center.
12. **Contractor Personnel – Uniform/Badges/Identification:** The Contractor warrants that all persons employed to provide service under this Contract have satisfactory past work records indicating their ability to accept the kind of responsibility under this Contract.

All Contractor’s employees shall be required to wear uniforms, badges, or other means of identification which are to be furnished by the Contractor and must be worn at all times while working on County property. The assigned Deputy Purchasing Agent must be notified in writing, within seven (7) days of notification of award of Contract of the uniform and/or badges and/or other identification to be worn by employees prior to beginning work and notified in writing seven (7) days prior to any changes in this procedure.

13. Contractor's Records: The Contractor shall keep true and accurate accounts, records, books and data which shall correctly reflect the business transacted by the Contractor in accordance with generally accepted accounting principles. These records shall be maintained by Contractor for a period of three (3) years after final payment is received from the County.
14. Conditions Affecting Work: The Contractor shall be responsible for taking all steps reasonably necessary to ascertain the nature and location of the work to be performed under this Contract and to know the general conditions which can affect the work or the cost thereof. Any failure by the Contractor to do so will not relieve Contractor from responsibility for successfully performing the work without additional cost to the County. The County assumes no responsibility for any understanding or representations concerning the nature, location(s) or general conditions made by any of its officers or agents prior to the execution of this Contract, unless such understanding or representations by the County are expressly stated in the Contract.
15. Data – Title To: All materials, documents, data or information obtained from the County data files or any County medium furnished to the Contractor in the performance of this Contract will at all times remain the property of the County. Such data or information may not be used or copied for direct or indirect use by the Contractor after completion or termination of this Contract without the express written consent of the County. All materials, documents, data or information, including copies, must be returned to the County at the end of this Contract.
16. Disputes – Contract:
 - A. The parties shall deal in good faith and attempt to resolve potential disputes informally. If the dispute concerning a question of fact arising under the terms of this Contract is not disposed of in a reasonable period of time by the Contractor's Project Manager and the County's Project Manager, such matter shall be brought to the attention of the County Deputy Purchasing Agent by way of the following process:
 1. The Contractor shall submit to the agency/department assigned Deputy Purchasing Agent a written demand for a final decision regarding the disposition of any dispute between the parties arising under, related to, or involving this Contract, unless the County, on its own initiative, has already rendered such a final decision.
 2. The Contractor's written demand shall be fully supported by factual information, and, if such demand involves a cost adjustment to the Contract, the Contractor shall include with the demand a written statement signed by a senior official indicating that the demand is made in good faith, that the supporting data are accurate and complete, and that the amount requested accurately reflects the Contract adjustment for which the Contractor believes the County is liable.
 - B. Pending the final resolution of any dispute arising under, related to, or involving this Contract, the Contractor agrees to diligently proceed with the performance of this Contract, including the delivery of goods and/or provision of services. The Contractor's failure to diligently proceed shall be considered a material breach of this Contract.

Any final decision of the County shall be expressly identified as such, shall be in writing, and shall be signed by the County Deputy Purchasing Agent or his designee. If the County fails to render a decision within 90 days after receipt of

the Contractor's demand, it shall be deemed a final decision adverse to the Contractor's contentions. Nothing in this section shall be construed as affecting the County's right to terminate the Contract for cause or termination for convenience as stated in section K herein.

16. **Drug-Free Workplace:** The Contractor hereby certifies compliance with Government Code Section 8355 in matters relating to providing a drug-free workplace. The Contractor will:

A. Publish a statement notifying employees that unlawful manufacture, distribution, dispensation, possession, or use of a controlled substance is prohibited and specifying actions to be taken against employees for violations, as required by Government Code Section 8355(a)(1).

B.. Establish a drug-free awareness program as required by Government Code Section 8355(a)(2) to inform employees about all of the following:

1. The dangers of drug abuse in the workplace;
2. The organization's policy of maintaining a drug-free workplace;
3. Any available counseling, rehabilitation and employee assistance programs; and
4. Penalties that may be imposed upon employees for drug abuse violations.

C. Provide as required by Government Code Section 8355(a)(3) that every employee who works under this Contract:

1. Will receive a copy of the company's drug-free policy statement; and
2. Will agree to abide by the terms of the company's statement as a condition of employment under this Contract.

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

1. The Contractor has made false certification, or
2. The Contractor violates the certification by failing to carry out the requirements as noted above.

17. **Emergency/Declared Disaster Requirements:** In the event of an emergency or if Orange County is declared a disaster area by the County, state or federal government, this Contract may be subjected to unusual usage. The Contractor shall service the County during such an emergency or declared disaster under the same terms and conditions that apply during non-emergency/disaster conditions. The pricing quoted by the Contractor shall apply to serving the County's needs regardless of the circumstances. If the Contractor is unable to supply the goods/services under the terms of the Contract, then the Contractor shall provide proof of such disruption and a copy of the invoice for the goods/services from the Contractor's supplier(s). Additional profit margin as a result of supplying goods/services during an emergency or a declared disaster shall not be permitted. In the event of an

emergency or declared disaster, emergency purchase order numbers will be assigned. All applicable invoices from the Contractor shall show both the emergency purchase order number and the Contract number.

18. **Errors and Omissions:** All reports, files and other documents prepared and submitted by Contractor shall be complete and shall be carefully checked by the professional(s) identified by Contractor as project manager and key personnel attached hereto, prior to submission to the County. Contractor agrees that County review is discretionary and Contractor shall not assume that the County will discover errors and/or omissions. If the County discovers any errors or omissions prior to approving Contractor's reports, files and other written documents, the reports, files or documents will be returned to Contractor for correction. Should the County or others discover errors or omissions in the reports, files or other written documents submitted by the Contractor after County approval thereof, County approval of Contractor's reports, files or documents shall not be used as a defense by Contractor in any action between the County and Contractor, and the reports, files or documents will be returned to Contractor for correction.
19. **Equal Employment Opportunity:** The Contractor shall comply with U.S. Executive Order 11246 entitled, "Equal Employment Opportunity" as amended by Executive Order 11375 and as supplemented in Department of Labor regulations (41 CFR, Part 60) and applicable state of California regulations as may now exist or be amended in the future. The Contractor shall not discriminate against any employee or applicant for employment on the basis of race, color, national origin, ancestry, religion, sex, marital status, political affiliation or physical or mental condition.

Regarding handicapped persons, the Contractor will not discriminate against any employee or applicant for employment because of physical or mental handicap in regard to any position for which the employee or applicant for employment is qualified. The Contractor agrees to provide equal opportunity to handicapped persons in employment or in advancement in employment or otherwise treat qualified handicapped individuals without discrimination based upon their physical or mental handicaps in all employment practices such as the following: employment, upgrading, promotions, transfers, recruitments, advertising, layoffs, terminations, rate of pay or other forms of compensation, and selection for training, including apprenticeship. The Contractor agrees to comply with the provisions of Sections 503 and 504 of the Rehabilitation Act of 1973, as amended, pertaining to prohibition of discrimination against qualified handicapped persons in all programs and/or activities as detailed in regulations signed by the Secretary of the Department of Health and Human Services effective June 3, 1977, and found in the Federal Register, Volume 42, No. 68 dated May 4, 1977, as may now exist or be amended in the future.

Regarding Americans with disabilities, Contractor agrees to comply with applicable provisions of Title 1 of the Americans with Disabilities Act enacted in 1990 as may now exist or be amended in the future.

20. **News/Information Release:** The Contractor agrees that it will not issue any news releases in connection with either the award of this Contract or any subsequent amendment of or effort under this Contract without first obtaining review and written approval of said news releases from the County through the County's Project Manager.
21. **Notices:** Any and all notices, requests demands and other communications contemplated, called for, permitted, or required to be given hereunder shall be in writing with a copy provided to the assigned Deputy Purchasing Agent (DPA), and County Project Manager (CPM, as set forth below, except through the course of the parties' project managers' routine exchange of information and cooperation during the terms of the work and services. Any written communications shall be deemed to have been duly given upon a) actual in-person delivery, if delivery is by direct hand, b) upon delivery on the actual day of receipt or no greater than four (4) calendar days after being mailed by US certified or registered mail, return receipt requested, postage prepaid, whichever occurs first or c) by nationally recognized overnight courier service, with proof of delivery, to the address specified below. The date

of mailing shall count as the first day. All communications shall be addressed to the appropriate party at the address stated herein or such other address as the parties hereto may designate by written notice from time to time in the manner aforesaid.

Contractor: Life Technologies Corporation
5781 Van Allen Way
Carlsbad, CA 92008
Attn: Bids & Contracts
Email: NA_BidLegalNotices@lifetech.com

With a copy to: Life Technologies Corporation
North American Sales and Services
Attn: Service Contract Administration
Mail Stop: PLE C-1
5781 Van Allen Way
Carlsbad, CA 92008
Fax: 925-426-2051
Email: Service.Sales@lifetech.com

County: Sheriff-Coroner Department/OC Crime Lab
320 N. Flower Street, 5th Floor
Santa Ana, CA 92703
Attn: Maria Manriquez
Ph: 714-834-6301
Email: MManriquez@ocsheriff.gov

Assigned DPA: County of Orange
Sheriff-Coroner Department/Purchasing Services Unit
320 N. Flower Street, 2nd Floor
Santa Ana, CA 92703
Attn: Erika Lara
Ph: 714-834-4327
Email: Elara@ocsheriff.gov

22. Precedence: The Contract documents consist of this Contract and its exhibits and attachments. In the event of a conflict between or among the Contract documents, the order of precedence shall be the provisions of the main body of this Contract, i.e., those provisions set forth in the recitals and articles of this Contract, and then the exhibits and attachments.
23. Termination – Orderly: After receipt of a termination notice from the County of Orange or upon issuing a notice of termination to the County, the Contractor may submit to the County a termination claim, if applicable. Such claim shall be submitted promptly, but in no event later than 60 days from the effective date of the termination, unless one or more extensions in writing are granted by the County upon written request of the Contractor. Upon termination County agrees to pay the Contractor for all services actually performed prior to termination which meet the requirements of the Contract, provided, however, that such compensation combined with previously paid compensation shall not exceed the total compensation set forth in the Contract. Upon termination or other expiration of this Contract, each party shall promptly return to the other party all papers, materials, and other properties of the other held by each for purposes of performance of the Contract.
24. Usage: No guarantee is given by the County to the Contractor regarding usage of this Contract. Usage figures, if provided, are approximations. The Contractor agrees to supply services and/or commodities requested, as needed by the County of Orange, at rates/prices listed in the Contract, regardless of quantity requested.

25. Usage Reports: Intentionally Left Blank

26. Sub-Contracting: No performance of this Contract or any portion thereof may be subcontracted by the Contractor without the express written consent of the County. Any attempt by the Contractor to subcontract any performance of this Contract without the express written consent of the County shall be invalid and shall constitute a breach of this Contract.

In the event that the Contractor is authorized by the County to subcontract, this Contract shall take precedence over the terms of the Contract between Contractor and subcontractor, and shall incorporate by reference the terms of this Contract. The County shall look to the Contractor for performance and indemnification and not deal directly with any subcontractor. All work performed by a subcontractor must meet the approval of the County of Orange.

-Signature Page Follows-

Signature Page

The Parties hereto have executed this Contract# MA-060-23011532 for the Maintenance of Genetic Analyzers on the dates shown opposite their respective signatures below.

Contractor*: Life Technologies Corporation

By: _____	Title: _____
Print Name: _____	Date: _____

Contractor*: Life Technologies Corporation

By: _____	Title: _____
Print Name: _____	Date: _____

**If the contracting party is a corporation, (2) two signatures are required: (1) signature by the Chairman of the Board, the President or any Vice President; and one (1) signature by the Secretary, any Assistant Secretary, the Chief Financial Officer or any Assistant Treasurer. The signature of one person alone is sufficient to bind a corporation, as long as he or she holds corporate offices in each of the two categories described above. For County purposes, proof of such dual office holding will be satisfied by having the individual sign the instrument twice, each time indicating his or her office that qualifies under the above described provision.*

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

County Of Orange

A political subdivision of the State of California



Sheriff-Coroner Department

By: _____	Title: _____
Print Name: _____	Date: _____

Approved by the Board of Supervisors: _____

Approved as to Form

Office of the County Counsel
Orange County, California

By: _____
Deputy

ATTACHMENT A

Scope of Work

1. Contractor shall provide the following for the maintenance and repairs of the Genetic Analyzers, Real Time PCR Instruments, RapidHIT DNA instruments, Massive Parallel Sequencers, and KingFisher Presto Magnetic Particle Processors, hereafter referred to as "Instrument(s)", that are in service at the OC Crime Laboratory (OCCL).
 - A. Contractor shall provide Services to County between the business hours of 8:00 a.m. through 5:00 p.m. (Pacific Time), Monday through Friday, excluding all Contractor holidays. Pursuant to the County Project Manager's request, Contractor shall provide the County Project Manager a schedule of the Contractor's company holidays.
 - B. Contractor shall supply parts, labor, and instrument service expenses. Consumables are not included in this contract, except those consumable parts replaced during preventative maintenance/repair visits.
 - C. Emergency calls need a response within 24 hours to 1 business day of initial contact. Contractor does not need to schedule a visit, but needs to speak with someone in the Laboratory within 24 hours to 1 business day. At that time the Lab may set up an appointment with Contractor to come out for emergency service as part of the service included in the agreement with no additional charge for onsite labor, travel time, or travel expenses during the business hours of 8 a.m. to 5 p.m. Monday through Friday.
 - D. Contractor shall provide one (1) planned preventative maintenance (PM) call per instrument per one Contract year in accordance with its PM procedures for the instrument Contractor is servicing.
 - E. Scheduled preventative maintenance shall include cleaning, inspecting adjustment and calibration to published factory specifications. This PM visit ensures optimal performance of your instrument, often preventing major breakdowns before they happen.
 - F. Off-site maintenance or service is included in this Contract at no extra charges. When an instrument needs to be taken from the County premises, the County Project Manager or their authorized representative must be notified, and a signed receipt must be left for the instrument prior to its removal.
 - G. OC Crime Lab agrees to maintain the instrument in good repair in accordance with prescribed maintenance schedules.

2. Delivery Location:

County of Orange
Sheriff's Department / Crime Lab
320 N. Flower St, 7th Floor
Santa Ana, CA 92703

ATTACHMENT B

Compensation and Pricing Provisions

2. **Compensation:** This is a firm-fixed fee Contract between the County and Contractor for Maintenance of Genetic Analyzers as set forth in Attachment A, "Scope of Work".

The Contractor agrees to accept the specified compensation as set forth in this Contract as full payment for performing all services and furnishing all staffing and materials required, for any reasonably unforeseen difficulties which may arise or be encountered in the execution of the services until acceptance, for risks connected with the services, and for performance by the Contractor of all its duties and obligations hereunder. The Contractor shall only be compensated as set forth herein for work performed in accordance with the Scope of Work. The County shall have no obligation to pay any sum in excess of the fixed rates specified herein unless authorized by amendment in accordance with Articles C. Amendments of the County Contract Terms and Conditions.

3. **Fees and Charges:** County will pay the following fees in accordance with the provisions of this Contract. Payment shall be as follows:

Item#	Qty	Instrument	Serial Number	Coverage	Year 1 From 11/01/2023 To 10/31/2024	Year 2 From 11/01/2024 To 10/31/2025
0010	1	3500 Genetic Analyzer	25186-040	AB Assurance 1 PM	\$13,050.00	\$13,050.00
0020	1	3500 Genetic Analyzer	22118-201	AB Assurance 1 PM	\$13,050.00	\$13,050.00
0030	1	3500 Genetic Analyzer	30158-020	AB Assurance 1 PM	\$13,050.00	\$13,050.00
0040	1	7500 Real Time PCR System	275009752	AB Assurance 1PM	\$8,229.96	\$8,229.96
0050	1	7500 Real Time PCR System^	2750011730	AB Assurance 1PM	-	\$6,349.46
0060	1	7500 Real Time PCR System^	2750011734	AB Assurance 1PM	-	\$6,349.46
0070	1	ION Chef SVC	242471528	AB Assurance 1PM	\$9,000.00	\$9,000.00
0080	1	ION S5 Sequencer	2772718090606	AB Assurance 1PM	\$10,749.96	\$10,749.96
0090	1	RapidHIT ID System	RHID-0785	AB Assurance 1PM	\$16,838.50	\$16,980.00

0100	1	KingFisher Presto 96 Deepwell Head*	713-80682	AB Assurance 1PM	\$3,755.17	\$5,400.00
0110	1	KingFisher Presto 96 Deepwell Head*	713-80866	AB Assurance 1PM	\$3,755.17	\$5,400.00
0120	1	KingFisher Presto 96 Deepwell Head*	713-8G0087	AB Assurance 1PM	\$3,755.17	\$5,400.00
0130	1	KingFisher Presto 96 Deepwell Head*	713-8G0237	AB Assurance 1PM	\$3,755.17	\$5,400.00
Contract Year Shall Not Exceed					\$98,989.10	\$118,408.84

**Instrument covered under the initial purchase agreement through 02/19/2024. Service period price for Year 1: 02/20/2024 – 10/31/2024 (Prorated Price)*

^Instrument covered under the initial purchase/extended service agreement through 01/23/2025. Service period for Year 1: N/A. Service Period for Year 2: 01/24/2025 – 10/31/2025 (Prorated Price)

Contract Shall Not Exceed \$217,397.94 for the Initial Term of Two (2) Years.

4. **Price Increase/Decreases:** No price increases will be permitted during the initial two year term of the contract. The County requires documented proof of cost increases on Contracts prior to any price adjustment. A minimum of 30-days advance notice in writing is required to secure such adjustment. No retroactive price adjustments will be considered. All price decreases will automatically be extended to the County of Orange. The County may enforce, negotiate, or cancel escalating price Contracts or take any other action it deems appropriate, as it sees fit. The net dollar amount of profit will remain firm during the period of the Contract. Adjustments increasing the Contractor's profit will not be allowed.
5. **Contractor's Expense:** The Contractor will be responsible for all costs related to photo copying, telephone communications and fax communications while on County sites during the performance of work and services under this Contract.
6. **Payment Terms:** Invoices are to be submitted in annually in advance to the user agency/department on the ship-to address, unless otherwise directed in this Contract. Vendor shall reference Contract number on invoice. Payment of invoice will be net 30 calendar days after receipt of an invoice in a format acceptable to the County of Orange and verified and approved by the department and subject to routine processing requirements. The responsibility for providing an acceptable invoice rests with the Contractor. For the avoidance of doubt, "acceptable invoice" shall mean an invoice that meets the requirements of Section 7 below titled Payment – Invoicing Instructions and contains accurate information.

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

Payments made by the County does not preclude the right of the County from thereafter disputing the services billed as permitted under this Contract and shall not be construed as acceptance of the services.

7. Taxpayer ID Number: The Contractor shall include its taxpayer ID number on all invoices submitted to the County for payment to ensure compliance with IRS requirements and to expedite payment processing.
8. Payment – Invoicing Instructions: The Contractor will provide an invoice on the Contractor's letterhead for goods delivered and/or services rendered. In the case of goods, the Contractor will leave an invoice with each delivery. Each invoice will have a number and will include the following information:
 - a. Contractor's name and address
 - b. Contractor's remittance address, if different from 1 above
 - c. Contractor's Taxpayer ID Number
 - d. Name of County Department
 - e. Delivery/service address
 - f. Master Agreement (MA) number
 - g. Department's Account Number, if applicable
 - h. Date of invoice
 - i. Product/service description, quantity, and prices
 - j. Sales tax, if applicable
 - k. Freight/delivery charges, if applicable
 - l. Total

Invoice and support documentation are to be forwarded to:

Orange County Sheriff's Department/Crime Lab
Attn: Maria Manriquez
320 N. Flower Street, 5th Floor
Santa Ana, CA 92703
Email: occlpurchasing@ocsheriff.com and mmanriquez@ocsheriff.gov

9. Payment (Electronic Funds Transfer (EFT))
The County of Orange offers Contractors the option of receiving payment directly to its bank account via an Electronic Fund Transfer (EFT) process in lieu of a check payment. Payments made via EFT shall also receive an Electronic Remittance Advice with the payment details via e-mail. An e-mail address shall need to be provided to the County of Orange via an EFT Authorization Form. Contractor may request a form from the department representative listed in the contract.

Contract Summary Form

OC Expediter Requisition# 1589353

Life Technologies Corporation

SUMMARY OF SIGNIFICANT CHANGES

N/A

SUBCONTRACTORS

This contract does not currently include subcontractors or pass through to other providers.

CONTRACT OPERATING EXPENSES

See attached excerpt from the Contract with Life Technologies Corporation for Maintenance of Genetic Analyzers, Magnetic Particle Processors, Rapid DNA, and Real Time Polymerase Chain Reaction instruments for the term of November 1, 2023, through October 31, 2024, in the not to exceed amount of \$217,398, renewable for three additional one-year terms.

ATTACHMENT A

Scope of Work

1. Contractor shall provide the following for the maintenance and repairs of the Genetic Analyzers, Real Time PCR Instruments, RapidHIT DNA instruments, Massive Parallel Sequencers, and KingFisher Presto Magnetic Particle Processors, hereafter referred to as "Instrument(s)", that are in service at the OC Crime Laboratory (OCCL).
 - A. Contractor shall provide Services to County between the business hours of 8:00 a.m. through 5:00 p.m. (Pacific Time), Monday through Friday, excluding all Contractor holidays. Pursuant to the County Project Manager's request, Contractor shall provide the County Project Manager a schedule of the Contractor's company holidays.
 - B. Contractor shall supply parts, labor, and instrument service expenses. Consumables are not included in this contract, except those consumable parts replaced during preventative maintenance/repair visits.
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Sheriff's Department / Crime Lab
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2. **Compensation:** This is a firm-fixed fee Contract between the County and Contractor for Maintenance of Genetic Analyzers as set forth in Attachment A, "Scope of Work".

The Contractor agrees to accept the specified compensation as set forth in this Contract as full payment for performing all services and furnishing all staffing and materials required, for any reasonably unforeseen difficulties which may arise or be encountered in the execution of the services until acceptance, for risks connected with the services, and for performance by the Contractor of all its duties and obligations hereunder. The Contractor shall only be compensated as set forth herein for work performed in accordance with the Scope of Work. The County shall have no obligation to pay any sum in excess of the fixed rates specified herein unless authorized by amendment in accordance with Articles C. Amendments of the County Contract Terms and Conditions.

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Contract Shall Not Exceed \$217,397.94 for the Initial Term of Two (2) Years.



County Executive Office

Memorandum

October 26, 2023

To: Clerk of the Board of Supervisors
From: Frank Kim, County Executive Officer
Subject: Exception to Rule 21

Frank Kim

Digitally signed by Frank Kim
DN: cn=Frank Kim, o=County
of Orange, ou=County
Executive Office,
email=frank.kim@ocgov.com,
c=US
Date: 2023.10.26 10:39:44
-0700
Adobe Acrobat version:
2023.006.20360

CLERK OF THE BOARD
COUNTY OF ORANGE
BOARD OF SUPERVISORS

2023 OCT 26 PM 12:07

RECEIVED

S23C

The County Executive Office is requesting a Supplemental Agenda Staff Report for the October 31, 2023, Board Hearing.

Agency: County Executive Office
Subject: Reappoint the Clerk of the Board and Approve Fifth Amendment to Agreement for Employment
Districts: All Districts

Reason Item is Supplemental: The Agenda Staff Report and attachments were finalized after the filing deadline to the Clerk of the Board.

Justification: The Board of Supervisors has requested this item to come as soon as possible as the current contract for the Clerk of the Board will be expiring. This item will allow the extension of the Clerk of the Board's employment contract for three years.

Donald P. Wagner

Concur:

Donald P. Wagner, Chairman of the Board of Supervisors

cc: Board of Supervisors
County Executive Office
County Counsel

Agenda Item S23C
Clerk's Use Only

SUPPLEMENTAL AGENDA ITEM AGENDA STAFF REPORT

MEETING DATE: October 31, 2023

LEGAL ENTITY TAKING ACTION: Board of Supervisors

BOARD OF SUPERVISORS DISTRICT(S): All Districts

SUBMITTING AGENCY/DEPARTMENT: County Executive Office

DEPARTMENT HEAD REVIEW: *[Signature]*
Department Head Signature

DEPARTMENT CONTACT PERSON(S): Colette Farnes (714) 834-2836
Sandra Florez (714) 834-7360

RECEIVED
2023 OCT 26 PM 12:07
CLERK OF THE BOARD
COUNTY OF ORANGE
BOARD OF SUPERVISORS

SUBJECT: Approve Fifth Amendment to Agreement for Employment to Reappoint the Clerk of the Board

CEO CONCUR

[Signature]
Digitally signed by Frank Kim,
DN: cn=Frank Kim, ou=County of Orange,
ou=County Executive Office,
email=frank.kim@coorange.com, c=US
Date: 2023.10.26 10:38:42 -0700
Adobe Acrobat version: 2023.006.20360

CEO Signature

COUNTY COUNSEL REVIEW

Approve as to form

DocuSigned by: Action
[Signature]
570052AF60B844C

County Counsel Signature

CLERK OF THE BOARD

Discussion

3 Votes Board Majority

Budgeted: Yes

Current Year Cost: See Financial
Impact Section

Annual Cost: See Financial
Impact Section

Staffing Impact: No

of Positions: N/A

Sole Source: N/A

Current Fiscal Year Revenue: N/A

Funding Source: GF: 100%

County Audit in last 3 years: No

Levine Act Review Completed: N/A

Prior Board Action: 12/8/2020 #30, 4/28/2020 #48, 11/6/2018 #S9D, 9/11/2018 #S28C

RECOMMENDED ACTION(S)

1. Reappoint Robin Stieler as Clerk of the Board effective November 3, 2023.
2. Approve and authorize the Chairman of the Board to execute the Fifth Amendment to the Agreement for the Employment of the Clerk of the Board effective November 3, 2023, at an annual salary of \$195,555 and an estimated total compensation of \$312,167 including benefits.

SUMMARY:

Approval of the agreement will allow the Chairman of the Board to execute, on behalf of the Board of Supervisors, the attached three-year agreement for the Employment of the Clerk of the Board.

BACKGROUND INFORMATION:

A three-year employment agreement with Robin Stieler for employment as the Clerk of the Board was executed on November 17, 2015, and expired on November 16, 2018.

The table below provides actions previously taken by the Board.

Board Date	Board Action	Term Date
9/11/2018	Approve First Amendment increasing salary	N/A
11/6/2018	Reappoint Robin Stieler as Clerk of the Board and approve Second Amendment renewing the terms of employment and increasing salary	11/17/2018-11/16/2020
4/28/2020	Approve Third Amendment adding benefits generally provided to Executive Management (Group II) employees	4/29/2020 – 11/16/2023
12/8/2020	Reappoint Robin Stieler as Clerk of the Board and approve the Fourth Amendment renewing the terms of employment and increasing salary	11/17/2020 – 11/16/2023

FINANCIAL IMPACT:

The negotiated salary for Ms. Stieler is \$195,555. Including the cost of benefits, the total annual cost to the County is anticipated to be \$312,167. Salary and benefits appropriations are included in the Clerk of the Board FY 2023-2024 Budget for Budget Control 011 and will be included in the budgeting process for future years.

STAFFING IMPACT:

N/A

ATTACHMENT(S):

Attachment A - Fifth Amended Agreement for Employment of Clerk of the Board

**FIFTH AMENDMENT TO
EMPLOYMENT AGREEMENT
FOR
CLERK OF THE BOARD**

This Fifth Amendment (“FIFTH AMENDMENT”) to the Employment Agreement (“AGREEMENT”) for the Clerk of the Board is made by and between the County of Orange (“COUNTY”) and Robin Stieler (hereinafter “STIELER”). The COUNTY and STIELER shall collectively be referred to herein as the “Parties.”

ARTICLE I. RECITALS

- 1.1 **WHEREAS**, by minute order dated November 17, 2015, the Orange County Board of Supervisors (“BOARD”) approved the AGREEMENT;
- 1.2 **WHEREAS**, by minute order dated September 11, 2018, the BOARD approved the First Amendment to the AGREEMENT to modify the compensation, benefits, and annual leave available to STIELER under the AGREEMENT;
- 1.3 **WHEREAS**, on November 6, 2018, the BOARD approved the Second Amendment to the AGREEMENT to modify the compensation, benefits, and annual leave available to STIELER and to extend the term of the AGREEMENT to November 16, 2020;
- 1.4 **WHEREAS**, on April 29, 2020, the BOARD approved the Third Amendment to the AGREEMENT to modify the compensation, benefits, and annual leave available to STIELER; and,
- 1.5 **WHEREAS**, on November 17, 2020, the BOARD approved the Fourth Amendment to the AGREEMENT to modify the compensation, benefits, and annual leave available to STIELER and to extend the term of the AGREEMENT to November 16, 2023.
- 1.6 **WHEREAS**, on October 31, 2023, the BOARD re-appointed STIELER to the Office of Clerk of the Board for a three-year term, and now desires to amend the terms and conditions of STIELER’S employment in the manner set forth below.

ARTICLE II. TERMS

NOW THEREFORE, in consideration of the mutual covenants, representations, and promises set forth herein, the Parties agree as follows:

- 2.1 Except as modified in this FIFTH AMENDMENT, all terms of the AGREEMENT shall remain in full force and effect;

2.2 With respect to Section 2 of the AGREEMENT, Term shall be extended as follows:

This AGREEMENT is for a three-year term commencing on November 3, 2023, and ending on November 2, 2026 (hereinafter "EXPIRATION DATE").

2.3 With respect to the first paragraph of Section 6 of the AGREEMENT, the first sentence shall be revised to read:

"For services rendered to the COUNTY as Clerk of the Board, STIELER shall be compensated on a salary basis through the EXPIRATION DATE of this AGREEMENT in the annual amount of approximately \$195,555, commencing November 3, 2023. STIELER shall additionally be entitled to receive the same salary adjustments and benefits generally provided other Executive Management (Group II) employees."

ARTICLE III. ACKNOWLEDGEMENT AND CONSENT

By signing below, STIELER and Supervisor Donald P. Wagner, Chairman of the Board of Supervisors, acting on behalf of the COUNTY, acknowledge that they each have read and fully understand the terms and conditions of this FIFTH AMENDMENT, and that they consent and agree to each and every term and condition contained herein.

FOR THE COUNTY OF ORANGE:

Donald P. Wagner
Chair of the Board of Supervisors
County of Orange

Date

Robin Stieler


Date

Signed and certified that copy of this document
has been delivered to the Chair of the Board per
G.C. Sec. 25103, Reso 79-1535

Attest:

Valerie Sanchez
Assistant Clerk of the Board of Supervisors
Orange County California

APPROVED AS TO FORM:
Office of the County Counsel
Orange County, California

By  10/26/2023
3D3EBB13F30240E...

Leon J. Page
County Counsel



OFFICE OF THE COUNTY COUNSEL
COUNTY OF ORANGE

400 West Civic Center Drive, Suite 202
Santa Ana, California 92701
Direct No.: (714) 834-3303
E-Mail: leon.page@coco.ocgov.com

LEON J. PAGE
COUNTY COUNSEL

Agenda Item No. SCS- 2
October 31, 2023

MEMORANDUM

October 23, 2023

TO: Robin Stieler, Clerk of the Board of Supervisors
FROM: Leon J. Page, County Counsel
SUBJECT: Request for Supplemental Closed Session

I am requesting a supplemental closed session on Tuesday, October 31, 2023, to discuss with the Board the status of existing litigation, pursuant to Government Code section 54956.9(d)(1).

Accordingly, please prepare the Agenda Item to read:

“CONFERENCE WITH LEGAL COUNSEL –
EXISTING LITIGATION Pursuant to Government Code Section
54956.9(d)(1).

Name of Case: *Reyner Guerrero v. County of Orange*,
WCAB Case: ADJ17014596.

RECOMMENDED ACTION: Conduct Closed Session.”

Thank you.



CLERK OF THE BOARD
COUNTY OF ORANGE
BOARD OF SUPERVISORS

2023 OCT 24 AM 11:27

RECEIVED

LJP:vl

cc: Members of the Board of Supervisors
Frank Kim, CEO