

A G R E E M E N T

THIS AGREEMENT ("Agreement") is made and entered into this 12th day of July, 2022, by and between the COUNTY OF FRESNO, a Political Subdivision of the State of California, hereinafter referred to as "COUNTY", and GM Lab Consulting LLC , an individual, whose address is 700 Cabada Drive, Brentwood, California, 94513, hereinafter referred to as "CONTRACTOR".

W I T N E S S E T H:

WHEREAS, COUNTY, through its Department of Public Health (DPH), operates a Public Health Laboratory (PHL) which provides both clinical and dairy testing; and

WHEREAS, DPH PHL is in need of a Laboratory Director to perform the duties and responsibilities of the Laboratory Director and meets all required qualifications to oversee clinical and dairy testing as well as the COUNTY's DPH Level-B Bioterrorism Laboratory and a Regional Level-2 Laboratory for the State and National Laboratory Response Network (NLRN); and

WHEREAS, it is common practice for California counties to utilize an independent contractor to perform the duties and responsibilities of its Laboratory Director; and

WHEREAS, CONTRACTOR represents that he has all required qualifications and is willing to provide such services, pursuant to the terms and conditions of this Agreement; and

WHEREAS, CONTRACTOR currently provides Laboratory Director services to COUNTY, under Agreement No. A-18-333, which expires June 30, 2022; and

WHEREAS, CONTRACTOR and COUNTY have developed this successor Agreement to become effective upon expiration of the existing Agreement; and

NOW, THEREFORE, in consideration of the mutual covenants, terms and conditions herein contained, the parties hereto agree as follows:

1. OBLIGATIONS OF THE CONTRACTOR

A. CONTRACTOR shall meet and maintain the required certifications for Clinical Laboratory Improvement Amendments (CLIA) and all state, federal and local required qualifications throughout the term of this Agreement.

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1 B. Under the terms and conditions of this Agreement, CONTRACTOR shall provide
2 services for the DPH PHL, encompassing Laboratory Director activities and oversight as follows:

- 3 1. Provide general consultation on state and federal CLIA requirements for
4 licensing and assist with preparations for inspections, reviews and
5 applications related to laboratory certifications as required;
- 6 2. Review of PHL operations, procedures, and protocols to verify compliance
7 with applicable regulations and consult with COUNTY DPH Director of
8 designee (Department designee) regarding findings and
9 recommendations, as needed;
- 10 3. Evaluate, analyze, and develop of policies, procedures, and reports, as
11 required, to ensure compliance with state and federal requirements;
- 12 4. Provide consultation on evaluation of a Laboratory Information
13 Management System;
- 14 5. Provide consultation in organizing the PHL to meet Lean Principles
15 throughout physical work environment and systems of operations;
- 16 6. Train laboratory staff on laboratory methodologies and techniques, as
17 required;
- 18 7. May perform the duties of the technical supervisor, clinical consultant, and
19 testing personnel;
- 20 8. Consult in the event of an emergency in the PHL and/or local emergencies
21 requiring modified of accelerated testing, protocols and/or processes;
- 22 9. Be accessible to the Department via cell phone, landline phone, pager,
23 email or facsimile 24 hours, 7 days a week during the term of this
24 Agreement. If CONTRACTOR is not available during these time periods, it
25 must be prearranged by Department designee; and
- 26 10. Perform site visits of PHL to evaluate operations are efficient and
27 compliant with applicable State and Federal regulations. Onsite visits will
28 be coordinated with Department designee.

1 2. TERM

2 The term of this Agreement shall be for a period of three (3) years, commencing on July 1, 2022
3 through and including June 30, 2025. This Agreement may be extended for two (2) additional consecutive
4 twelve (12) month periods upon written approval of both parties before the next period ends. The DPH
5 Director or his or her designee is authorized to execute such written approval on behalf of COUNTY based
6 on CONTRACTOR'S satisfactory performance.

7 3. TERMINATION

8 A. Non-Allocation of Funds - The terms of this Agreement, and the services to be
9 provided hereunder, are contingent on the approval of funds by the appropriating government agency.
10 Should sufficient funds not be allocated, the services provided may be modified, or this Agreement
11 terminated, at any time by giving the CONTRACTOR thirty (30) days advance written notice.

12 B. Breach of Contract - The COUNTY may immediately suspend or terminate this
13 Agreement in whole or in part, where in the determination of the COUNTY there is:

- 14 1) An illegal or improper use of funds;
15 2) A failure to comply with any term of this Agreement;
16 3) A substantially incorrect or incomplete report submitted to the COUNTY;
17 4) Improperly performed service.

18 In no event shall any payment by the COUNTY constitute a waiver by the COUNTY of any breach
19 of this Agreement or any default which may then exist on the part of the CONTRACTOR. Neither shall such
20 payment impair or prejudice any remedy available to the COUNTY with respect to the breach or default.
21 The COUNTY shall have the right to demand of the CONTRACTOR the repayment to the COUNTY of any
22 funds disbursed to the CONTRACTOR under this Agreement, which in the judgment of the COUNTY were
23 not expended in accordance with the terms of this Agreement. The CONTRACTOR shall promptly refund
24 any such funds upon demand.

25 C. Without Cause - Under circumstances other than those set forth above, this
26 Agreement may be terminated by COUNTY upon the giving of thirty (30) days advance written notice of an
27 intention to terminate to CONTRACTOR.

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1 4. COMPENSATION

2 COUNTY agrees to pay CONTRACTOR and CONTRACTOR agrees to receive
3 compensation as follows:

4 For the period of July 1, 2022 through and including June 30, 2023, Eight Thousand Four
5 Hundred Eighty-Nine and 25/100 Dollars (\$8,489.25) per month. In no event shall actual services
6 performed under this Agreement be in excess of One Hundred One Thousand Eight Hundred Seventy-One
7 and 00/100 Dollars (\$101,871.00) during the period of July 1, 2022 through and including June 30, 2023 of
8 this Agreement.

9 For the period of July 1, 2023 through and including June 30, 2024, Eight Thousand Seven
10 Hundred Forty-Three and 93/100 Dollars (\$8,743.93) per month. In no event shall actual services
11 performed under this Agreement be in excess of One Hundred Four Thousand Nine Hundred TwentySeven
12 and 16/100 Dollars (\$104,927.16) during the period of July 1, 2023 through and including June 30, 2024 of
13 this Agreement

14 For the period of July 1, 2024 through and including June 30, 2025, Nine Thousand
15 Six and 25/100 Dollars (\$9,006.25) per month. In no event shall actual services performed under this
16 Agreement be in excess of One Hundred Eight Thousand Seventy-Five and 00/100 Dollars (\$108,075.00)
17 during the period of July 1, 2024 through and including June 30, 2025 of this Agreement.

18 If the additional year four option is exercised, for the period of July 1, 2025 through June 30,2026,
19 Nine Thousand Two Hundred Seventy-Six and 44/100 Dollars (\$9,276.44) per month. In no event shall
20 actual services performed under this Agreement be in excess of One Hundred Eleven Thousand Three
21 Hundred Seventeen and 28/100 Dollars (\$111,317.28) during the period of July 1, 2025 through and
22 including June 30, 2026 of this Agreement.

23 If the additional year five option is exercised, for the period of July 1, 2026 through June 30,2027,
24 Nine Thousand Five Hundred Fifty Four and 73/100 Dollars (\$9,554.73) per month. In no event shall actual
25 services performed under this Agreement be in excess of One Hundred Fourteen Thousand Three Six
26 Hundred Fifty Six and 76/100 Dollars (\$114,656.76) during the period of July 1, 2026 through and including
27 June 30, 2027 of this Agreement.

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1 It is understood that all expenses incidental to CONTRACTOR's performance of actual services
2 under this Agreement shall be borne by CONTRACTOR.

3 Payments by COUNTY shall be made in advance at the start of the month, for services provided
4 during the current month, invoices will need to be submitted 15 calendar days before the start of the month
5 receipt and verification of CONTRACTOR's invoices by COUNTY's Department of Public Health. If
6 CONTRACTOR should fail to comply with any provision of this Agreement, COUNTY shall be relieved of its
7 obligation for further compensation.

8 If notice is given to terminate this Agreement within the calendar month, the base monthly
9 compensation shall be calculated by the COUNTY on a prorated basis for actual days of service provided
10 by the CONTRACTOR. The CONTRACTOR agrees to receive compensation in accordance with the
11 prorated calculation.

12 5. INDEPENDENT CONTRACTOR: In performance of the work, duties and obligations
13 assumed by CONTRACTOR under this Agreement, it is mutually understood and agreed that
14 CONTRACTOR, including any and all of the CONTRACTOR'S officers, agents, and employees will at all
15 times be acting and performing as an independent contractor, and shall act in an independent capacity and
16 not as an officer, agent, servant, employee, joint venturer, partner, or associate of the COUNTY.
17 Furthermore, COUNTY shall have no right to control or supervise or direct the manner or method by which
18 CONTRACTOR shall perform its work and function. However, COUNTY shall retain the right to administer
19 this Agreement so as to verify that CONTRACTOR is performing its obligations in accordance with the
20 terms and conditions thereof.

21 CONTRACTOR and COUNTY shall comply with all applicable provisions of law and the rules and
22 regulations, if any, of governmental authorities having jurisdiction over matters the subject thereof.

23 Because of its status as an independent contractor, CONTRACTOR shall have absolutely no right
24 to employment rights and benefits available to COUNTY employees. CONTRACTOR shall be solely liable
25 and responsible for providing to, or on behalf of, its employees all legally-required employee benefits. In
26 addition, CONTRACTOR shall be solely responsible and save COUNTY harmless from all matters relating
27 to payment of CONTRACTOR'S employees, including compliance with Social Security withholding and all
28 other regulations governing such matters. It is acknowledged that during the term of this Agreement,

CONTRACTOR may be providing services to others unrelated to the COUNTY or to this Agreement.

6. MODIFICATION: Any matters of this Agreement may be modified from time to time by the written consent of all the parties without, in any way, affecting the remainder.

7. NON-ASSIGNMENT: Neither party shall assign, transfer or sub-contract this Agreement nor their rights or duties under this Agreement without the prior written consent of the other party.

8. HOLD HARMLESS: CONTRACTOR agrees to indemnify, save, hold harmless, and at COUNTY'S request, defend the COUNTY, its officers, agents, and employees from any and all costs and expenses (including attorney's fees and costs), damages, liabilities, claims, and losses occurring or resulting to COUNTY in connection with the performance, or failure to perform, by CONTRACTOR, its officers, agents, or employees under this Agreement, and from any and all costs and expenses (including attorney's fees and costs), damages, liabilities, claims, and losses occurring or resulting to any person, firm, or corporation who may be injured or damaged by the performance, or failure to perform, of CONTRACTOR, its officers, agents, or employees under this Agreement.

The provisions of this Section 9 shall survive termination of this Agreement.

9. INSURANCE

Without limiting the COUNTY's right to obtain indemnification from CONTRACTOR or any third parties, CONTRACTOR, at its sole expense, shall maintain in full force and effect, the following insurance policies or a program of self-insurance, including but not limited to, an insurance pooling arrangement or Joint Powers Agreement (JPA) throughout the term of the Agreement:

A. Commercial General Liability

Commercial General Liability Insurance with limits of not less than Two Million Dollars (\$2,000,000.00) per occurrence and an annual aggregate of Four Million Dollars (\$4,000,000.00). This policy shall be issued on a per occurrence basis. COUNTY may require specific coverages including completed operations, products liability, contractual liability, Explosion-Collapse-Underground, fire legal liability or any other liability insurance deemed necessary because of the nature of this contract.

B. Automobile Liability

Comprehensive Automobile Liability Insurance with limits of not less than One Million Dollars (\$1,000,000.00) per accident for bodily injury and for property damages. Coverage should include any auto

used in connection with this Agreement.

C. Professional Liability

If CONTRACTOR employs licensed professional staff, (e.g., Ph.D., R.N., L.C.S.W., M.F.C.C.) in providing services, Professional Liability Insurance with limits of not less than One Million Dollars (\$1,000,000.00) per occurrence, Three Million Dollars (\$3,000,000.00) annual aggregate.

D. Worker's Compensation

A policy of Worker's Compensation insurance as may be required by the California Labor Code.

E. Molestation

Sexual abuse / molestation liability insurance with limits of not less than One Million Dollars (\$1,000,000.00) per occurrence, Two Million Dollars (\$2,000,000.00) annual aggregate. This policy shall be issued on a per occurrence basis.

F. Cyber Liability

Cyber Liability Insurance, with limits not less than \$2,000,000 per occurrence or claim, \$2,000,000 aggregate. Coverage shall be sufficiently broad to respond to the duties and obligations as is undertaken by CONTRACTOR in this Agreement and shall include, but not be limited to, claims involving infringement of intellectual property, including but not limited to infringement of copyright, trademark, trade dress, invasion of privacy violations, information theft, damage to or destruction of electronic information, release of private information, alteration of electronic information, extortion and network security. The policy shall provide coverage for breach response costs as well as regulatory fines and penalties as well as credit monitoring expenses with limits sufficient to respond to these obligations.

Additional Requirements Relating to Insurance

CONTRACTOR shall obtain endorsements to the Commercial General Liability insurance naming the County of Fresno, its officers, agents, and employees, individually and collectively, as additional insured, but only insofar as the operations under this Agreement are concerned. Such coverage for additional insured shall apply as primary insurance and any other insurance, or self-insurance, maintained by COUNTY, its officers, agents and employees shall be excess only and not contributing with insurance provided under CONTRACTOR's policies herein. This insurance shall not be cancelled or changed without

1 a minimum of thirty (30) days advance written notice given to COUNTY.

2 CONTRACTOR hereby waives its right to recover from COUNTY, its officers, agents, and
3 employees any amounts paid by the policy of worker's compensation insurance required by this
4 Agreement. CONTRACTOR is solely responsible to obtain any endorsement to such policy that may be
5 necessary to accomplish such waiver of subrogation, but CONTRACTOR's waiver of subrogation under
6 this paragraph is effective whether or not CONTRACTOR obtains such an endorsement.

7 Within Thirty (30) days from the date CONTRACTOR signs and executes this Agreement,
8 CONTRACTOR shall provide certificates of insurance and endorsement as stated above for all of the
9 foregoing policies, as required herein, to the County of Fresno, (Name and Address of the official who will
10 administer this contract), stating that such insurance coverage have been obtained and are in full force; that
11 the County of Fresno, its officers, agents and employees will not be responsible for any premiums on the
12 policies; that for such worker's compensation insurance the CONTRACTOR has waived its right to recover
13 from the COUNTY, its officers, agents, and employees any amounts paid under the insurance policy and
14 that waiver does not invalidate the insurance policy; that such Commercial General Liability insurance
15 names the County of Fresno, its officers, agents and employees, individually and collectively, as additional
16 insured, but only insofar as the operations under this Agreement are concerned; that such coverage for
17 additional insured shall apply as primary insurance and any other insurance, or self-insurance, maintained
18 by COUNTY, its officers, agents and employees, shall be excess only and not contributing with insurance
19 provided under CONTRACTOR's policies herein; and that this insurance shall not be cancelled or changed
20 without a minimum of thirty (30) days advance, written notice given to COUNTY.

21 In the event CONTRACTOR fails to keep in effect at all times insurance coverage as herein
22 provided, the COUNTY may, in addition to other remedies it may have, suspend or terminate this
23 Agreement upon the occurrence of such event.

24 All policies shall be issued by admitted insurers licensed to do business in the State of California,
25 and such insurance shall be purchased from companies possessing a current A.M. Best, Inc. rating of A
26 FSC VII or better.

27 10. STATE ENERGY CONSERVATION: CONTRACTOR must comply with the mandatory
28 standard and policies relating to energy efficiency, which are contained in the State Energy

1 Conservation Plan issued in compliance with 42 United States (US) Code sections 6321, et. seq.

2 11. CLEAN AIR AND WATER: In the event the funding under this Agreement exceeds One
3 Hundred Thousand and No/100 Dollars (\$100,000), CONTRACTOR shall comply with all applicable
4 standards, orders or requirements issued under the Clean Air Act contained in 42 U.S. Code 7601 et
5 seq; the Clean Water Act contained in U.S. Code 1368 et seq.; and any standards, laws and
6 regulations, promulgated thereunder. Under these laws and regulations, CONTRACTOR shall assure:

7 A. No facility shall be utilized in the performance of the Agreement that
8 has been listed on the Environmental Protection Agency (EPA) list of
9 Violating on the Facilities;

10 B. COUNTY shall be notified prior to execution of this Agreement of the
11 receipt of any communication from the Director, Office of Federal Activities,
12 U.S. EPA

13 indicating that a facility to be utilized in the performance of this Agreement is under consideration to be
14 listed on the EPA list of Violating Facilities;

15 C. COUNTY and U.S. EPA shall be notified about any known violation of
16 the above laws and regulations; and,

17 D. This assurance shall be included in every nonexempt subgrant, contract, or
18 subcontract.

19 12. AUDITS AND INSPECTIONS: The CONTRACTOR shall at any time during business hours,
20 and as often as the COUNTY may deem necessary, make available to the COUNTY for examination all of
21 its records and data with respect to the matters covered by this Agreement. The CONTRACTOR shall,
22 upon request by the COUNTY, permit the COUNTY to audit and inspect all of such records and data
23 necessary to ensure CONTRACTOR'S compliance with the terms of this Agreement.

24 If this Agreement exceeds ten thousand dollars (\$10,000.00), CONTRACTOR shall be subject to
25 the examination and audit of the California State Auditor for a period of three (3) years after final payment
26 under contract (Government Code Section 8546.7).

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1 13. SINGLE AUDIT CLAUSE:

2 A. If CONTRACTOR expends Seven Hundred Fifty Thousand Dollars (\$750,000) or
3 more Federal and Federal flow-through monies, CONTRACTOR agrees to conduct an annual audit in
4 accordance with the requirements of the Single Audit Standards as set forth in Office of Management
5 and Budget (OMB) Title 2 of the Code of Federal Regulations, Chapter II, Part 200. CONTRACTOR
6 shall submit said audit and management letter to COUNTY. The audit must include a statement of
7 findings or a statement that there were no findings. If there were negative findings, CONTRACTOR
8 must include a corrective action plan signed by an authorized individual. CONTRACTOR agrees to take
9 action to correct any material non-compliance or weakness found as a result of such audit. Such audit
10 shall be delivered to COUNTY'S DPH Administration for review within nine (9) months of the end of any
11 fiscal year in which funds were expended and/or received for the program. Failure to perform the
12 requisite audit functions as required by this Agreement may result in COUNTY performing the necessary
13 audit tasks, or at the COUNTY'S option, contracting with a public accountant to perform said audit, or,
14 may result in the inability of COUNTY to enter into future agreements with the CONTRACTOR.

15 B. A single audit report is not applicable if all CONTRACTOR'S Federal contracts do
16 not exceed the Seven Hundred Fifty Thousand Dollars (\$750,000) requirement or CONTRACTOR'S
17 federal funding is through Drug Medi-Cal.

18 14. HEALTH INSURANCE PORTABILITY AND ACCOUNTABILITY ACT:

19 A. The parties to this Agreement shall be in strict conformance with all applicable
20 Federal and State of California laws and regulations, including but not limited to Sections 5328, 10850,
21 and 14100.2 *et seq.* of the Welfare and Institutions Code, Sections 2.1 and 431.300 *et seq.* of Title 42,
22 Code of Federal Regulations (CFR), Section 56 *et seq.* of the California Civil Code and the Health
23 Insurance Portability and Accountability Act (HIPAA), including but not limited to Section 1320 D *et seq.* of
24 Title 42, United States Code (USC) and its implementing regulations, including, but not limited to Title 45,
25 CFR, Sections 160, 162, and 164, The Health Information Technology for Economic and Clinical Health
26 Act (HITECH) regarding the confidentiality and security of patient information, and the Genetic Information
27 Nondiscrimination Act (GINA) of 2008 regarding the confidentiality of genetic information.

28 Except as otherwise provided in this Agreement, CONTRACTOR, as a Business

1 Associate of COUNTY, may use or disclose Protected Health Information (PHI) to perform functions,
2 activities or services for or on behalf of COUNTY, as specified in this Agreement, provided that such use
3 or disclosure shall not violate the Health Insurance Portability and Accountability Act (HIPAA), USC 1320d
4 *et seq.* The uses and disclosures of PHI may not be more expansive than those applicable to COUNTY,
5 as the “Covered Entity” under the HIPAA Privacy Rule (45 CFR 164.500 *et seq.*), except as authorized for
6 management, administrative or legal responsibilities of the Business Associate.

7 B. CONTRACTOR, including its subcontractors and employees, shall protect, from
8 unauthorized access, use, or disclosure of names and other identifying information, including genetic
9 information, concerning persons receiving services pursuant to this Agreement, except where permitted in
10 order to carry out data aggregation purposes for health care operations [45 CFR Sections 164.504
11 (e)(2)(i), 164.504 (3)(2)(ii)(A), and 164.504 (e)(4)(i)] This pertains to any and all persons receiving services
12 pursuant to a COUNTY funded program. This requirement applies to electronic PHI. CONTRACTOR
13 shall not use such identifying information or genetic information for any purpose other than carrying out
14 CONTRACTOR’S obligations under this Agreement.

15 C. CONTRACTOR, including its subcontractors and employees, shall not disclose any
16 such identifying information or genetic information to any person or entity, except as otherwise specifically
17 permitted by this Agreement, authorized by Subpart E of 45 CFR Part 164 or other law, required by the
18 Secretary, or authorized by the client/patient in writing. In using or disclosing PHI that is permitted by this
19 Agreement or authorized by law, CONTRACTOR shall make reasonable efforts to limit PHI to the
20 minimum necessary to accomplish intended purpose of use, disclosure or request.

21 D. For purposes of the above sections, identifying information shall include, but not be
22 limited to name, identifying number, symbol, or other identifying particular assigned to the individual, such
23 as finger or voice print, or photograph.

24 E. For purposes of the above sections, genetic information shall include genetic tests of
25 family members of an individual or individual, manifestation of disease or disorder of family members of an
26 individual, or any request for or receipt of, genetic services by individual or family members. Family
27 member means a dependent or any person who is first, second, third, or fourth degree relative.

28 F. CONTRACTOR shall provide access, at the request of COUNTY, and in the time

1 and manner designated by COUNTY, to PHI in a designated record set (as defined in 45 CFR Section
2 164.501), to an individual or to COUNTY in order to meet the requirements of 45 CFR Section 164.524
3 regarding access by individuals to their PHI. With respect to individual requests, access shall be
4 provided within thirty (30) days from request. Access may be extended if CONTRACTOR cannot
5 provide access and provides individual with the reasons for the delay and the date when access may
6 be granted. PHI shall be provided in the form and format requested by the individual or COUNTY.

7 CONTRACTOR shall make any amendment(s) to PHI in a designated record set
8 at the request of COUNTY or individual, and in the time and manner designated by COUNTY in
9 accordance with 45 CFR Section 164.526.

10 CONTRACTOR shall provide to COUNTY or to an individual, in a time and
11 manner designated by COUNTY, information collected in accordance with 45 CFR Section 164.528, to
12 permit COUNTY to respond to a request by the individual for an accounting of disclosures of PHI in
13 accordance with 45 CFR Section 164.528.

14 G. CONTRACTOR shall report to COUNTY, in writing, any knowledge or reasonable
15 belief that there has been unauthorized access, viewing, use, disclosure, security incident, or breach of
16 unsecured PHI not permitted by this Agreement of which it becomes aware, immediately and without
17 reasonable delay and in no case later than two (2) business days of discovery. Immediate notification
18 shall be made to COUNTY's Information Security Officer and Privacy Officer and COUNTY's DPH HIPAA
19 Representative, within two (2) business days of discovery. The notification shall include, to the extent
20 possible, the identification of each individual whose unsecured PHI has been, or is reasonably believed to
21 have been, accessed, acquired, used, disclosed, or breached. CONTRACTOR shall take prompt
22 corrective action to cure any deficiencies and any action pertaining to such unauthorized disclosure
23 required by applicable Federal and State Laws and regulations. CONTRACTOR shall investigate such
24 breach and is responsible for all notifications required by law and regulation or deemed necessary by
25 COUNTY and shall provide a written report of the investigation and reporting required to COUNTY's
26 Information Security Officer and Privacy Officer and COUNTY's DPH HIPAA Representative. This written
27 investigation and description of any reporting necessary shall be postmarked within the thirty (30) working
28 days of the discovery of the breach to the addresses below:

County of Fresno
Dept. of Public Health
HIPAA Representative
(559) 600-6439
P.O. Box 11867
Fresno, CA 93775

County of Fresno
Dept. of Public Health
Privacy Officer
(559) 600-6405
P.O. Box 11867
Fresno, CA 93775

County of Fresno
Information Technology Services
Information Security Officer
(559) 600-5800
333 W. Pontiac Way
Clovis, CA 93612

H. CONTRACTOR shall make their internal practices, books, and records relating to the use and disclosure of PHI received from COUNTY, or created or received by the CONTRACTOR on behalf of COUNTY, in compliance with HIPAA's Privacy Rule, including, but not limited to the requirements set forth in Title 45, CFR, Sections 160 and 164. CONTRACTOR shall make its internal practices, books, and records relating to the use and disclosure of PHI received from COUNTY, or created or received by the CONTRACTOR on behalf of COUNTY, available to the United States Department of Health and Human Services (Secretary) upon demand.

CONTRACTOR shall cooperate with the compliance and investigation reviews conducted by the Secretary. PHI access to the Secretary must be provided during the CONTRACTOR'S normal business hours, however, upon exigent circumstances access at any time must be granted. Upon the Secretary's compliance or investigation review, if PHI is unavailable to CONTRACTOR and in possession of a Subcontractor, it must certify efforts to obtain the information to the Secretary.

I. Safeguards

CONTRACTOR shall implement administrative, physical, and technical safeguards as required by the HIPAA Security Rule, Subpart C of 45 CFR 164, that reasonably and appropriately protect the confidentiality, integrity, and availability of PHI, including electronic PHI, that it creates, receives, maintains or transmits on behalf of COUNTY and to prevent unauthorized access, viewing, use, disclosure, or breach of PHI other than as provided for by this Agreement. CONTRACTOR shall conduct an accurate and thorough assessment of the potential risks and vulnerabilities to the confidential, integrity and availability of electronic PHI. CONTRACTOR shall develop and maintain a written information privacy and security program that includes administrative, technical and physical safeguards appropriate to the size and complexity of CONTRACTOR'S operations and the nature and scope of its activities. Upon COUNTY's request, CONTRACTOR shall provide COUNTY with information concerning such safeguards.

CONTRACTOR shall implement strong access controls and other security

1 safeguards and precautions in order to restrict logical and physical access to confidential, personal (e.g.,
2 PHI) or sensitive data to authorized users only. Said safeguards and precautions shall include the
3 following administrative and technical password controls for all systems used to process or store
4 confidential, personal, or sensitive data:

- 5 1. Passwords must not be:
 - 6 a. Shared or written down where they are accessible or recognizable
7 by anyone else; such as taped to computer screens, stored under keyboards, or visible in a work area;
 - 8 b. A dictionary word; or
 - 9 c. Stored in clear text
- 10 2. Passwords must be:
 - 11 a. Eight (8) characters or more in length;
 - 12 b. Changed every ninety (90) days;
 - 13 c. Changed immediately if revealed or compromised; and
 - 14 d. Composed of characters from at least three (3) of the following four
15 (4) groups from the standard keyboard:
 - 16 1) Upper case letters (A-Z);
 - 17 2) Lowercase letters (a-z);
 - 18 3) Arabic numerals (0 through 9); and
 - 19 4) Non-alphanumeric characters (punctuation symbols).

20 CONTRACTOR shall implement the following security controls on each
21 workstation or portable computing device (e.g., laptop computer) containing confidential,
22 personal, or sensitive data:

- 23 1. Network-based firewall and/or personal firewall;
- 24 2. Continuously updated anti-virus software; and
- 25 3. Patch management process including installation of all operating
26 system/software vendor security patches.

27 CONTRACTOR shall utilize a commercial encryption solution that has received
28 FIPS 140-2 validation to encrypt all confidential, personal, or sensitive data stored on portable

1 electronic media (including, but not limited to, compact disks and thumb drives) and on portable
2 computing devices (including, but not limited to, laptop and notebook computers).

3 CONTRACTOR shall not transmit confidential, personal, or sensitive data via e-
4 mail or other internet transport protocol unless the data is encrypted by a solution that has been
5 validated by the National Institute of Standards and Technology (NIST) as conforming to the Advanced
6 Encryption Standard (AES) Algorithm. CONTRACTOR must apply appropriate sanctions against its
7 employees who fail to comply with these safeguards. CONTRACTOR must adopt procedures for
8 terminating access to PHI when employment of employee ends.

9 J. Mitigation of Harmful Effects

10 CONTRACTOR shall mitigate, to the extent practicable, any harmful effect that is
11 suspected or known to CONTRACTOR of an unauthorized access, viewing, use, disclosure, or breach
12 of PHI by CONTRACTOR or its subcontractors in violation of the requirements of these provisions.
13 CONTRACTOR must document suspected or known harmful effects and the outcome.

14 K. CONTRACTOR'S Subcontractors

15 CONTRACTOR shall ensure that any of their contractors, including
16 subcontractors, if applicable, to whom CONTRACTOR provide PHI received from or created or
17 received by CONTRACTOR on behalf of COUNTY, agree to the same restrictions, safeguards, and
18 conditions that apply to CONTRACTOR with respect to such PHI and to incorporate, when applicable,
19 the relevant provisions of these provisions into each subcontract or sub-award to such agents or
20 subcontractors.

21 L. Employee Training and Discipline

22 CONTRACTOR shall train and use reasonable measures to ensure compliance
23 with the requirements of these provisions by employees who assist in the performance of functions or
24 activities on behalf of COUNTY under this Agreement and use or disclose PHI and discipline such
25 employees who intentionally violate any provisions of these provisions, including termination of
26 employment.

27 M. Termination for Cause

28 Upon COUNTY's knowledge of a material breach of these provisions by a

CONTRACTOR, COUNTY shall either:

1. Provide an opportunity for the CONTRACTOR to cure the breach or end the violation and terminate this Agreement if CONTRACTOR does not cure the breach or end the violation within the time specified by COUNTY; or

2. Immediately terminate this Agreement if a CONTRACTOR has breached a material term of these provisions and cure is not possible.

3. If neither cure nor termination is feasible, the COUNTY's Privacy Officer shall report the violation to the Secretary of the U.S. Department of Health and Human Services.

N. Judicial or Administrative Proceedings

COUNTY may terminate this Agreement in accordance with the terms and conditions of this Agreement as written hereinabove, if: (1) a CONTRACTOR is found guilty in a criminal proceeding for a violation of the HIPAA Privacy or Security Laws or the HITECH Act; or (2) a finding or stipulation that a CONTRACTOR has violated a privacy or security standard or requirement of the HITECH Act, HIPAA or other security or privacy laws in an administrative or civil proceeding in which the CONTRACTOR is a party.

O. Effect of Termination

Upon termination or expiration of this Agreement for any reason, CONTRACTOR shall return or destroy all PHI received from COUNTY (or created or received by CONTRACTOR on behalf of COUNTY) that CONTRACTOR still maintains in any form, and shall retain no copies of such PHI. If return or destruction of PHI is not feasible, it shall continue to extend the protections of these provisions to such information, and limit further use of such PHI to those purposes that make the return or destruction of such PHI infeasible. This provision shall apply to PHI that is in the possession of subcontractors or agents, if applicable, of CONTRACTOR. If CONTRACTOR destroy the PHI data, a certification of date and time of destruction shall be provided to the COUNTY by CONTRACTOR.

P. Disclaimer

COUNTY makes no warranty or representation that compliance by CONTRACTOR with these provisions, the HITECH Act, HIPAA or the HIPAA regulations will be adequate or satisfactory for CONTRACTOR'S own purposes or that any information in

1 CONTRACTOR'S possession or control, or transmitted or received by CONTRACTOR, is or will be
2 secure from unauthorized access, viewing, use, disclosure, or breach. CONTRACTOR are solely
3 responsible for all decisions made by CONTRACTOR regarding the safeguarding of PHI.

4 Q. Amendment

5 The parties acknowledge that Federal and State laws relating to electronic data
6 security and privacy are rapidly evolving and that amendment of these provisions may be required to
7 provide for procedures to ensure compliance with such developments. The parties specifically agree to
8 take such action as is necessary to amend this agreement in order to implement the standards and
9 requirements of HIPAA, the HIPAA regulations, the HITECH Act and other applicable laws relating to
10 the security or privacy of PHI. COUNTY may terminate this Agreement upon thirty (30) days written
11 notice in the event that CONTRACTOR do not enter into an amendment providing assurances
12 regarding the safeguarding of PHI that COUNTY in its sole discretion, deems sufficient to satisfy the
13 standards and requirements of HIPAA, the HIPAA regulations and the HITECH Act.

14 R. No Third-Party Beneficiaries

15 Nothing express or implied in the terms and conditions of these provisions is
16 intended to confer, nor shall anything herein confer, upon any person other than COUNTY or
17 CONTRACTOR and their respective successors or assignees, any rights, remedies, obligations or
18 liabilities whatsoever.

19 S. Interpretation

20 The terms and conditions in these provisions shall be interpreted as broadly as
21 necessary to implement and comply with HIPAA, the HIPAA regulations and applicable State laws. The
22 parties agree that any ambiguity in the terms and conditions of these provisions shall be resolved in
23 favor of a meaning that complies and is consistent with HIPAA and the HIPAA regulations.

24 T. Regulatory References

25 A reference in the terms and conditions of these provisions to a section in the
26 HIPAA regulations means the section as in effect or as amended.

27 U. Survival

28 The respective rights and obligations of CONTRACTOR as stated in this Section

shall survive the termination or expiration of this Agreement.

V. No Waiver of Obligations

No change, waiver or discharge of any liability or obligation hereunder on any one or more occasions shall be deemed a waiver of performance of any continuing or other obligation, or shall prohibit enforcement of any obligation on any other occasion.

W. Public Health Exception Extended

1. The HIPAA Privacy Rule creates a special rule for a subset of public health activities whereby HIPAA cannot preempt state law if, “[t]he provision of state law, including state procedures established under such law, as applicable, provides for the reporting of disease or injury, child abuse, birth, or death, or for the conduct of public health surveillance, investigation, or intervention.” (45 C.F.R. § 160.203(c) [HITECH Act, § 13421, sub. (a)].) ;

2. To the extent a disclosure or use of information received under this agreement may also be considered a disclosure or use of “Protected Health Information” (PHI) of an individual, as that term is defined in Section 160.103 of Title 45, Code of Federal Regulations, the following Privacy Rule provisions apply to permit such data disclosure and/or use by COUNTY and CONTRACTOR, without the consent or authorization of the individual who is the subject of the PHI:

a) HIPAA cannot preempt state law if, “[t]he provision of state law, including state procedures established under such law, as applicable, provides for the reporting of disease or injury, child abuse, birth, or death, or for the conduct of public health surveillance, investigation, or intervention.” (45 C.F.R. § 160.203(c) [HITECH Act, § 13421, sub. (a)].);

b) A covered entity may disclose PHI to a “public health authority” carrying out public health activities authorized by law; (45 C.F.R. § 164.512(b).);

c) A covered entity may use or disclose protected health information to the extent that such use or disclosure is required by law and the use or disclosure complies with and is limited to the relevant requirements of such law.” (Title 45 C.F.R. §§ 164.502 (a)(1)(vii), 164.512(a)(1).)

15. NON-DISCRIMINATION: During the performance of this Agreement, CONTRACTOR shall not unlawfully discriminate against any employee or applicant for employment, or recipient of services,

because of race, religious creed, color, national origin, ancestry, physical disability, mental disability, medical condition, genetic information, marital status, sex, gender, gender identity, gender expression, age, sexual orientation, military status or veteran status pursuant to all applicable State of California and Federal statutes and regulation.

16. NOTICES: The persons and their addresses having authority to give and receive notices under this Agreement include the following:

COUNTY

County of Fresno
Director, Department of Public Health
1221 Fulton St.
Fresno, CA 93721

CONTRACTOR

GM Lab Consulting LLC
700 Cabada Drive
Brentwood, CA 94513

All notices between the COUNTY and CONTRACTOR provided for or permitted under this Agreement must be in writing and delivered either by personal service, by first-class United States mail, by an overnight commercial courier service, or by telephonic facsimile transmission. A notice delivered by personal service is effective upon service to the recipient. A notice delivered by first-class United States mail is effective three COUNTY business days after deposit in the United States mail, postage prepaid, addressed to the recipient. A notice delivered by an overnight commercial courier service is effective one COUNTY business day after deposit with the overnight commercial courier service, delivery fees prepaid, with delivery instructions given for next day delivery, addressed to the recipient. A notice delivered by telephonic facsimile is effective when transmission to the recipient is completed (but, if such transmission is completed outside of COUNTY business hours, then such delivery shall be deemed to be effective at the next beginning of a COUNTY business day), provided that the sender maintains a machine record of the completed transmission. For all claims arising out of or related to this Agreement, nothing in this section establishes, waives, or modifies any claims presentation requirements or procedures provided by law, including but not limited to the Government Claims Act (Division 3.6 of Title 1 of the Government Code, beginning with section 810).

17. CERTIFICATION REGARDING DEBARMENT, SUSPENSION, INELIGIBILITY AND VOLUNTARY EXCLUSION-LOWER TIER COVERED TRANSACTIONS:

A. COUNTY and CONTRACTOR recognize that CONTRACTOR is a recipient of Federal funds under the terms of this Agreement. By signing this Agreement, CONTRACTOR agrees to

1 comply with applicable Federal suspension and debarment regulations, including but not limited to: 29
2 CFR 1470.35, 29 CFR 97.35, 41 CFR 105-71.135, and Executive Order 12549. By signing this
3 Agreement, CONTRACTOR attests to the best of its knowledge and belief, that it and its principals:

- 4 1. Are not presently debarred, suspended, proposed for debarment, declared
5 ineligible, or voluntarily excluded by any Federal department or agency; and
- 6 2. Shall not knowingly enter into any covered transaction with an entity or person
7 who is proposed for debarment under Federal regulations, debarred,
8 suspended, declared ineligible, or voluntarily excluded from participation in
9 such transaction.

10 B. CONTRACTOR shall provide immediate written notice to COUNTY if at any time
11 during the term of this Agreement CONTRACTOR learns that the representations it makes above were
12 erroneous when made or have become erroneous by reason of changed circumstances.

13 C. CONTRACTOR shall include a clause titled "Certification Regarding Debarment,
14 Suspension, Ineligibility, and Voluntary Exclusion- Lower Tier Covered Transactions" and similar in
15 nature to this paragraph in all lower tier covered transactions and in all solicitations for lower tier covered
16 transactions.

17 D. CONTRACTOR shall, prior to soliciting or purchasing goods and services in
18 excess of \$25,000 funded by this Agreement, review and retain the proposed vendor's suspension and
19 debarment status at <https://sam.gov/SAM/>

20 18. PROPERTY OF COUNTY: CONTRACTOR agrees to take reasonable and prudent steps
21 to ensure the security of any and all said hardware and software provided to it by COUNTY under this
22 Agreement, to maintain replacement-value insurance coverages on said hardware and software of like
23 kind and quality approved by COUNTY.

24 All purchases over Five Thousand Dollars (\$5,000) made during the life of this Agreement that
25 will outlive the life of this Agreement shall be identified as fixed assets with an assigned Fresno County
26 DPH Accounting Inventory Number. These fixed assets shall be retained by COUNTY, as COUNTY
27 property, in the event this Agreement is terminated or upon expiration of this Agreement.

28 CONTRACTOR agrees to participate in an annual inventory of all COUNTY fixed assets and shall be

1 physically present when fixed assets are returned to COUNTY possession at the termination or
2 expiration of this Agreement. CONTRACTOR is responsible for returning to COUNTY all COUNTY
3 owned fixed assets upon the expiration or termination of this Agreement.

4 19. PROHIBITION ON PUBLICITY: None of the funds provided directly or indirectly under this
5 Agreement shall be used for CONTRACTOR's advertising, fundraising, or publicity (i.e., purchasing of
6 tickets/tables, silent auction donations, etc.) for the purpose of self-promotion. Notwithstanding the
7 above, funds provided directly or indirectly under this Agreement may be used by CONTRACTOR for
8 publicity of the services described in Paragraph One (1) of this Agreement as necessary to raise public
9 awareness about the availability of such specific services when approved in advance by COUNTY's
10 Director of Public Health or designee for such items as written/printed materials, the use of media (i.e.,
11 radio, television, newspapers) and any other related expense(s).

12 20. CONFLICT OF INTEREST: No officer, employee or agent of the COUNTY who exercises
13 any function or responsibility for planning and carrying out of the services provided under this
14 Agreement shall have any direct or indirect personal financial interest in this Agreement. In addition, no
15 employee of the COUNTY shall be employed by the CONTRACTOR under this Agreement to fulfill any
16 contractual obligations with the COUNTY. COUNTY and CONTRACTOR shall comply with all Federal,
17 State of California and local conflict of interest laws, statutes and regulations, which shall be applicable
18 to all parties and beneficiaries under this Agreement and any officer, employee or agent of the
19 COUNTY.

20 21. CHANGE OF LEADERSHIP/MANAGEMENT: In the event of any change in the status of
21 CONTRACTOR's leadership or management, CONTRACTOR shall provide written notice to COUNTY
22 within thirty (30) days from the date of change. Such notification shall include any new leader or
23 manager's name, address and qualifications. "Leadership or management" shall include any employee,
24 member, or owner of CONTRACTOR who either a) directs individuals providing services pursuant to
25 this Agreement, b) exercises control over the manner in which services are provided, or c) has authority
26 over CONTRACTOR's finances.

1 22. LOBBYING ACTIVITY: None of the funds provided under this Agreement shall be used for
2 publicity, lobbying or propaganda purposes designed to support or defeat legislation pending in the
3 Congress of the United States of America or the Legislature of the State of California.

4 23. GOVERNING LAW: Venue for any action arising out of or related to this Agreement shall only
5 be in Fresno County, California.

6 The rights and obligations of the parties and all interpretation and performance of this Agreement
7 shall be governed in all respects by the laws of the State of California.

8 24. DISCLOSURE OF SELF-DEALING TRANSACTIONS

9 This provision is only applicable if the CONTRACTOR is operating as a corporation (a for-profit
10 or non-profit corporation) or if during the term of the agreement, the CONTRACTOR changes its status
11 to operate as a corporation.

12 Members of the CONTRACTOR's Board of Directors shall disclose any self-dealing transactions
13 that they are a party to while CONTRACTOR is providing goods or performing services under this
14 agreement. A self-dealing transaction shall mean a transaction to which the CONTRACTOR is a party
15 and in which one or more of its directors has a material financial interest. Members of the Board of
16 Directors shall disclose any self-dealing transactions that they are a party to by completing and signing a
17 Self-Dealing Transaction Disclosure Form, attached hereto as Exhibit A and incorporated herein by
18 reference, and submitting it to the COUNTY prior to commencing with the self-dealing transaction or
19 immediately thereafter.

20 25. ELECTRONIC SIGNATURE: The parties agree that this Agreement may be executed by
21 electronic signature as provided in this section. An "electronic signature" means any symbol or process
22 intended by an individual signing this Agreement to represent their signature, including but not limited to (1)
23 a digital signature; (2) a faxed version of an original handwritten signature; or (3) an electronically scanned
24 and transmitted (for example by PDF document) of a handwritten signature. Each electronic signature
25 affixed or attached to this Agreement (1) is deemed equivalent to a valid original handwritten signature of
26 the person signing this Agreement for all purposes, including but not limited to evidentiary proof in any
27 administrative or judicial proceeding, and (2) has the same force and effect as the valid original handwritten
28 signature of that person. The provisions of this section satisfy the requirements of Civil Code section

1 1633.5, subdivision (b), in the Uniform Electronic Transaction Act (Civil Code, Division 3, Part 2, Title 2.5,
2 beginning with section 1633.1). Each party using a digital signature represents that it has undertaken and
3 satisfied the requirements of Government Code section 16.5, subdivision (a), paragraphs (1) through (5),
4 and agrees that each other party may rely upon that representation. This Agreement is not conditioned
5 upon the parties conducting the transactions under it by electronic means and either party may sign this
6 Agreement with an original handwritten signature.

7 26. ENTIRE AGREEMENT: This Agreement constitutes the entire agreement between the
8 CONTRACTOR and COUNTY with respect to the subject matter hereof and supersedes all previous
9 Agreement negotiations, proposals, commitments, writings, advertisements, publications, and
10 understanding of any nature whatsoever unless expressly included in this Agreement.

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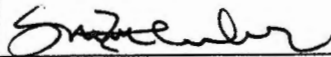
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1 IN WITNESS WHEREOF, the parties hereto have executed this Agreement as of the day and year
2 first hereinabove written.

3
4 CONTRACTOR
5 GM Lab Consulting LLC
6 EIN 88-1377592

7 
8 (Authorized Signature)

9 GODFRED MASINDE

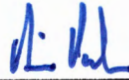
10 Print Name & Title

11 LAB DIRECTOR

12 700 CARBARK DR, BRENTWOOD

13 Mailing Address CA 94513

COUNTY OF FRESNO



Brian Pacheco, Chairman of the Board of
Supervisors of the County of Fresno

ATTEST:

Bernice E. Seidel

Clerk of the Board of Supervisors

County of Fresno, State of California

By: 

Deputy

17 FOR ACCOUNTING USE ONLY:

18 Fund: 0001

19 Subclass: 10000

20 ORG: 56201620

21 Account: 7295
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23
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SELF-DEALING TRANSACTION DISCLOSURE FORM

In order to conduct business with the County of Fresno (hereinafter referred to as “County”), members of a contractor’s board of directors (hereinafter referred to as “County Contractor”), must disclose any self-dealing transactions that they are a party to while providing goods, performing services, or both for the County. A self-dealing transaction is defined below:

“A self-dealing transaction means a transaction to which the corporation is a party and in which one or more of its directors has a material financial interest.”

The definition above will be utilized for purposes of completing this disclosure form.

INSTRUCTIONS

- (1) Enter board member’s name, job title (if applicable), and date this disclosure is being made.
- (2) Enter the board member’s company/agency name and address.
- (3) Describe in detail the nature of the self-dealing transaction that is being disclosed to the County. At a minimum, include a description of the following:
 - a. The name of the agency/company with which the Corporation has the transaction; and
 - b. The nature of the material financial interest in the Corporation’s transaction that the board member has.
- (4) Describe in detail why the self-dealing transaction is appropriate based on applicable provisions of the Corporations Code.
- (5) Form must be signed by the board member that is involved in the self-dealing transaction described in Sections (3) and (4).

(1) Company Board Member Information:			
Name:		Date:	
Job Title:			
(2) Company/Agency Name and Address:			
(3) Disclosure (Please describe the nature of the self-dealing transaction you are a party to):			
(4) Explain why this self-dealing transaction is consistent with the requirements of Corporations Code 5233 (a):			
(5) Authorized Signature			
Signature:		Date:	