

**SUBMITTAL TO THE BOARD OF SUPERVISORS
COUNTY OF RIVERSIDE, STATE OF CALIFORNIA**

512



FROM: Community Health Agency/Department of Public Health

SUBMITTAL DATE:
September 22, 2009

SUBJECT: Approve the Agreement between the Nuview Union School District and Riverside County Community Health Agency, Department of Public Health.

RECOMMENDED MOTION: That the Board of Supervisors:

- 1) Approve the Agreement between the Nuview Union School District and Riverside County Community Health Agency, Department of Public Health for the period of October 1, 2009 through September 30, 2010;
- 2) Authorize the Purchasing Agent to sign the 1-year annual renewals; and
- 3) Authorize the Chairperson to sign two (2) copies of said Agreement on behalf of the County.

BACKGROUND: This agreement delineates areas of understanding and agreement between Riverside County Community Health Agency, Department of Public Health and Nuview Union School District (NUSD).

FORM APPROVED COUNTY COUNSEL
BY: NEAL R. KIPNIS DATE _____
Departmental Concurrence

Purchasing: Mark Saffer, Assistant Director

Continued (2 Pages Total)

GH:nw

Susan D. Harrington
Susan Harrington, Director of Public Health

FINANCIAL DATA	Current F.Y. Total Cost:	\$ 0	In Current Year Budget:	Yes
	Current F.Y. Net County Cost:	\$ 0	Budget Adjustment:	No
	Annual Net County Cost:	\$ 0	For Fiscal Year:	09/10

SOURCE OF FUNDS: 100% Federal grant funding	Positions To Be Deleted Per A-30	<input type="checkbox"/>
	Requires 4/5 Vote	<input type="checkbox"/>

C.E.O. RECOMMENDATION:

APPROVE

BY: Debra Cournoyer
Debra Cournoyer

County Executive Office Signature

Dep't Recomm.: Consent Policy

Per Exec. Ofc.: Consent Policy

Prev. Agn. Ref.:

District: ALL

Agenda Number:

3.19

ATTACHMENTS FILED
WITH THE CLERK OF THE BOARD

BACKGROUND (Continued)

Nuview Union School District is partnering with the Department of Public Health, Nutrition Services Branch to provide nutrition education through the *Network Food Stamp Nutrition Education Program for a Healthy California* Local Incentive Award Program (LIA).

Nuview Union School District will provide qualifying *Network* matching funds to the Department of Public Health in exchange for Department of Public Health staff support in implementing *Network for a Healthy California* Local Incentive Award Program (LIA) activities at two low income schools in the Nuview Union School District. Selected schools will participate in *Network for a Healthy California* Local Incentive Award Program (LIA) nutrition education activities such as Power Play Campaign, Nutrition Decathlon and parent nutrition education classes.

MEMORANDUM OF UNDERSTANDING (MOU)

Between

**County of Riverside
Community Health Agency
Department of Public Health Nutrition Services Branch**

and

Nuview Union School District

This AGREEMENT is made and entered between the County of Riverside on behalf of the Community Health Agency, Department of Public Health, Nutrition Services Branch, herein after referred to as "COUNTY" and Nuview Union School District- Nutrition Services, hereinafter called "NUSD".

I. PURPOSE & SCOPE

The purpose of this MOU is to clearly identify the roles and responsibilities of each party as they relate to the collaboration and partnership around the promotion of health and nutrition in food stamp eligible populations in Riverside County, as part of the *Network for a Healthy California* Local Incentive Award (LIA).

II. BACKGROUND

The COUNTY is serving a population of 2.1 million people in an urban and rural setting. The purpose of COUNTY is to promote and protect the health of the residents of Riverside County. The COUNTY has participated as a LIA in the *Network* Food Stamp Nutrition Education Program since 1997. NUSD SCHOOL DISTRICT, is the 2nd smallest school district in Riverside County, enrolls approximately 2,000 students in kindergarten through grade 12. The District operates 4 schools -- 2 elementary, 1 middle school, and 1 charter high school.

III. COUNTY RESPONSIBILITIES UNDER THIS MOU

COUNTY shall undertake the following activities during the duration of the MOU term:

1. Oversee all activities covered by the LIA contract.
2. Prepare and submit all required reports or data required by the LIA program.

3. Participate in all collaborative meetings related to the LIA contract.
4. Provide NUSD with technical support related to documentation of State Share.

IV. NUSD RESPONSIBILITIES UNDER THIS MOU

NUSD shall undertake the following activities during the duration of the MOU term:

1. Conduct nutrition education as outlined and specified in Exhibit A - the Nuview USD Scope of Services.
2. Provide documentation of salaries and fringe benefit rates for State Share personnel.
3. Submit a State Share Weekly Time Log (Exhibit B) quarterly to the COUNTY for all State Share activities that comply with *Network* guidelines for providing nutrition education and physical activity promotion. Time Logs will be completed and signed by the employee and verified and signed by the employee's Supervisor (or designee). Time Logs will be submitted for the following staff:

October 1, 2009- September 30, 2010

NUSD Position	State Share Match %	Rate	State Share (includes 30% Fringe Benefit Rate)
Food Services Director (1)	20%	\$67,200	\$17,472
Food Service Manager (2)	10%	\$26,099	\$6,786
Food Service Workers (20)	10%	\$13,520	\$35,152
TOTAL State Share			\$59,410

4. Follow all relevant and applicable regulations as specified in the California Department of Public Health's "Special Terms and Conditions," also known as Exhibit C.

V. IT IS MUTUALLY UNDERSTOOD AND AGREED BY AND BETWEEN THE PARTIES THAT:

1. The California Department of Public Health administers funding for LIA and California Department of Education administers funding for NUSD.

2. This Agreement is subject to prior review and written approval of the California Department of Public Health. The parties understand and agree that this Agreement is made contingent upon availability of funds. Proposals considered by the Legislature, including those made by the Governor could potentially reduce or defer funds for the current year's programs. In the event that the Legislature takes action to reduce or defer the funding for this program, this agreement will be amended accordingly.
3. Either party may terminate this agreement without cause by giving 30 calendar days advanced written notice to the other party.

VI. STATE SHARE REQUIREMENTS

As requested by COUNTY and/or the Network, NUSD shall provide documentation of qualifying services that they provide with their own resources to the total of \$59,410 each year. State Share funds are from a non-federal source.

VII. FUNDING REQUIREMENTS

This MOU does not include the reimbursement of funds between the two parties.

None of the State Share funds used in this MOU are federal funds or funds being used to match other federal funds.

No portion of the proposed State Share funds is being counted more than once, or for another State agency, Local Incentive Award (LIA) or for a University of California Cooperative Extension Food Stamp Nutrition Education Program (FSNEP) activity during the term of the contract.

The collaborating/partnering organization will provide State Share and Federal Share Budget documentation as requested by COUNTY and/or *Network*.

None of the activities funded through Federal or State Food Stamp Nutrition Education (FSNE) budget shares supplant existing nutrition education efforts or funding.

VIII. RECORD RETENTION

COUNTY and NUSD must maintain all records supporting the MOU and related activities for three years after the end of the contract term. Additionally, NUSD agrees to make all records relating to the contract available upon request by COUNTY, the Network, and/or USDA.

IX. EFFECTIVE DATE AND SIGNATURE

This MOU shall be effective upon the signature of Parties COUNTY and NUSD authorized officials. It shall be in force from October 1, 2009 to September 30, 2010 and may be renewed through the annual amendment process. COUNTY and NUSD indicate agreement with this MOU by their signatures and dates.

Riverside County

Riverside County, Superintendent of Schools

Chairman, Board of Supervisors


Nuview Union School District

Date

Date

FORM APPROVED COUNTY COUNSEL

BY:


NEAL R. KIPNIS

DATE

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Riverside County

Riverside County, Superintendent of Schools

Chairman, Board of Supervisors

Nuvview Union School District

Date

Date

FORM APPROVED COUNTY COUNSEL
BY: Neal R. Kipnis | 10/1/09
NEAL R. KIPNIS | DATE

Nuvview Union School District (NUSD)

*Scope of Services
10/1/09 to 9/30/2010*

County of Riverside <i>Network for a Healthy California,</i> Nutrition Services	Nuvview Union Nutrition Services	How County of Riverside Nutrition Services Will Assist:
<p>500 students receiving free or reduced lunch and their parents in Riverside County will participate in nutrition education and / or physical activity promotion.</p>		
<p>1. Conduct one interactive nutrition education and /or physical activity promotion parent class at the calendar contest participating school.</p>	<p>Select one school with 50 % or more of the students receiving free or reduced lunch for participation in the program</p> <p>Schedule the parent class</p>	<p>Class is approximately 20 – 30 minutes in English or Spanish. Topics may include information on grocery shopping, preparing easy nutritious foods, food safety, healthy classroom parties, non-food fundraisers, and / or other nutrition related topic requested.</p> <p>Provide the materials and resources and staffing for the booth at the selected school.</p>
<p>2. Participate in a minimum of one school event (e.g. Back to School Night, Open House, Walk to School, National Nutrition Month) at the calendar contest participating school.</p> <p>Set up a booth or a display to provide nutrition education and / or physical activity promotion materials including posters, handouts and / or pamphlets.</p>	<p>Recommend events for participation</p> <p>Promote <i>Network</i> messages at events in the cafeteria of the participating school</p> <p>Promote the <i>Network</i> messages at the other school cafeterias during the year</p>	<p>Provide materials and resources at least 1-2 times per year for the other participating schools.</p>
<p>3. Conduct a calendar contest at the selected school. Utilize calendar contest winners in developing a school calendar with healthy nutrition tips and/or messages. Print and distribute 900 calendars to students, teachers, school administrators, school staff and/or parents.</p>	<p>Allow school assembly time to promote the contest for 4th & 5th graders or grades selected for school participation and to honor the winners of the contest</p> <p>Allow time in class to encourage participation in the calendar contest</p>	<p>Conduct the calendar contest within the school district with assistance from school personnel. Responsible for selecting contest winners with school input. Print and distribute 900 calendars for distribution as indicated.</p>

Nuvview Union School District (NUSD)

*Scope of Services
10/1/09 to 9/30/2010*

County of Riverside <i>Network for a Healthy California,</i> Nutrition Services	Nuvview Union Nutrition Services	How County of Riverside Nutrition Services Will Assist:
<p>Participate in Harvest of the Month (HOTM): The HOTM program will be used to provide, link and support nutrition education messages that promote the consumption of fresh fruits and vegetables, as well as physical activity in the cafeteria, classroom and / or community. 500 students receiving free or reduced lunch and their parents in Riverside County will participate in nutrition education and / or physical activity promotion.</p>		
<p>1. The Harvest of the Month (HOTM) program will be used at one eligible school in NUSD.</p>	<p>Select one school with 50 % or more of the students receiving free or reduced lunch for participation in the program</p> <p>Provide current food service information for all schools on free and reduced Meal participation</p>	<p>Provide information and materials on HOTM</p>
<p>2. (Classroom) Teachers will receive:</p> <ul style="list-style-type: none"> • HOTM schedule for the year listing fruits and vegetables for each month • HOTM educator newsletter for each month of participation. • Family newsletter for each student to take home for each month of participation 	<p>Teachers will have the option of promoting healthy fruits and vegetables in the classroom using HOTM education.</p> <p>Teachers will distribute HOTM information to the students for them to take home to their parents.</p>	<p>Provide HOTM schedule for 2009/2010</p> <p>Provide HOTM newsletters</p>
<p>3. Teachers will have a minimum of one opportunity to learn about the HOTM during their lunch break or other school designated time. A sample of the featured fruits or vegetables will be provided for educational purposes to promote the</p>	<p>Give ideas for providing HOTM food samples and nutrition education and physical activity promotion to teachers</p>	<p>Provide information and materials</p> <p><u>Riverside County, DOPH, Network for a Healthy California, Nutrition Services</u> will pay for the cost of the fruit or vegetable provided</p>

Exhibit A

<p>County of Riverside Network for a Healthy California, Nutrition Services</p>	<p>Nuvview Union Nutrition Services</p>	<p>How County of Riverside Nutrition Services Will Assist:</p>
<p>HOTM program to their students.</p>		<p>for the teacher's taste test.</p>
<p>4. A taste test of the HOTM fruit or vegetable will be featured in the cafeteria or other designated school area for students to sample. Appropriate educational materials will be given to enhance and encourage students to select fruits and vegetables when offered at breakfast, lunch or at home. Students will receive HOTM nutrition education and / or physical activity promotional materials.</p>	<p>Teachers to support monthly taste tests in the cafeteria by allowing their students to participate. Cafeteria will feature a taste test of HOTM fruit or vegetable for students.</p>	<p>Provide educational materials <u>Riverside County, DOPH, Network for a Healthy California, Nutrition Services will pay for the cost of the fruit or vegetable provided for the HOTM taste tests.</u></p>
<p>5. NUSD Nutrition Services will be provided HOTM website information on nutrition and menu slicks to be an option for use in the district's monthly menu.</p>		<p>Assist/train on use of the website as needed (www.harvestofthemoonth.com).</p>

ALL LOGS ARE DUE 10th working day of the following month
1st Qtr NUTRITION NETWORK STATE SHARE WEEKLY TIME LOG
Teachers, School Nurses, and Nutrition Services
(2009-2010)

Name: _____ Location: Nuvview Union School District

Classification: _____ Grade: _____ School Name: _____ Phone #: _____
 (Teacher, Cafeteria Mgr, Server) (If applicable)

October 2009					November 2009					December 2009				
Number of hours for the week of...					Number of hours for the week of...					Number of hours for the week of...				
Oct 1-3	4-10	11-17	18-24	25-31	Nov 1-7	8-14	15-21	22-28	29-30	Dec 1-5	6-12	13-19	20-26	27-31

Total Logged Hours for 1st Quarter 0.00 Hourly Rate _____

* I certify that documented time is from Allowable Activities listed on this page.

Employee Signature (required)* _____ Date _____

Supervisor/Designee Signature (required)* _____ Date _____

Examples of Allowable Activities to log above:

Children/Student Nutrition Education in a Classroom Setting:

- Conduct cooking classes and/or taste tests with healthy foods as part of a nutrition education lesson/activity.
- Read books on nutrition or encourage creation of artwork or essays on topics of nutrition such as the importance of eating fruits and vegetables as part of a healthy diet.
- Teaching lessons in the area of Nutrition, Food Safety, Health Benefits of Physical Activity.
- Teach nutrition via CD ROM/Internet/Computer programs. Harvest of the Season/Month activities.
- Bulletin boards/door murals that support good nutrition and increase physical activity.
- Discussing breakfast and lunch menu choices in relation to the components of a healthy nutritious meal.

Children/Student Nutrition Education outside a Classroom Setting (as a component of a structured curriculum):

- Taking nutrition education field trips (do not include travel time or costs) and/or having guest speakers in the areas of nutrition education and physical activity promotion.
- Garden based nutrition education.
- In a food stamp or health office setting, promote healthy eating habits and the role that physical activity plays in good nutrition (can include a brief Food Stamp Program promotion message).
- Cafeteria-based nutrition education activities/promotions which are part of a structured program that is connected to classroom instruction (i.e., Harvest of the Month).

Administrative Tasks Related to the Network

Contract:

- Spend time completing documentation and clerical task for the Network (e.g., time logs, photocopying)

Adult Nutrition Education in Classroom, Group or Individual Settings:

- Talking with parents or passing out information about nutrition/physical activity promotion. (i.e. Back to School Night or during a conference)
- Connecting students and their families with community resources that promote healthy eating and physical activity.
- In a food stamp or health office setting, promote healthy eating habits and the role that physical activity plays in good nutrition (can include a brief Food Stamp Program promotion message).

Nutrition Promotion and Education Activities at Special Events:

- Disseminate newsletters, posters, brochures, flyers or other educational materials that promote good nutrition and set up nutrition displays.
- Get media involved and provide nutrition information and or technical assistance to community leaders who work directly with the food stamp eligibles about nutrition-related issues.
- Nutrition Education at special events- Health Fairs, Open House, Back to School Night, Carnivals and other school activities.

Physical Activity Promotion (as a component of a broader Nutrition Education intervention):

- Present a one-time physical activity demonstration that educates and promotes physical activity as a component of a broader nutrition education intervention.
- Promote increased physical activity as a component of a nutrition education intervention.

Staff Training/Professional Development:

- Nutrition Education Training- attending workshops, seminars and other training events that support nutrition education and physical activity promotion.

Special Terms and Conditions

(For federally funded service contracts or agreements and grant agreements)

The use of headings or titles throughout this exhibit is for convenience only and shall not be used to interpret or to govern the meaning of any specific term or condition.

The terms "contract", "Contractor" and "Subcontractor" shall also mean, "agreement", "grant", "grant agreement", "Grantee" and "Subgrantee" respectively.

The terms "California Department of Public Health", "California Department of Health Services", "Department of Health Services", "CDPH", "CDHS", and "DHS" shall all have the same meaning and refer to the California State agency that is a party to this Agreement.

This exhibit contains provisions that require strict adherence to various contracting laws and policies. Some provisions herein are conditional and only apply if specified conditions exist (i.e., agreement total exceeds a certain amount, agreement is federally funded, etc.). The provisions herein apply to this Agreement unless the provisions are removed by reference on the face of this Agreement, the provisions are superseded by an alternate provision appearing elsewhere in this Agreement, or the applicable conditions do not exist.

1. Federal Equal Opportunity Requirements

(Applicable to all federally funded agreements entered into by the California Department of Public Health (CDPH) formerly known as California Department of Health Services (CDHS).)

- a. The Contractor will not discriminate against any employee or applicant for employment because of race, color, religion, sex, national origin, physical or mental handicap, disability, age or status as a disabled veteran or veteran of the Vietnam era. The Contractor will take affirmative action to ensure that qualified applicants are employed, and that employees are treated during employment, without regard to their race, color, religion, sex, national origin, physical or mental handicap, disability, age or status as a disabled veteran or veteran of the Vietnam era. Such action shall include, but not be limited to the following: employment, upgrading, demotion or transfer; recruitment or recruitment advertising; layoff or termination; rates of pay or other forms of compensation; and career development opportunities and selection for training, including apprenticeship. The Contractor agrees to post in conspicuous places, available to employees and applicants for employment, notices to be provided by the Federal Government or CDPH, setting forth the provisions of the Equal Opportunity clause, Section 503 of the Rehabilitation Act of 1973 and the affirmative action clause required by the Vietnam Era Veterans' Readjustment Assistance Act of 1974 (38 U.S.C. 4212). Such notices shall state the Contractor's obligation under the law to take affirmative action to employ and advance in employment qualified applicants without discrimination based on their race, color, religion, sex, national origin physical or mental handicap, disability, age or status as a disabled veteran or veteran of the Vietnam era and the rights of applicants and employees.
- b. The Contractor will, in all solicitations or advancements for employees placed by or on behalf of the Contractor, state that all qualified applicants will receive consideration for employment without regard to race, color, religion, sex, national origin physical or mental handicap, disability, age or status as a disabled veteran or veteran of the Vietnam era.
- c. The Contractor will send to each labor union or representative of workers with which it has a collective bargaining agreement or other contract or understanding a notice, to be provided by the Federal Government or the State, advising the labor union or workers' representative of the Contractor's commitments under the provisions herein and shall post copies of the notice in conspicuous places available to employees and applicants for employment.
- d. The Contractor will comply with all provisions of and furnish all information and reports required by Section 503 of the Rehabilitation Act of 1973, as amended, the Vietnam Era Veterans' Readjustment Assistance Act of 1974 (38 U.S.C. 4212) and of the Federal Executive Order No. 11246 as amended, including by Executive Order 11375, 'Amending Executive Order 11246 Relating to Equal Employment Opportunity,' and as supplemented by regulation at 41 CFR part

60, "Office of the Federal Contract Compliance Programs, Equal Employment Opportunity, Department of Labor," and of the rules, regulations, and relevant orders of the Secretary of Labor.

- e. The Contractor will furnish all information and reports required by Federal Executive Order No. 11246 as amended, including by Executive Order 11375, 'Amending Executive Order 11246 Relating to Equal Employment Opportunity,' and as supplemented by regulation at 41 CFR part 60, "Office of the Federal Contract Compliance Programs, Equal Employment Opportunity, Department of Labor," and the Rehabilitation Act of 1973, and by the rules, regulations, and orders of the Secretary of Labor, or pursuant thereto, and will permit access to its books, records, and accounts by the State and its designated representatives and the Secretary of Labor for purposes of investigation to ascertain compliance with such rules, regulations, and orders.
- f. In the event of the Contractor's noncompliance with the requirements of the provisions herein or with any federal rules, regulations, or orders which are referenced herein, this Agreement may be cancelled, terminated, or suspended in whole or in part and the Contractor may be declared ineligible for further federal and state contracts in accordance with procedures authorized in Federal Executive Order No. 11246 as amended and such other sanctions may be imposed and remedies invoked as provided in Federal Executive Order No. 11246 as amended, including by Executive Order 11375, 'Amending Executive Order 11246 Relating to Equal Employment Opportunity,' and as supplemented by regulation at 41 CFR part 60, "Office of the Federal Contract Compliance Programs, Equal Employment Opportunity, Department of Labor," or by rule, regulation, or order of the Secretary of Labor, or as otherwise provided by law.
- g. The Contractor will include the provisions of Paragraphs a through g in every subcontract or purchase order unless exempted by rules, regulations, or orders of the Secretary of Labor issued pursuant to Federal Executive Order No. 11246 as amended, including by Executive Order 11375, 'Amending Executive Order 11246 Relating to Equal Employment Opportunity,' and as supplemented by regulation at 41 CFR part 60, "Office of the Federal Contract Compliance Programs, Equal Employment Opportunity, Department of Labor," or Section 503 of the Rehabilitation Act of 1973 or (38 U.S.C. 4212) of the Vietnam Era Veteran's Readjustment Assistance Act, so that such provisions will be binding upon each subcontractor or vendor. The Contractor will take such action with respect to any subcontract or purchase order as the Director of the Office of Federal Contract Compliance Programs or CDPH may direct as a means of enforcing such provisions including sanctions for noncompliance provided, however, that in the event the Contractor becomes involved in, or is threatened with litigation by a subcontractor or vendor as a result of such direction by CDPH, the Contractor may request in writing to CDPH, who, in turn, may request the United States to enter into such litigation to protect the interests of the State and of the United States.

2. Site Inspection

The State, through any authorized representatives, has the right at all reasonable times to inspect or otherwise evaluate the work performed or being performed hereunder including subcontract supported activities and the premises in which it is being performed. If any inspection or evaluation is made of the premises of the Contractor or Subcontractor, the Contractor shall provide and shall require Subcontractors to provide all reasonable facilities and assistance for the safety and convenience of the authorized representatives in the performance of their duties. All inspections and evaluations shall be performed in such a manner as will not unduly delay the work.

3. Confidentiality of Information

- a. The Contractor and its employees, agents, or subcontractors shall protect from unauthorized disclosure names and other identifying information concerning persons either receiving services pursuant to this Agreement or persons whose names or identifying information become available or are disclosed to the Contractor, its employees, agents, or subcontractors as a result of services performed under this Agreement, except for statistical information not identifying any such person.
- b. The Contractor and its employees, agents, or subcontractors shall not use such identifying information for any purpose other than carrying out the Contractor's obligations under this Agreement.

Exhibit C

- c. The Contractor and its employees, agents, or subcontractors shall promptly transmit to the CDPH Program Contract Manager all requests for disclosure of such identifying information not emanating from the client or person.
- d. The Contractor shall not disclose, except as otherwise specifically permitted by this Agreement or authorized by the client, any such identifying information to anyone other than CDPH without prior written authorization from the CDPH Program Contract Manager, except if disclosure is required by State or Federal law.
- e. For purposes of this provision, identity shall include, but not be limited to name, identifying number, symbol, or other identifying particular assigned to the individual, such as finger or voice print or a photograph.
- f. As deemed applicable by CDPH, this provision may be supplemented by additional terms and conditions covering personal health information (PHI) or personal, sensitive, and/or confidential information (PSCI). Said terms and conditions will be outlined in one or more exhibits that will either be attached to this Agreement or incorporated into this Agreement by reference.

4. Dispute Resolution Process

- a. A Contractor grievance exists whenever there is a dispute arising from CDPH's action in the administration of an agreement. If there is a dispute or grievance between the Contractor and CDPH, the Contractor must seek resolution using the procedure outlined below.
 - (1) The Contractor should first informally discuss the problem with the CDPH Program Contract Manager. If the problem cannot be resolved informally, the Contractor shall direct its grievance together with any evidence, in writing, to the program Branch Chief. The grievance shall state the issues in dispute, the legal authority or other basis for the Contractor's position and the remedy sought. The Branch Chief shall render a decision within ten (10) working days after receipt of the written grievance from the Contractor. The Branch Chief shall respond in writing to the Contractor indicating the decision and reasons therefore. If the Contractor disagrees with the Branch Chief's decision, the Contractor may appeal to the second level.
 - (2) When appealing to the second level, the Contractor must prepare an appeal indicating the reasons for disagreement with Branch Chief's decision. The Contractor shall include with the appeal a copy of the Contractor's original statement of dispute along with any supporting evidence and a copy of the Branch Chief's decision. The appeal shall be addressed to the Deputy Director of the division in which the branch is organized within ten (10) working days from receipt of the Branch Chief's decision. The Deputy Director of the division in which the branch is organized or his/her designee shall meet with the Contractor to review the issues raised. A written decision signed by the Deputy Director of the division in which the branch is organized or his/her designee shall be directed to the Contractor within twenty (20) working days of receipt of the Contractor's second level appeal.
- b. If the Contractor wishes to appeal the decision of the Deputy Director of the division in which the branch is organized or his/her designee, the Contractor shall follow the procedures set forth in Division 25.1 (commencing with Section 38050) of the Health and Safety Code and the regulations adopted thereunder. (Title 1, Subchapter 2.5, commencing with Section 251, California Code of Regulations.)
- c. Disputes arising out of an audit, examination of an agreement or other action not covered by subdivision (a) of Section 20204, of Chapter 2.1, Title 22, of the California Code of Regulations, and for which no procedures for appeal are provided in statute, regulation or the Agreement, shall be handled in accordance with the procedures identified in Sections 51016 through 51047, Title 22, California Code of Regulations.
- d. Unless otherwise stipulated in writing by CDPH, all dispute, grievance and/or appeal correspondence shall be directed to the CDPH Program Contract Manager.
- e. There are organizational differences within CDPH's funding programs and the management levels identified in this dispute resolution provision may not apply in every contractual situation.

When a grievance is received and organizational differences exist, the Contractor shall be notified in writing by the CDPH Program Contract Manager of the level, name, and/or title of the appropriate management official that is responsible for issuing a decision at a given level.

5. Smoke-Free Workplace Certification

(Applicable to federally funded agreements/grants and subcontracts/subawards, that provide health, day care, early childhood development services, education or library services to children under 18 directly or through local governments.)

- a. Public Law 103-227, also known as the Pro-Children Act of 1994 (Act), requires that smoking not be permitted in any portion of any indoor facility owned or leased or contracted for by an entity and used routinely or regularly for the provision of health, day care, early childhood development services, education or library services to children under the age of 18, if the services are funded by federal programs either directly or through state or local governments, by federal grant, contract, loan, or loan guarantee. The law also applies to children's services that are provided in indoor facilities that are constructed, operated, or maintained with such federal funds. The law does not apply to children's services provided in private residences; portions of facilities used for inpatient drug or alcohol treatment; service providers whose sole source of applicable federal funds is Medicare or Medicaid; or facilities where WIC coupons are redeemed.
- b. Failure to comply with the provisions of the law may result in the imposition of a civil monetary penalty of up to \$1,000 for each violation and/or the imposition of an administrative compliance order on the responsible party.
- c. By signing this Agreement, Contractor or Grantee certifies that it will comply with the requirements of the Act 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. The prohibitions herein are effective December 26, 1994.
- d. Contractor or Grantee further agrees that it will insert this certification into any subawards (subcontracts or subgrants) entered into that provide for children's services as described in the Act.

6. Officials Not to Benefit

No members of or delegate of Congress or the State Legislature shall be admitted to any share or part of this Agreement, or to any benefit that may arise therefrom. This provision shall not be construed to extend to this Agreement if made with a corporation for its general benefits.

7. Contract Uniformity (Fringe Benefit Allowability)

(Applicable only to nonprofit organizations.)

Pursuant to the provisions of Article 7 (commencing with Section 100525) of Chapter 3 of Part 1 of Division 101 of the Health and Safety Code, CDPH sets forth the following policies, procedures, and guidelines regarding the reimbursement of fringe benefits.

- a. As used herein fringe benefits shall mean an employment benefit given by one's employer to an employee in addition to one's regular or normal wages or salary.
- b. As used herein, fringe benefits do not include:
 - (1) Compensation for personal services paid currently or accrued by the Contractor for services of employees rendered during the term of this Agreement, which is identified as regular or normal salaries and wages, annual leave, vacation, sick leave, holidays, jury duty and/or military leave/training.
 - (2) Director's and executive committee member's fees.
 - (3) Incentive awards and/or bonus incentive pay.
 - (4) Allowances for off-site pay.
 - (5) Location allowances.
 - (6) Hardship pay.

(7) Cost-of-living differentials

c. Specific allowable fringe benefits include:

- (1) Fringe benefits in the form of employer contributions for the employer's portion of payroll taxes (i.e., FICA, SUI, SDI), employee health plans (i.e., health, dental and vision), unemployment insurance, worker's compensation insurance, and the employer's share of pension/retirement plans, provided they are granted in accordance with established written organization policies and meet all legal and Internal Revenue Service requirements.

d. To be an allowable fringe benefit, the cost must meet the following criteria:

- (1) Be necessary and reasonable for the performance of the Agreement.
- (2) Be determined in accordance with generally accepted accounting principles.
- (3) Be consistent with policies that apply uniformly to all activities of the Contractor.

e. Contractor agrees that all fringe benefits shall be at actual cost.

f. Earned/Accrued Compensation

- (1) Compensation for vacation, sick leave and holidays is limited to that amount earned/accrued within the agreement term. Unused vacation, sick leave and holidays earned from periods prior to the agreement term cannot be claimed as allowable costs. See Provision f (3)(a) for an example.
- (2) For multiple year agreements, vacation and sick leave compensation, which is earned/accrued but not paid, due to employee(s) not taking time off may be carried over and claimed within the overall term of the multiple years of the Agreement. Holidays cannot be carried over from one agreement year to the next. See Provision f (3)(b) for an example.
- (3) For single year agreements, vacation, sick leave and holiday compensation that is earned/accrued but not paid, due to employee(s) not taking time off within the term of the Agreement, cannot be claimed as an allowable cost. See Provision f (3)(c) for an example.

(a) **Example No. 1:**

If an employee, John Doe, earns/accrues three weeks of vacation and twelve days of sick leave each year, then that is the maximum amount that may be claimed during a one year agreement. If John Doe has five weeks of vacation and eighteen days of sick leave at the beginning of an agreement, the Contractor during a one-year budget period may only claim up to three weeks of vacation and twelve days of sick leave as actually used by the employee. Amounts earned/accrued in periods prior to the beginning of the Agreement are not an allowable cost.

(b) **Example No. 2:**

If during a three-year (multiple year) agreement, John Doe does not use his three weeks of vacation in year one, or his three weeks in year two, but he does actually use nine weeks in year three; the Contractor would be allowed to claim all nine weeks paid for in year three. The total compensation over the three-year period cannot exceed 156 weeks (3 x 52 weeks).

(c) **Example No. 3:**

If during a single year agreement, John Doe works fifty weeks and used one week of vacation and one week of sick leave and all fifty-two weeks have been billed to CDPH, the remaining unused two weeks of vacation and seven days of sick leave may not be claimed as an allowable cost.