

**SAMPLE SUBCONTRACT BETWEEN
PUBLIC HEALTH INSTITUTE
AND
SUBCONTRACTOR**

This subcontract is entered into on the subscribed date by the Public Health Institute, 555 12th Street, 10th Floor, Oakland, CA 94607-4046, 510-285-5500, Fax: 510-285-5501, hereinafter referred to as PHI, and the following Subcontractor: Subcontractor Name, Street Address, City, State, Zip, Phone: , Fax: , hereinafter referred to as SUBCONTRACTOR.

1. **RECITALS:** This agreement is a subcontract under prime contract no. 08-85580 awarded to PHI by the California Department of Public Health (CDPH) and funded by the U.S. Department of Agriculture (USDA).
2. **EFFECTIVE DATE OF SUBCONTRACT:** This subcontract and any amendment in the subcontract shall not take effect, and neither party shall be obligated to perform this subcontract or the amendment, unless and until the subcontract is approved in writing by an authorized representative of California Department of Public Health and SUBCONTRACTOR receives written notice thereof from PHI.
3. **TERM OF AGREEMENT:** The term of this subcontract shall be from July 1, 2009 to December 31, 2009.
4. **SCOPE OF WORK:** SUBCONTRACTOR shall provide the following services: Services as set forth in Exhibit A, Scope of Work, a copy of which is attached and made a part hereof by reference.
5. **PAYMENT FOR SUBCONTRACTOR'S SERVICES:**
 - A. The maximum amount payable shall not exceed \$XXX.XX, in accordance with Exhibit B, Budget, a copy of which is attached and made a part hereof by reference. PHI shall have no obligation to pay invoices received more than 30 days after the expiration of the term or termination of this agreement.

PHI shall reimburse SUBCONTRACTOR not more frequently than monthly, in arrears, upon receipt of SUBCONTRACTOR'S invoice(s) and approval by PHI representative Susan B. Foerster, for allowable costs incurred in accordance with Exhibit B, Budget, which is attached and made a part hereof by reference.
 - B. Amounts paid to SUBCONTRACTOR that are determined by audit or otherwise to be unallowable shall be deducted from subsequent payments due SUBCONTRACTOR, or SUBCONTRACTOR shall refund such amounts to PHI on demand.
 - C. SUBCONTRACTOR shall submit its final invoice no later than 60 days after the date of expiration of the term or termination of this subcontract. PHI may approve an extension of this deadline if requested by SUBCONTRACTOR.

D. Invoices shall be submitted on a form acceptable to PHI with supporting documentation as PHI may require, including name and address of SUBCONTRACTOR, project or subcontract number (if any), time period covered by the invoice, current period expenditures, cumulative expenditures to date, and the original signature of SUBCONTRACTOR's authorized representative.

6. TERMINATION: This subcontract may be terminated as follows: (i) Either party may terminate without cause upon 30 days written notice to the other party; (ii) PHI may terminate, effective on the date SUBCONTRACTOR receives written notice, if the prime contract terminates or is amended in relevant part, if PHI is required to terminate this subcontract by California Department of Public Health, or if SUBCONTRACTOR materially fails to comply with the terms and conditions of this subcontract. When it either sends or receives notice of termination, SUBCONTRACTOR shall cancel as many outstanding obligations as possible, and on the date of termination work shall stop and SUBCONTRACTOR shall not incur any new obligations. In the event of termination without cause, upon receipt of all completed or partially-completed deliverables, PHI shall pay SUBCONTRACTOR for costs incurred through the termination date (including the allowable cost of uncancelable obligations) if this is a cost-reimbursement type subcontract, and for services rendered through the termination date if this is a fixed price type subcontract. SUBCONTRACTOR shall incorporate the requirements of this clause in all lower tier subcontracts.

7. INCORPORATION BY REFERENCE

A. Exhibit D(F) to the prime contract entitled "California Department of Public Health Services Special Terms and Conditions (for federally funded service contracts or agreements and grant awards (03/08))" is attached and made a part hereof by reference. SUBCONTRACTOR shall be subject to and shall comply in all respects with the following numbered provisions of Exhibit D(F): 1, 2, 3, 4 (including subsection 4(g)(4)(a), except that SUBCONTRACTOR's reports under subsection a(1), (2) and (f) shall be submitted to PHI), 5, 6, 7, 8, 9 (except subsection 9.d), 10, 11, 12, 13, 14, 17, 19, 20, 24, 31. Unless the context requires otherwise, all references in Exhibit D(F) to the Contractor shall be deemed to refer to SUBCONTRACTOR.

B. All other terms and conditions of the prime contract that are applicable to this subcontract are incorporated herein by reference, and SUBCONTRACTOR shall be subject to and comply with them in all respects. SUBCONTRACTOR shall have the right to obtain a copy of the prime contract from PHI at any time. However, this section shall apply whether or not SUBCONTRACTOR does so, and SUBCONTRACTOR expressly waives any right to further notification or explanation of prime contract provisions. If any of the aforementioned prime contract provisions directly and irreconcilably conflict with other provisions of this subcontract, the latter shall take precedence.

C. SUBCONTRACTOR shall incorporate the requirements of this section into lower-tier subcontracts.

8. **INTELLECTUAL PROPERTY RIGHTS:** Notwithstanding Provision 10 of Exhibit D(F), entitled “Intellectual Property Rights,” whenever it is reasonably necessary for Subcontractor to use, reproduce, distribute, or modify any intellectual property in order to perform services that are required to be performed in or permitted to be performed under this agreement or under a subcontract approved by PHI under this agreement, PHI grants a non-exclusive, royalty-free, worldwide and irrevocable license to Subcontractor to use, reproduce, distribute, and modify such intellectual property and have or permit others to do so.
9. **PUBLIC REPORTING:** The SUBCONTRACTOR shall comply with the following requirements.
 - A. SUBCONTRACTOR must submit any news release related to this contract to PHI for review prior to its release.
 - B. SUBCONTRACTOR shall ensure that the California Department of Public Health (CDPH) and the U.S. Department of Agriculture (USDA) are clearly identified as a sponsor or support organization on all published material relating to this contract. The SUBCONTRACTOR agrees to abide by the guidelines set for usage of all *Network* logos on any products generated by SUBCONTRACTOR.
 - C. When producing audio and/or visual materials, not previously developed, the SUBCONTRACTOR will acknowledge CDPH and USDA support in the following manner:

English
A message from the California Department of Public Health funded by the Food Stamp Program of the U.S. Department of Agriculture.

Spanish
Patrocinado por el Departamento de Salud Publica de California y auspiciado por el Programa de Cupones de Alimentos del Departamento de Agricultura de los Estados Unidos.
 - D. The CDPH’s and USDA’s name shall be placed prominently on all other products generated by the SUBCONTRACTOR as a result of this contract with appropriate credit given for funding.
10. **PUBLICATIONS:** SUBCONTRACTOR shall not publish any journal articles or other materials that disclose the objectives, contents, methods, or results of work hereunder without the prior written authorization of PHI. SUBCONTRACTOR shall incorporate the requirements of this clause in all lower tier subcontracts.
11. **SUBCONTRACTING APPROVAL:** SUBCONTRACTOR shall not enter into any lower-tier subcontracts without the prior written approval of PHI.

12. **APPLICABILITY TO LOWER-TIER SUBCONTRACTORS AND SUPPLIERS:** SUBCONTRACTOR shall require its subcontractors, suppliers, employees, consultants and agents to comply with the applicable provisions of this subcontract.
13. **NON-DISCRIMINATION CLAUSE:** During the performance of this subcontract, SUBCONTRACTOR shall not unlawfully discriminate, harass, or allow harassment against any employee or applicant for employment because of sex, race, color, ancestry, religious creed, national origin, physical disability (including HIV and AIDS), mental disability, medical condition (cancer), age (over 40), marital status, and denial of family care leave. SUBCONTRACTOR shall insure that the evaluation and treatment of its employees and applicants for employment are free from such discrimination and harassment. SUBCONTRACTOR shall comply with the provisions of the Fair Employment and Housing Act (Government Code Section 12990 (a-f) et seq.) and the applicable regulations promulgated thereunder (California Code of Regulations, Title 2, Section 7285 et seq.). The applicable regulations of the Fair Employment and Housing Commission implementing Government Code Section 12990 (a-f), set forth in Chapter 5 of Division 4 of Title 2 of the California Code of Regulations are incorporated into this subcontract by reference and made a part hereof as if set forth in full. SUBCONTRACTOR shall give written notice of its obligations under this section to labor organizations with which it has a collective bargaining or other agreement.
14. **LOBBYING CERTIFICATION:** SUBCONTRACTOR shall comply with 31 USC 1352 “Limitation on Use of Appropriated Funds to Influence Certain Federal Contracting and Financial Matters” and implementing regulations at 48 CFR subpart 3.8. If this subcontract exceeds \$100,000, SUBCONTRACTOR certifies by signing this subcontract that to the best of its knowledge and belief no federal appropriated funds have been or will be paid by it or on its behalf to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with the making, award, extension, continuation, renewal, amendment or modification of any federal contract, grant, loan, or cooperative agreement, provided that if any funds other than federal appropriated funds (including profit or fee received under a covered federal transaction) have been or will be paid to any person for the above-noted purposes in connection with this subcontract, SUBCONTRACTOR shall complete and submit to PHI OMB Standard Form LLL “Disclosure of Lobbying Activities.” SUBCONTRACTOR shall incorporate the requirements of this clause in all nonexempt lower tier subcontracts and require subcontractors to certify and disclose to it, and forward their disclosures to PHI.
15. **DEBARMENT AND SUSPENSION CERTIFICATION:** SUBCONTRACTOR agrees to comply with applicable federal suspension and debarment regulations including but not limited to 7 CFR Part 3017, 45 CFR 76, 40 CFR 32 or 34 CFR 85, and by signing this subcontract, SUBCONTRACTOR certifies to the best of its knowledge and belief, that it and its principals: (1) Are not presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded by any federal department or agency; (2) Have not within a three-year period preceding this subcontract been convicted of or had a civil judgment rendered against them for commission of fraud or a criminal offense in

connection with obtaining, attempting to obtain, or performing a public (Federal, State or local) transaction or contract under a public transaction; violation of Federal or State antitrust statutes or commission of embezzlement, theft, forgery, bribery, falsification or destruction of records, making false statements, or receiving stolen property; (3) Are not presently indicted for or otherwise criminally or civilly charged by a governmental entity (Federal, State or local) with commission of any of the offenses enumerated above; (4) Have not within a three-year period preceding this subcontract had one or more public transactions (Federal, State or local) terminated for cause or default; (5) Shall not knowingly enter into any lower tier covered transaction with a person who is proposed for debarment under federal regulations (i.e., 48 CFR part 9, subpart 9.4), debarred, suspended, declared ineligible, or voluntarily excluded from participation in such transaction, unless authorized by PHI; and (6) Will include a clause entitled, "Debarment and Suspension Certification" that essentially sets forth the provisions herein in all lower tier covered transactions and in all solicitations for lower tier covered transactions. If the SUBCONTRACTOR is unable to certify to any of the statements in this certification, it shall submit an explanation to PHI. The terms and definitions herein have the meanings set out in the Definitions and Coverage sections of the rules implementing Federal Executive Order 12549. If SUBCONTRACTOR knowingly violates this certification, in addition to other remedies available to the Federal Government, PHI may terminate this subcontract for cause or default.

16. **SMOKE-FREE WORKPLACE CERTIFICATION:** SUBCONTRACTOR certifies by signing this subcontract that it will comply with the Pro-Children Act of 1994 (P.L. 103-227) and will not allow smoking within any portion of any indoor facility used for the provision of services for children as defined by the Act.
17. **TRAVEL REIMBURSEMENT AND EQUIPMENT REPORTING:** Travel and per diem expense reimbursement provided under this subcontract shall conform with the policies set forth in the attached CDPH "Travel Reimbursement Information" Exhibit G, which is incorporated herein by reference. If applicable, SUBCONTRACTOR shall utilize the CDPH 1203 "Contractor Equipment Purchased with CDPH Funds" and CDPH 1204 "Inventory/Disposition of CDPH-Funded Equipment" forms for reporting and inventory of equipment. The forms shall be submitted to PHI.
18. **PROTECTION OF HUMAN SUBJECTS:** SUBCONTRACTOR shall comply with the applicable terms and conditions of 45 CFR Part 46 "Protection of Human Subjects" and shall incorporate the requirements of this section in lower tier subcontracts for research involving human subjects.
19. **HUMAN SUBJECTS EDUCATION:** SUBCONTRACTOR certifies that all key personnel who are involved in the design and conduct of research involving human subjects under this subcontract have completed the NIH computer-based training in the protection of human research participants (<http://ohsr.od.nih.gov/cbt/>) or a comparable program, and SUBCONTRACTOR agrees to provide documentation thereof to PHI upon request.

20. **RECORD RETENTION, AUDIT AND INSPECTION:** SUBCONTRACTOR shall maintain all books, documents, papers, records and supporting documentation relating to this subcontract for a minimum of three (3) years after termination and final payment, unless a longer period of record retention is stipulated. SUBCONTRACTOR agrees to allow PHI, California Department of Public Health, the Department of General Services, the Bureau of State Audits, and their designated representatives to have access to, review, copy and audit the foregoing materials during any normal business hours and to interview any employee who might reasonably have information relating to them.
21. **AUDIT FILING COMPLIANCE:** If applicable, SUBCONTRACTOR will comply with the non-federal audit requirements of OMB Circular A-133 including providing a copy of its reporting package to PHI if required by the circular. SUBCONTRACTOR can provide the reporting package by notifying PHI of the organization's name and other identifying information in order for PHI to access the reporting package in the Federal Audit Clearinghouse website at <http://harvester.census.gov/sac>. SUBCONTRACTOR will take appropriate and timely action to follow up and correct all audit findings.
22. **INDEMNIFICATION:**
 - A. SUBCONTRACTOR agrees to indemnify, defend and hold harmless the State of California, its officers, agents and employees from any and all claims and losses accruing or resulting to any and all contractors, subcontractors, suppliers, laborers and any other person, firm or corporation furnishing or supplying work, services, materials or supplies in connection with the performance of this subcontract, and from any and all claims and losses accruing or resulting to any person, firm or corporation who may be injured or damaged by SUBCONTRACTOR in the performance of this subcontract.
 - B. SUBCONTRACTOR and PHI each agree to indemnify, defend and hold harmless the other and its directors, officers, members, employees, contractors and agents from and against any and all claims, losses, damages, costs, expenses or other liability resulting directly or indirectly from any intentional, grossly negligent or negligent act or failure to act by the indemnifying party's directors, officers, employees or agents in the performance of this subcontract, including without limitation any accident or injury to persons or property or any liability for copyright, patent or trademark infringement. The parties' obligations under this section shall survive the expiration or termination of this subcontract until all claims involving any of the indemnified matters are fully and finally resolved or barred by applicable statutes of limitation.
23. **REPRESENTATIONS AND WARRANTIES:** SUBCONTRACTOR represents and warrants that services will be performed in a good and workmanlike manner, free from defects, and by personnel with the requisite skill, qualifications, and licenses.
24. **DISPUTES AND ARBITRATION:** Any controversy or claim arising out of or relating to this subcontract, or the breach thereof, shall be settled by arbitration in accordance with the Commercial Arbitration Rules of the American Arbitration Association and judgment upon the arbitrator's award may be entered in any court having jurisdiction.

25. **TIMELY PERFORMANCE:** Time is of the essence in the performance of this subcontract.
26. **INDEPENDENT CONTRACTOR:** SUBCONTRACTOR is an independent contractor and for no purpose shall any of its officers, directors, members, employees, volunteers, subcontractors or agents be considered an employee of PHI or the funding agency, if any.
27. **EXCUSABLE DELAY:** If SUBCONTRACTOR is delayed in the performance its obligations by reason of labor troubles, power failure, acts of government, acts of God or the public enemy, or any other reasons or causes beyond its reasonable control, performance shall be excused for the period of delay and, if agreed to in writing by the parties, the subcontract shall be extended for a period equivalent to the delay.
28. **INTERFERING CONDITIONS:** SUBCONTRACTOR agrees to promptly notify PHI of any condition that might interfere with this subcontract. Notification shall not relieve SUBCONTRACTOR of any responsibilities hereunder.
29. **COMPLIANCE WITH LAW:** SUBCONTRACTOR agrees to comply with all relevant state and federal statutes and regulations.
30. **ASSIGNMENT:** This subcontract is not assignable by SUBCONTRACTOR without the prior written consent of PHI.
31. **SEVERABILITY:** If any provision of this subcontract is held in conflict with law, the validity of the remaining provisions shall not be affected.
32. **SURVIVAL OF OBLIGATIONS:** Expiration or termination of this subcontract shall not extinguish any previously-accrued rights or obligations of the parties.
33. **GOVERNING LAW:** The validity, construction, and effect of this subcontract shall be governed by the laws of the United States of America and the State of California.
34. **CAPTIONS:** Captions are for convenience and reference only and are not intended to affect the interpretation of this subcontract.
35. **NOTICES:** Notices and other communications hereunder are deemed given three business days after the date of mailing by certified mail to the address set forth at the beginning of this agreement.

36. ENTIRE AGREEMENT: This is the entire agreement between the parties. It supersedes all prior oral or written agreements or understandings and it may be amended only in writing.

For Public Health Institute:

For Subcontractor:

Supervisor, Grants and Contracts

Date

Date