

PROFESSIONAL SERVICES AGREEMENT

THIS AGREEMENT is entered into this ____ day of _____ 2018, between the CITY OF STOCKTON, a municipal corporation ("City"), and SAN JOAQUIN COUNTY PUBLIC HEALTH SERVICES (SJCPHS), a political subdivision of the State of California, whose address is 1601 E. Hazelton Ave, Stockton, CA 95205 and telephone number is (209) 468-3411 ("Contractor").

RECITALS

A. As a requirement of the California Department of Justice, Office of Attorney General Tobacco Law Enforcement Grant, Contractor shall provide outreach services, media development, and advertising related to illegal sales and marketing of tobacco products to minors.

B. Contractor administers the Smoking & Tobacco Outreach Prevention/Program (STOPP) for the purposes specified in this Agreement.

C. City finds it necessary and advisable to use the services of the Contractor, for the purposes specified in this Agreement, to meet the Tobacco Law Enforcement Grant objectives and obligations.

NOW THEREFORE, in consideration of the mutual covenants and conditions in this Agreement, City and Contractor agree as follows:

1. **Contractor's Services.** Subject to the terms and conditions set forth in this Agreement, Contractor shall provide to City services described in **Exhibit A**. Contractor shall provide said services at the location requested and in the manner specified in **Exhibit A**.

2. **City Assistance, Facilities, Equipment and Clerical Support.** Except as set forth in **Exhibit A**, Contractor shall, at its sole cost and expense, furnish all facilities and equipment that may be required for furnishing services pursuant to this Agreement. City shall furnish to Contractor only the facilities and equipment listed in **Exhibit A** according to the terms and conditions set forth in **Exhibit A**.

3. **Term.** This Agreement shall commence on the date written above and shall expire on June 30, 2020, unless terminated sooner as provided in this Agreement.

4. **Compensation.** City shall pay Contractor for services rendered pursuant to this Agreement as described more particularly in **Exhibit A**. The payments shall be made monthly upon receipt and approval of Contractor's invoice. In no way, shall the total compensation for services to the Contractor and reimbursement for costs exceed \$197,710 over the term of this Agreement, **Exhibit C**.

a. Invoices submitted by Contractor to City must contain a brief description of work performed, date and time expended, and City reference number. Payment shall be made within thirty (30) days of City approval of Contractor's invoice.

5. **Ownership of Work.** All reports, work product, and all other documents completed or partially completed by Contractor in the performance of this Agreement shall become the property of the City. All materials shall be delivered to the City upon completion or termination of the work under this Agreement. If any materials are lost, damaged or destroyed before final delivery to the City, the Contractor shall replace them at its own expense. Contractor shall keep materials confidential. Materials shall not be used for purposes other than performance of services under this Agreement and shall not be disclosed to anyone not connected with these services, unless the City provides prior written consent.

6. **Changes.** City may request changes in the scope of services to be provided by Contractor. Any changes and related fees shall be mutually agreed upon between the parties and subject to a written amendment to this Agreement.

7. **Contractor's Status.** In performing the obligations set forth in this Agreement, Contractor shall have the status of an independent contractor and Contractor shall not be considered to be an employee of the City for any purpose. All persons working for or under the direction of Contractor are its agents and employees and are not agents or employees of City.

8. **Termination for Convenience of City.** The City may terminate this Agreement at any time by mailing a notice in writing to Contractor. The Agreement shall then be deemed terminated and no further work shall be performed by Contractor. If the Agreement is so terminated, the Contractor shall be paid for the work actually completed at the time the notice of termination is received.

9. **Non-Assignability.** The Contractor shall not assign, sublet, or transfer this Agreement or any interest or obligation in the Agreement without the prior written consent of the City, and then only upon such terms and conditions as City may set forth in writing. Contractor shall be solely responsible for reimbursing subcontractors.

10. **Indemnity and Hold Harmless.** To the fullest extent permitted by law, Contractor shall hold harmless, defend at its own expense, and indemnify the City of Stockton, its officers, employees, agents, and volunteers, against any and all liability, claims, losses, damages, or expenses, including reasonable attorney's fees, arising from all acts or omissions of contractor or its officers, agents, or employees in rendering services under this contract; excluding, however, such liability, claims, losses, damages, or expenses arising from the City of Stockton's sole negligence or willful acts. The duty to defend and the duty to indemnify are separate and distinct obligations. The indemnification obligations of this section shall survive the termination of this Agreement.

11. **Insurance.** During the term of this Agreement, Contractor shall maintain in full force and effect at its own cost and expense the insurance coverage as set forth in the attached **Exhibit B** and shall otherwise comply with the other provisions of **Exhibit B**.

12. **Notices.** All notices herein required shall be in writing and shall be sent by certified or registered mail, postage prepaid, addressed as follows:

Contractor: San Joaquin County
Public Health Services
1601 E. Hazelton Avenue
Stockton, CA 95201

City: City Manager
City of Stockton
425 N. El Dorado Street
Stockton, CA 95202

13. **Conformance to Applicable Laws.** Contractor shall comply with all applicable Federal, State, and Municipal laws, rules, and ordinances. Contractor shall not discriminate in the employment of persons or in the provision of services under this Agreement on the basis of any legally protected classification, including race, color, national origin, ancestry, sex or religion of such person.

14. **Licenses, Certifications and Permits.** Prior to the City's execution of this Agreement and prior to the Contractor's engaging in any operation or activity set forth in this Agreement, Contractor shall obtain a City of Stockton business license, which must be kept in effect during the term of this Agreement. Contractor covenants that it has obtained all certificates, licenses, permits and the like required to perform the services under this Agreement.

15. **Records and Audits.** Contractor shall maintain all records regarding this Agreement and the services performed for a period of three years from the date that final payment is made. At any time during normal business hours, the records shall be made available to the City to inspect and audit.

16. **Confidentiality.** Contractor shall exercise reasonable precautions to prevent the unauthorized disclosure and use of City reports, information or conclusions.

17. **Conflicts of Interest.** Contractor covenants that other than this Agreement, Contractor has no financial interest with any official, employee or other representative of the City. Contractor and its principals do not have any financial interest in real property, sources of income or investment that would be affected in any manner of degree by the performance of Contractor's services under this Agreement. If such an interest arises, Contractor will immediately notify the City.

18. **Waiver.** In the event either City or Contractor at any time waive any breach of this Agreement by the other, such waiver shall not constitute a waiver of any other or succeeding breach of this Agreement, whether of the same or of any other covenant, condition or obligation.

19. **Governing Law.** California law shall govern any legal action pursuant to this Agreement with venue for all claims in the Superior Court of the County of San Joaquin, Stockton Branch or, where applicable, in the federal District Court of California, Eastern District, Sacramento Division.

20. **No Personal Liability.** No official or employee of City shall be personally liable to Contractor in the event of any default or breach by the City or for any amount due Contractor.

21. **Exhibits.** All exhibits referred to herein are attached hereto and are by this reference incorporated herein.

22. **Scope of Agreement.** This writing constitutes the entire Agreement between the parties. Any modification to the Agreement shall be in writing and signed by both parties.

THIS AGREEMENT executed the date and year first above written.

CITY OF STOCKTON

CONTRACTOR

Kurt O. Wilson, City Manager

By: _____
Signature

ATTEST:

Robert V. Elliot

Christian Clegg
Deputy City Manager/Interim City Clerk

Title: Chair, Board of Supervisors
San Joaquin County

APPROVED AS TO FORM:

*[If Contractor is a corporation
signature(s) must comply with
Corporations Code §313.]*

Phaedra A. Norton, Deputy City Attorney

EXHIBIT A:
SCOPE OF WORK

The Contractor shall provide the following services for the City:

- A. As a requirement of the Tobacco Law Enforcement Grant, Contractor shall provide outreach services, media development, and advertising related to illegal sales and marketing of tobacco products to minors.
- B. Contractor shall assign to the Tobacco Law Enforcement Grant Program, one 0.20 Full-Time Equivalent (FTE) Health Education Associate II, and one 0.10 FTE Supervising Public Health Educator, as specified in **Exhibit C**, not to supplant existing state or local funds for the same purpose.
- C. Contractor shall coordinate youth activities, decoy training, surveys, public education and leadership development with community organizations.
- D. Contractor shall coordinate training of Stockton Police Department staff at roll calls with the Special Investigation Section's unit supervisor.
- E. The Stockton Police Department's Special Investigation Section unit supervisor will monitor Contractor activities related to the Tobacco Law Enforcement Grant objectives.

EXHIBIT B:
INSURANCE REQUIREMENTS FOR PROFESSIONAL SERVICES

Consultant shall procure and maintain for the duration of the contract insurance against claims for injuries to persons or damages to property which may arise from or in connection with the performance of the work hereunder by the Consultant, its agents, representatives, or employees.

MINIMUM SCOPE AND LIMIT OF INSURANCE

Coverage shall be at least as broad as:

1. **Commercial General Liability (CGL):** Insurance Services Office Form CG 00 01 covering CGL on an "occurrence" basis, including products and completed operations, property damage, bodily injury and personal & advertising injury with limits no less than **\$1,000,000** per occurrence. If a general aggregate limit applies, either the general aggregate limit shall apply separately to this project/location or the **general aggregate limit shall be twice** the required occurrence limit.
2. **Automobile Liability:** Insurance Services Office Form Number CA 0001 covering, Code 1 (any auto), or if Consultant has no owned autos, Code 8 (hired) and 9 (non-owned), with limit no less than **\$1,000,000** per accident for bodily injury and property damage.
3. **Workers' Compensation** insurance as required by the State of California, with Statutory Limits, and Employer's Liability Insurance with limit of no less than **\$1,000,000** per accident for bodily injury or disease. **(Not required if consultant provides written verification it has no employees)**
4. **Professional Liability (Errors and Omissions)** Insurance appropriate to the Consultant's profession, with limit no less than **\$2,000,000** per occurrence or claim, \$2,000,000 aggregate. (If Claims-made, see below.)

If the Consultant maintains higher limits than the minimums shown above, the City of Stockton requires and shall be entitled to coverage for the higher limits maintained by the consultant. Any available insurance proceeds in excess of the specified minimum limits of insurance and coverage shall be available to the City of Stockton.

Other Insurance Provisions

The insurance policies are to contain, or be endorsed to contain, the following provisions:

Additional Insured Status

The City of Stockton, its Mayor, Council, officers, representatives, agents, employees and volunteers are to be covered as additional insureds on the CGL policy and AL policy with respect to liability arising out of work or operations performed by or on behalf of the Consultant including materials, parts, or equipment furnished in

connection with such work or operations. General liability coverage can be provided in the form of an endorsement to the Consultant's insurance (**at least as broad as ISO Form CG 20 10 11 85 or both CG 20 10 and CG 20 37 forms if later revisions used**).

Primary Coverage

For any claims related to this contract, the **Consultant's insurance coverage shall be endorsed as primary** insurance as respects the City of Stockton, its Mayor, Council, officers, representatives, agents, employees and volunteers. Any insurance or self-insurance maintained by the City of Stockton, its Mayor, Council, officers, representatives, agents, employees and volunteers shall be excess of the Consultant's insurance and shall not contribute with it. The City of Stockton does not accept endorsements limiting the Consultant's insurance coverage to the sole negligence of the Named Insured.

Notice of Cancellation

Each insurance policy required above shall state that **coverage shall not be canceled, except with notice to the City of Stockton.**

Waiver of Subrogation

Consultant hereby grants to City of Stockton a waiver of any right to subrogation which any insurer of said Consultant may acquire against the City of Stockton by virtue of the payment of any loss under such insurance. Consultant agrees to obtain any endorsement that may be necessary to affect this waiver of subrogation, but this provision applies regardless of whether or not the City of Stockton has received a waiver of subrogation endorsement from the insurer.

Deductibles and Self-Insured Retentions

Any deductibles or self-insured retentions must be declared to and approved by the City of Stockton Risk Services. The City of Stockton may require the Consultant to provide proof of ability to pay losses and related investigations, claim administration, and defense expenses within the retention.

Acceptability of Insurers

Insurance is to be placed with insurers with a current A.M. Best's rating of no less than A:VII if admitted to do business in the State of California; if not admitted to do business in the State of California, insurance is to be placed with insurers with a current A.M. Best's rating of no less than A+:X.

Claims Made Policies

If any of the required policies provide coverage on a claims-made basis:

1. The Retroactive Date must be shown and must be before the date of the contract or the beginning of contract work.
2. If Claims Made policy form is used, a three (3) year discovery and reporting tail period of coverage is required after completion of work.

Verification of Coverage

Consultant shall furnish the City of Stockton with original certificates and amendatory endorsements required by this clause. All certificates and endorsements are to be received and approved by the City of Stockton Risk Services before work commences. Failure to obtain the required documents prior to the work beginning shall not waive the Consultant's obligation to provide them. The City of Stockton reserves the right to require complete, certified copies of all required insurance policies, including endorsements required by these specifications, at any time, for any reason or no reason.

Consultant shall, prior to the commencement of work under this Agreement, provide the City of Stockton with a copy of its Declarations Page and Endorsement Page for each of the required policies.

Certificate Holder Address

Proper address for mailing certificates, endorsements and notices shall be:

- City of Stockton
- 400 E Main Street, 3rd Floor – HR
- Attn: City Risk Services
- Stockton, CA 95202

City of Stockton Risk Services Phone: 209-937-5037

City of Stockton Risk Services Fax: 209-937-8558

Maintenance of Insurance

If at any time during the life of the Contract or any extension, the Consultant fails to maintain the required insurance in full force and effect, all work under the Contract shall be discontinued immediately. Any failure to maintain the required insurance shall be sufficient cause for the CITY to terminate this Contract.

Subcontractors

Consultant shall require and verify that all subcontractors maintain insurance meeting all the requirements stated herein, and Consultant shall ensure that City of Stockton is an additional insured on insurance required from subcontractors.

Special Risks or Circumstances

City of Stockton reserves the right to modify these requirements, including limits, based on the nature of the risk, prior experience, insurer, coverage, or other special circumstances.

EXHIBIT C:
FEE SCHEDULE

The SJCPHS will provide all services under this Agreement, not to exceed \$197,710; to include a portion of salary and benefits for outreach personnel, operating costs for media development, and advertising as follows:

	7/1/18 - 6/30/19 Year 1	7/1/19 - 6/30/20 Year 2
Personnel	\$ 29,984	\$ 30,584
Operating Costs	\$ 56,000	\$ 66,000
Indirect Costs	<u>\$ 7,496</u>	<u>\$ 7,646</u>
Total:	\$ 93,480	\$104,230