

NOV 13 2014

11/20/14  
14-09752  
(2)

FIRST AMENDMENT  
CONTRACTUAL AGREEMENT  
BETWEEN THE GOVERNMENT OF GUAM AND  
ELIM PACIFIC MINISTRIES (DBA OASIS EMPOWERMENT CENTER)  
FOR RESIDENTIAL AND SOCIAL DETOXIFICATION  
SUBSTANCE TREATMENT FOR ADULT FEMALES  
GBHWC RFP 03-2014



THIS AGREEMENT is by and between the GUAM BEHAVIORAL HEALTH AND WELLNESS CENTER, (GBHWC), an agency of the GOVERNMENT OF GUAM, whose office address is 790 Governor Carlos G. Camacho Road, Tamuning, Guam 96913, Territory of Guam, (hereinafter called Government) and ELIM PACIFIC MINISTRIES, doing business as OASIS EMPOWERMENT CENTER (hereinafter called Contractor) whose office address is 556 East Marine Corps Drive, Hagatna, Guam 96910.

WHEREAS, a contractual agreement was entered into between Government and Contractor on August 11, 2014 that engaged the professional services of Contractor for the purpose of rendering Residential and Social Detoxification Substance Treatment for Adult Females; and

WHEREAS, Government desires to renew the term of the Agreement pursuant to SECTION III.A CONTRACT TERM of the original agreement for the first (1st) of a two (2) additional one (1) year periods, upon the option of the Government and subject to availability of funds; and

NOW THEREFORE, Government and Contractor, in consideration of mutual covenant hereinafter set forth, agree as follows:

**I. AMENDMENT TO CONTRACT TERM, SECTION III.A**

The Government exercises its first renewal option for a subsequent one (1) year term, commencing on October 1, 2014 and expiring September 30, 2015 and subject to availability of funds, as provided in SECTION III A of the original agreement.

**II. AMENDMENT TO COMPENSATION, SECTION IV.A**

The Government will make available funding from FY 2015 local appropriations and FY 2014 SAPT federal grant for compensation for services under this agreement to Contractor for services performed pursuant to Section IV of the original agreement shall be in the not to exceed amount of FOUR HUNDRED THOUSAND AND NO/100 DOLLARS (\$400,000.00) per fiscal year with eleven (11) not-to-exceed monthly payments for Thirty-Three Thousand Three Hundred Thirty-Three and No/100 Dollars (\$33,333.00) and one (1) monthly payment of Thirty-Three Thousand Three Hundred Thirty-Seven and No/100 Dollars (\$33,333.00) for not less than ten (10) consumers (2 for social detoxification and 8 for residential) per month upon clearances of monthly invoices to GBHWC, subject to the availability of funds. No additional costs are



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allowable without prior written approval by GBHWC. Any cost above the agreed upon amounts shall be at the expense of the Contractor.


### III. AMENDMENT TO WAGE AND BENEFIT COMPLIANCE, SECTION V.H (c)

In accordance to Section V.H (c), the most recent wage determination issued July 25, 2014 (Wage Determination No. 2005-2147, Revision 16) is applicable to this first amendment and attached hereto.

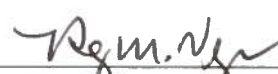
**All other terms and conditions in the original contract remain unchanged and in full effect.**

IN WITNESS WHEREOF, the parties have entered into this agreement on the dates indicated by their respective names.


CONTRACTOR:

  
Robert J. Zimmerman, Executive Director  
Elim Pacific Ministries, dba Oasis Empowerment  
Date: 9/17/2014


GOVERNMENT OF GUAM:

  
REY M. VEGA, Director  
Guam Behavioral Health and Wellness Center  
Date: 9/16/14

CERTIFIED FUNDS AVAILABLE:

  
REY M. VEGA, Director Peter Alecxis Ada  
Certifying Officer  
Date: 10/10/14  
Account No.: 5101A152300GA015290, \$375,920.50 (P.L. 32-182)  
Account No.: 5101H142310SE105230, \$24,079.50 (SAPT Grant Award #2B08T10114-14)  
Vendor No.: 00081905 Period Covering: 10/01/2014 to 09/30/2015

APPROVED:

  
ANTHONY C. BLAZ, Director  
Bureau of Budget, Management Research  
Date: OCT 20 2014  
CLEARED PER RBMR'S REVIEW  
Bureau of Budget and Management Research  
OCT 10 2014  
2B08T1010014-14

APPROVED AS TO LEGALITY AND FORM:

DEPARTMENT OF ADMINISTRATION  
DIVISION OF ACCOUNTS

Registration Date 11/12/2014  
Registered No. C140601531  
Book No. 00081905 Amendment 1 INCREASE  
Registered By R 11/14/2014

  
LEONARDO M. RAPADAS  
Attorney General of Guam  
Date: 11-27-14

APPROVED:

  
Governor of Guam  
Date: NOV 12 2014



14-0975

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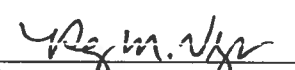
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Elim Pacific Ministries, dba Oasis Empowerment  
Date: 9/17/2014

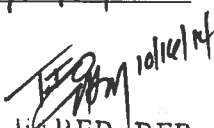
GOVERNMENT OF GUAM:

  
REY M. VEGA, Director  
Guam Behavioral Health and Wellness Center  
Date: 9/16/14

CERTIFIED FUNDS AVAILABLE:

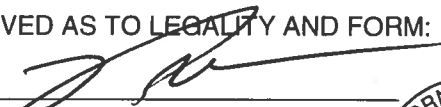
  
REY M. VEGA, Director Peter Alexxis Ada  
Certifying Officer  
Date: 10/10/14

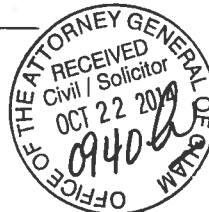
APPROVED:

  
CLEARED PER  
BMR'S REVIEW  
ANTHONY C. BLAZ, Director  
Bureau of Budget, Management Research  
Date: OCT 20 2014  
OCT 10 2014  
Bureau of Budget and Management Research

Account No.: 5101A152300GA015290, \$375,920.50 (P.L. 32-182) 5100A152300GA015290  
Account No.: 5101H142310SE105230, \$24,079.50 (SAPT Grant Award #2808T10114-14)  
Vendor No.: Q0081905 Period Covering: 10/01/2014 to 09/30/2015

APPROVED AS TO LEGALITY AND FORM:

  
LEONARDO M. RAPADAS  
Attorney General of Guam  
Date: 10/29/14  
DMHSA 14-0975  
APPROVED:



Governor of Guam  
Date: \_\_\_\_\_

WD 05-2147 (Rev.-16) was first posted on www.wdol.gov on 08/05/2014

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REGISTER OF WAGE DETERMINATIONS UNDER		U.S. DEPARTMENT OF LABOR
THE SERVICE CONTRACT ACT		EMPLOYMENT STANDARDS ADMINISTRATION
By direction of the Secretary of Labor		WAGE AND HOUR DIVISION
		WASHINGTON D.C. 20210

Diane C. Koplewski	Division of		Wage Determination No.: 2005-2147
Director	Wage Determinations		Revision No.: 16
			Date Of Revision: 07/25/2014

States: Guam, Northern Marianas, Wake Island

Area: Guam Statewide  
Northern Marianas Statewide  
Wake Island Statewide

\*\*Fringe Benefits Required Follow the Occupational Listing\*\*

OCCUPATION CODE - TITLE	FOOTNOTE	RATE
01000 - Administrative Support And Clerical Occupations		
01011 - Accounting Clerk I		12.50
01012 - Accounting Clerk II		13.53
01013 - Accounting Clerk III		15.59
01020 - Administrative Assistant		17.67
01040 - Court Reporter		15.38
01051 - Data Entry Operator I		10.48
01052 - Data Entry Operator II		11.99
01060 - Dispatcher, Motor Vehicle		13.06
01070 - Document Preparation Clerk		12.25
01090 - Duplicating Machine Operator		12.25
01111 - General Clerk I		10.29
01112 - General Clerk II		11.28
01113 - General Clerk III		12.32
01120 - Housing Referral Assistant		17.15
01141 - Messenger Courier		10.12
01191 - Order Clerk I		11.23
01192 - Order Clerk II		12.25
01261 - Personnel Assistant (Employment) I		14.33
01262 - Personnel Assistant (Employment) II		14.90
01263 - Personnel Assistant (Employment) III		16.48
01270 - Production Control Clerk		18.34
01280 - Receptionist		9.67
01290 - Rental Clerk		11.10
01300 - Scheduler, Maintenance		13.75
01311 - Secretary I		13.75
01312 - Secretary II		15.38
01313 - Secretary III		17.15
01320 - Service Order Dispatcher		11.57
01410 - Supply Technician		17.67
01420 - Survey Worker		15.26
01531 - Travel Clerk I		11.61
01532 - Travel Clerk II		12.57
01533 - Travel Clerk III		13.44
01611 - Word Processor I		12.25

01612 - Word Processor II	13.75
01613 - Word Processor III	15.38
05000 - Automotive Service Occupations	
05005 - Automobile Body Repairer, Fiberglass	13.34
05010 - Automotive Electrician	13.06
05040 - Automotive Glass Installer	12.10
05070 - Automotive Worker	12.10
05110 - Mobile Equipment Servicer	8.59
05130 - Motor Equipment Metal Mechanic	13.06
05160 - Motor Equipment Metal Worker	12.10
05190 - Motor Vehicle Mechanic	13.06
05220 - Motor Vehicle Mechanic Helper	10.12
05250 - Motor Vehicle Upholstery Worker	12.10
05280 - Motor Vehicle Wrecker	12.10
05310 - Painter, Automotive	12.37
05340 - Radiator Repair Specialist	12.10
05370 - Tire Repairer	7.81
05400 - Transmission Repair Specialist	12.10
07000 - Food Preparation And Service Occupations	
07010 - Baker	10.47
07041 - Cook I	9.54
07042 - Cook II	11.78
07070 - Dishwasher	7.25
07130 - Food Service Worker	7.78
07210 - Meat Cutter	11.86
07260 - Waiter/Waitress	7.59
09000 - Furniture Maintenance And Repair Occupations	
09010 - Electrostatic Spray Painter	14.38
09040 - Furniture Handler	8.85
09080 - Furniture Refinisher	14.38
09090 - Furniture Refinisher Helper	10.66
09110 - Furniture Repairer, Minor	12.51
09130 - Upholsterer	14.38
11000 - General Services And Support Occupations	
11030 - Cleaner, Vehicles	8.23
11060 - Elevator Operator	8.23
11090 - Gardener	10.99
11122 - Housekeeping Aide	8.33
11150 - Janitor	8.23
11210 - Laborer, Grounds Maintenance	9.14
11240 - Maid or Houseman	7.25
11260 - Pruner	8.23
11270 - Tractor Operator	10.33
11330 - Trail Maintenance Worker	9.14
11360 - Window Cleaner	9.14
12000 - Health Occupations	
12010 - Ambulance Driver	15.81
12011 - Breath Alcohol Technician	15.81
12012 - Certified Occupational Therapist Assistant	21.70
12015 - Certified Physical Therapist Assistant	21.70
12020 - Dental Assistant	13.20
12025 - Dental Hygienist	29.85
12030 - EKG Technician	23.96
12035 - Electroneurodiagnostic Technologist	23.96
12040 - Emergency Medical Technician	15.81
12071 - Licensed Practical Nurse I	14.14
12072 - Licensed Practical Nurse II	15.81

12073 - Licensed Practical Nurse III	17.63
12100 - Medical Assistant	11.54
12130 - Medical Laboratory Technician	14.14
12160 - Medical Record Clerk	11.82
12190 - Medical Record Technician	13.59
12195 - Medical Transcriptionist	14.14
12210 - Nuclear Medicine Technologist	34.75
12221 - Nursing Assistant I	10.03
12222 - Nursing Assistant II	11.30
12223 - Nursing Assistant III	12.31
12224 - Nursing Assistant IV	13.84
12235 - Optical Dispenser	15.81
12236 - Optical Technician	14.14
12250 - Pharmacy Technician	13.41
12280 - Phlebotomist	13.84
12305 - Radiologic Technologist	22.64
12311 - Registered Nurse I	20.70
12312 - Registered Nurse II	25.32
12313 - Registered Nurse II, Specialist	25.32
12314 - Registered Nurse III	30.64
12315 - Registered Nurse III, Anesthetist	30.64
12316 - Registered Nurse IV	36.72
12317 - Scheduler (Drug and Alcohol Testing)	19.59
13000 - Information And Arts Occupations	
13011 - Exhibits Specialist I	15.06
13012 - Exhibits Specialist II	18.66
13013 - Exhibits Specialist III	22.83
13041 - Illustrator I	15.06
13042 - Illustrator II	18.66
13043 - Illustrator III	22.83
13047 - Librarian	20.66
13050 - Library Aide/Clerk	12.00
13054 - Library Information Technology Systems Administrator	18.66
13058 - Library Technician	15.06
13061 - Media Specialist I	13.46
13062 - Media Specialist II	15.06
13063 - Media Specialist III	16.80
13071 - Photographer I	12.82
13072 - Photographer II	14.32
13073 - Photographer III	17.75
13074 - Photographer IV	21.73
13075 - Photographer V	26.30
13110 - Video Teleconference Technician	12.91
14000 - Information Technology Occupations	
14041 - Computer Operator I	13.65
14042 - Computer Operator II	15.76
14043 - Computer Operator III	17.56
14044 - Computer Operator IV	19.50
14045 - Computer Operator V	21.81
14071 - Computer Programmer I	(see 1) 15.73
14072 - Computer Programmer II	(see 1) 19.50
14073 - Computer Programmer III	(see 1) 23.84
14074 - Computer Programmer IV	(see 1)
14101 - Computer Systems Analyst I	(see 1) 24.23
14102 - Computer Systems Analyst II	(see 1)
14103 - Computer Systems Analyst III	(see 1)

14150 - Peripheral Equipment Operator	13.65
14160 - Personal Computer Support Technician	19.50
15000 - Instructional Occupations	
15010 - Aircrew Training Devices Instructor (Non-Rated)	24.23
15020 - Aircrew Training Devices Instructor (Rated)	29.32
15030 - Air Crew Training Devices Instructor (Pilot)	33.30
15050 - Computer Based Training Specialist / Instructor	24.23
15060 - Educational Technologist	22.82
15070 - Flight Instructor (Pilot)	33.30
15080 - Graphic Artist	20.47
15090 - Technical Instructor	17.65
15095 - Technical Instructor/Course Developer	21.58
15110 - Test Proctor	13.87
15120 - Tutor	13.87
16000 - Laundry, Dry-Cleaning, Pressing And Related Occupations	
16010 - Assembler	8.08
16030 - Counter Attendant	8.08
16040 - Dry Cleaner	9.34
16070 - Finisher, Flatwork, Machine	8.08
16090 - Presser, Hand	8.08
16110 - Presser, Machine, Drycleaning	8.08
16130 - Presser, Machine, Shirts	8.08
16160 - Presser, Machine, Wearing Apparel, Laundry	8.08
16190 - Sewing Machine Operator	9.86
16220 - Tailor	10.33
16250 - Washer, Machine	8.46
19000 - Machine Tool Operation And Repair Occupations	
19010 - Machine-Tool Operator (Tool Room)	14.49
19040 - Tool And Die Maker	18.20
21000 - Materials Handling And Packing Occupations	
21020 - Forklift Operator	12.49
21030 - Material Coordinator	18.34
21040 - Material Expediter	18.34
21050 - Material Handling Laborer	10.65
21071 - Order Filler	9.66
21080 - Production Line Worker (Food Processing)	12.49
21110 - Shipping Packer	13.33
21130 - Shipping/Receiving Clerk	13.33
21140 - Store Worker I	13.23
21150 - Stock Clerk	18.58
21210 - Tools And Parts Attendant	12.49
21410 - Warehouse Specialist	12.49
23000 - Mechanics And Maintenance And Repair Occupations	
23010 - Aerospace Structural Welder	20.69
23021 - Aircraft Mechanic I	19.70
23022 - Aircraft Mechanic II	20.69
23023 - Aircraft Mechanic III	21.74
23040 - Aircraft Mechanic Helper	13.70
23050 - Aircraft, Painter	18.50
23060 - Aircraft Servicer	16.09
23080 - Aircraft Worker	17.38
23110 - Appliance Mechanic	14.49
23120 - Bicycle Repairer	9.74
23125 - Cable Splicer	15.43
23130 - Carpenter, Maintenance	13.00
23140 - Carpet Layer	13.55
23160 - Electrician, Maintenance	14.99

23181 - Electronics Technician Maintenance I	14.72
23182 - Electronics Technician Maintenance II	15.05
23183 - Electronics Technician Maintenance III	18.31
23260 - Fabric Worker	12.60
23290 - Fire Alarm System Mechanic	15.43
23310 - Fire Extinguisher Repairer	11.67
23311 - Fuel Distribution System Mechanic	15.43
23312 - Fuel Distribution System Operator	13.01
23370 - General Maintenance Worker	11.95
23380 - Ground Support Equipment Mechanic	19.70
23381 - Ground Support Equipment Servicer	16.09
23382 - Ground Support Equipment Worker	17.38
23391 - Gunsmith I	11.67
23392 - Gunsmith II	13.55
23393 - Gunsmith III	15.43
23410 - Heating, Ventilation And Air-Conditioning Mechanic	15.76
23411 - Heating, Ventilation And Air Contditioning Mechanic (Research Facility)	16.55
23430 - Heavy Equipment Mechanic	15.15
23440 - Heavy Equipment Operator	13.73
23460 - Instrument Mechanic	15.43
23465 - Laboratory/Shelter Mechanic	14.49
23470 - Laborer	10.65
23510 - Locksmith	14.49
23530 - Machinery Maintenance Mechanic	17.38
23550 - Machinist, Maintenance	15.43
23580 - Maintenance Trades Helper	9.92
23591 - Metrology Technician I	15.43
23592 - Metrology Technician II	16.41
23593 - Metrology Technician III	17.37
23640 - Millwright	15.43
23710 - Office Appliance Repairer	14.38
23760 - Painter, Maintenance	13.55
23790 - Pipefitter, Maintenance	15.32
23810 - Plumber, Maintenance	14.38
23820 - Pneudraulic Systems Mechanic	15.43
23850 - Rigger	15.43
23870 - Scale Mechanic	13.55
23890 - Sheet-Metal Worker, Maintenance	15.21
23910 - Small Engine Mechanic	13.55
23931 - Telecommunications Mechanic I	19.01
23932 - Telecommunications Mechanic II	19.76
23950 - Telephone Lineman	18.24
23960 - Welder, Combination, Maintenance	14.66
23965 - Well Driller	15.43
23970 - Woodcraft Worker	15.43
23980 - Woodworker	11.67
24000 - Personal Needs Occupations	
24570 - Child Care Attendant	10.09
24580 - Child Care Center Clerk	12.58
24610 - Chore Aide	12.43
24620 - Family Readiness And Support Services Coordinator	12.44
24630 - Homemaker	16.12
25000 - Plant And System Operations Occupations	
25010 - Boiler Tender	15.43



25040 - Sewage Plant Operator	14.49
25070 - Stationary Engineer	15.43
25190 - Ventilation Equipment Tender	10.73
25210 - Water Treatment Plant Operator	14.49
27000 - Protective Service Occupations	
27004 - Alarm Monitor	10.90
27007 - Baggage Inspector	7.35
27008 - Corrections Officer	12.05
27010 - Court Security Officer	12.05
27030 - Detection Dog Handler	10.90
27040 - Detention Officer	12.05
27070 - Firefighter	12.05
27101 - Guard I	7.37
27102 - Guard II	10.90
27131 - Police Officer I	12.05
27132 - Police Officer II	13.40
28000 - Recreation Occupations	
28041 - Carnival Equipment Operator	9.53
28042 - Carnival Equipment Repairer	10.08
28043 - Carnival Equipment Worker	7.78
28210 - Gate Attendant/Gate Tender	13.18
28310 - Lifeguard	11.01
28350 - Park Attendant (Aide)	14.74
28510 - Recreation Aide/Health Facility Attendant	10.76
28515 - Recreation Specialist	18.26
28630 - Sports Official	11.74
28690 - Swimming Pool Operator	17.71
29000 - Stevedoring/Longshoremen Occupational Services	
29010 - Blocker And Bracer	15.20
29020 - Hatch Tender	15.20
29030 - Line Handler	15.20
29041 - Stevedore I	14.22
29042 - Stevedore II	16.25
30000 - Technical Occupations	
30010 - Air Traffic Control Specialist, Center (HFO) (see 2)	35.77
30011 - Air Traffic Control Specialist, Station (HFO) (see 2)	24.66
30012 - Air Traffic Control Specialist, Terminal (HFO) (see 2)	27.16
30021 - Archeological Technician I	17.49
30022 - Archeological Technician II	19.56
30023 - Archeological Technician III	24.21
30030 - Cartographic Technician	23.18
30040 - Civil Engineering Technician	21.93
30061 - Drafter/CAD Operator I	17.49
30062 - Drafter/CAD Operator II	19.56
30063 - Drafter/CAD Operator III	20.74
30064 - Drafter/CAD Operator IV	24.21
30081 - Engineering Technician I	14.62
30082 - Engineering Technician II	16.41
30083 - Engineering Technician III	18.36
30084 - Engineering Technician IV	22.34
30085 - Engineering Technician V	27.83
30086 - Engineering Technician VI	33.66
30090 - Environmental Technician	21.10
30210 - Laboratory Technician	20.74
30240 - Mathematical Technician	23.34
30361 - Paralegal/Legal Assistant I	19.06
30362 - Paralegal/Legal Assistant II	21.53

30363 - Paralegal/Legal Assistant III	26.35
30364 - Paralegal/Legal Assistant IV	30.80
30390 - Photo-Optics Technician	21.93
30461 - Technical Writer I	22.17
30462 - Technical Writer II	27.10
30463 - Technical Writer III	32.79
30491 - Unexploded Ordnance (UXO) Technician I	22.74
30492 - Unexploded Ordnance (UXO) Technician II	27.51
30493 - Unexploded Ordnance (UXO) Technician III	32.97
30494 - Unexploded (UXO) Safety Escort	22.74
30495 - Unexploded (UXO) Sweep Personnel	22.74
30620 - Weather Observer, Combined Upper Air Or Surface Programs	(see 2) 20.74
30621 - Weather Observer, Senior	(see 2) 23.00
31000 - Transportation/Mobile Equipment Operation Occupations	
31020 - Bus Aide	8.15
31030 - Bus Driver	9.69
31043 - Driver Courier	8.97
31260 - Parking and Lot Attendant	7.25
31290 - Shuttle Bus Driver	9.99
31310 - Taxi Driver	8.21
31361 - Truckdriver, Light	8.97
31362 - Truckdriver, Medium	11.61
31363 - Truckdriver, Heavy	12.48
31364 - Truckdriver, Tractor-Trailer	12.48
99000 - Miscellaneous Occupations	
99030 - Cashier	7.46
99050 - Desk Clerk	9.70
99095 - Embalmer	22.74
99251 - Laboratory Animal Caretaker I	16.24
99252 - Laboratory Animal Caretaker II	17.04
99310 - Mortician	22.74
99410 - Pest Controller	13.28
99510 - Photofinishing Worker	11.95
99710 - Recycling Laborer	10.76
99711 - Recycling Specialist	16.27
99730 - Refuse Collector	10.24
99810 - Sales Clerk	8.95
99820 - School Crossing Guard	15.03
99830 - Survey Party Chief	20.30
99831 - Surveying Aide	11.54
99832 - Surveying Technician	15.00
99840 - Vending Machine Attendant	20.19
99841 - Vending Machine Repairer	23.57
99842 - Vending Machine Repairer Helper	20.19

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ALL OCCUPATIONS LISTED ABOVE RECEIVE THE FOLLOWING BENEFITS:

HEALTH & WELFARE: \$4.02 per hour or \$160.80 per week or \$696.79 per month

VACATION: 2 weeks paid vacation after 1 year of service with a contractor or successor; and 4 weeks after 3 years. Length of service includes the whole span of

continuous service with the present contractor or successor, wherever employed, and with the predecessor contractors in the performance of similar work at the same Federal facility. (Reg. 29 CFR 4.173)

HOLIDAYS: A minimum of ten paid holidays per year, New Year's Day, Martin Luther King Jr's Birthday, Washington's Birthday, Memorial Day, Independence Day, Labor Day, Columbus Day, Veterans' Day, Thanksgiving Day, and Christmas Day. (A contractor may substitute for any of the named holidays another day off with pay in accordance with a plan communicated to the employees involved.) (See 29 CFR 4174)

THE OCCUPATIONS WHICH HAVE NUMBERED FOOTNOTES IN PARENTHESES RECEIVE THE FOLLOWING:

1) COMPUTER EMPLOYEES: Under the SCA at section 8(b), this wage determination does not apply to any employee who individually qualifies as a bona fide executive, administrative, or professional employee as defined in 29 C.F.R. Part 541. Because most Computer System Analysts and Computer Programmers who are compensated at a rate not less than \$27.63 (or on a salary or fee basis at a rate not less than \$455 per week) an hour would likely qualify as exempt computer professionals, (29 C.F.R. 541.400) wage rates may not be listed on this wage determination for all occupations within those job families. In addition, because this wage determination may not list a wage rate for some or all occupations within those job families if the survey data indicates that the prevailing wage rate for the occupation equals or exceeds \$27.63 per hour conformances may be necessary for certain nonexempt employees. For example, if an individual employee is nonexempt but nevertheless performs duties within the scope of one of the Computer Systems Analyst or Computer Programmer occupations for which this wage determination does not specify an SCA wage rate, then the wage rate for that employee must be conformed in accordance with the conformance procedures described in the conformance note included on this wage determination.

Additionally, because job titles vary widely and change quickly in the computer industry, job titles are not determinative of the application of the computer professional exemption. Therefore, the exemption applies only to computer employees who satisfy the compensation requirements and whose primary duty consists of:

(1) The application of systems analysis techniques and procedures, including consulting with users, to determine hardware, software or system functional specifications;

(2) The design, development, documentation, analysis, creation, testing or modification of computer systems or programs, including prototypes, based on and related to user or system design specifications;

(3) The design, documentation, testing, creation or modification of computer programs related to machine operating systems; or

(4) A combination of the aforementioned duties, the performance of which requires the same level of skills. (29 C.F.R. 541.400).

2) AIR TRAFFIC CONTROLLERS AND WEATHER OBSERVERS - NIGHT PAY & SUNDAY PAY: If you work at night as part of a regular tour of duty, you will earn a night differential and receive an additional 10% of basic pay for any hours worked between 6pm and 6am. If you are a full-time employed (40 hours a week) and Sunday is part of your regularly scheduled workweek, you are paid at your rate of basic pay plus a Sunday premium of 25% of your basic rate for each hour of Sunday work which is not overtime (i.e. occasional work on Sunday outside the normal tour of duty is considered overtime work).

HAZARDOUS PAY DIFFERENTIAL: An 8 percent differential is applicable to employees employed in a position that represents a high degree of hazard when working with or in close proximity to ordnance, explosives, and incendiary materials. This includes work such as screening, blending, dying, mixing, and pressing of sensitive ordnance, explosives, and pyrotechnic compositions such as lead azide, black powder and photoflash powder. All dry-house activities involving propellants or explosives.

Demilitarization, modification, renovation, demolition, and maintenance operations on sensitive ordnance, explosives and incendiary materials. All operations involving regrading and cleaning of artillery ranges.

A 4 percent differential is applicable to employees employed in a position that represents a low degree of hazard when working with, or in close proximity to ordnance, (or employees possibly adjacent to) explosives and incendiary materials which involves potential injury such as laceration of hands, face, or arms of the employee engaged in the operation, irritation of the skin, minor burns and the like; minimal damage to immediate or adjacent work area or equipment being used. All operations involving, unloading, storage, and hauling of ordnance, explosive, and incendiary ordnance material other than small arms ammunition. These differentials are only applicable to work that has been specifically designated by the agency for ordnance, explosives, and incendiary material differential pay.

**\*\* UNIFORM ALLOWANCE \*\***

If employees are required to wear uniforms in the performance of this contract (either by the terms of the Government contract, by the employer, by the state or local law, etc.), the cost of furnishing such uniforms and maintaining (by laundering or dry cleaning) such uniforms is an expense that may not be borne by an employee where such cost reduces the hourly rate below that required by the wage determination. The Department of Labor will accept payment in accordance with the following standards as compliance:

The contractor or subcontractor is required to furnish all employees with an adequate number of uniforms without cost or to reimburse employees for the actual cost of the uniforms. In addition, where uniform cleaning and maintenance is made the responsibility of the employee, all contractors and subcontractors subject to this wage determination shall (in the absence of a bona fide collective bargaining agreement providing for a different amount, or the furnishing of contrary affirmative proof as to the actual cost), reimburse all employees for such cleaning and maintenance at a rate of \$3.35 per week (or \$.67 cents per day). However, in those instances where the uniforms furnished are made of "wash and wear" materials, may be routinely washed and dried with other personal garments, and do not require any special treatment such as dry cleaning, daily washing, or commercial laundering in order to meet the cleanliness or appearance standards set by the terms of the Government contract, by the contractor, by law, or by the nature of the work, there is no requirement that employees be reimbursed for uniform maintenance costs.

The duties of employees under job titles listed are those described in the "Service Contract Act Directory of Occupations", Fifth Edition, April 2006, unless otherwise indicated. Copies of the Directory are available on the Internet. A links to the Directory may be found on the WHD home page at <http://www.dol.gov/esa/whd/> or through the Wage Determinations On-Line (WDOL) Web site at <http://wdol.gov/>.

REQUEST FOR AUTHORIZATION OF ADDITIONAL CLASSIFICATION AND WAGE RATE {Standard Form 1444 (SF 1444)}

## Conformance Process:

The contracting officer shall require that any class of service employee which is not listed herein and which is to be employed under the contract (i.e., the work to be performed is not performed by any classification listed in the wage determination), be classified by the contractor so as to provide a reasonable relationship (i.e., appropriate level of skill comparison) between such unlisted classifications and the classifications listed in the wage determination. Such conformed classes of employees shall be paid the monetary wages and furnished the fringe benefits as are determined. Such conforming process shall be initiated by the contractor prior to the performance of contract work by such unlisted class(es) of employees. The conformed classification, wage rate, and/or fringe benefits shall be retroactive to the commencement date of the contract. {See Section 4.6 (C) (vi)} When multiple wage determinations are included in a contract, a separate SF 1444 should be prepared for each wage determination to which a class(es) is to be conformed.

The process for preparing a conformance request is as follows:

- 1) When preparing the bid, the contractor identifies the need for a conformed occupation(s) and computes a proposed rate(s).
- 2) After contract award, the contractor prepares a written report listing in order proposed classification title(s), a Federal grade equivalency (FGE) for each proposed classification(s), job description(s), and rationale for proposed wage rate(s), including information regarding the agreement or disagreement of the authorized representative of the employees involved, or where there is no authorized representative, the employees themselves. This report should be submitted to the contracting officer no later than 30 days after such unlisted class(es) of employees performs any contract work.
- 3) The contracting officer reviews the proposed action and promptly submits a report of the action, together with the agency's recommendations and pertinent information including the position of the contractor and the employees, to the Wage and Hour Division, Employment Standards Administration, U.S. Department of Labor, for review. (See section 4.6(b)(2) of Regulations 29 CFR Part 4).
- 4) Within 30 days of receipt, the Wage and Hour Division approves, modifies, or disapproves the action via transmittal to the agency contracting officer, or notifies the contracting officer that additional time will be required to process the request.
- 5) The contracting officer transmits the Wage and Hour decision to the contractor.
- 6) The contractor informs the affected employees.

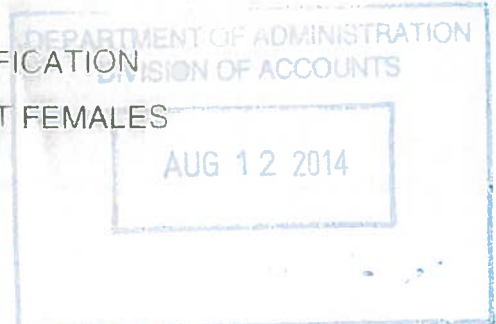
Information required by the Regulations must be submitted on SF 1444 or bond paper.

When preparing a conformance request, the "Service Contract Act Directory of Occupations" (the Directory) should be used to compare job definitions to insure that duties requested are not performed by a classification already listed in the wage determination. Remember, it is not the job title, but the required tasks that determine whether a class is included in an established wage determination. Conformances may not be used to artificially split, combine, or subdivide classifications listed in the wage determination.

**COPY**

CONTRACTUAL AGREEMENT  
BETWEEN GOVERNMENT OF GUAM AND  
ELIM PACIFIC MINISTRIES, dba OASIS EMPOWERMENT CENTER  
FOR  
RESIDENTIAL AND SOCIAL DETOXIFICATION  
SUBSTANCE TREATMENT FOR ADULT FEMALES  
GBHWC RFP 03-2014

DOPT'S  
13-0706  
11:23 AM  
JUL 08 2014  
Bureau of Budget and  
Management Research



This AGREEMENT is made between the GUAM BEHAVIORAL HEALTH AND WELLNESS CENTER, an agency of the GOVERNMENT OF GUAM, whose office address is 790 Governor Carlos G. Camacho Road, Tamuning, Guam 96913, Territory of Guam (hereinafter called GBHWC) and ELIM PACIFIC MINISTRIES, doing business as OASIS EMPOWERMENT CENTER (hereinafter called the Contractor) whose office address is 556 East Marine Corps Drive, Hagatna, Guam 96910

WHEREAS, the GBHWC intends to engage professional services of the Contractor for the purpose of rendering Residential and Social Detoxification Substance Treatment for Adult Females; and

WHEREAS, the Procurement Officer has provided adequate public announcement of the need for such service through a request for proposal describing the type of services required and specifying the type of information and data required of each contractor and the relative importance of particular qualifications, and

WHEREAS, the Contractor has submitted its proposal and interest in providing such services, and

WHEREAS, the award of this contract to the Contractor has been made pursuant to a written finding by the Purchasing Agent that the Contractor is qualified based on the evaluation factors set forth in the request for proposal, and that negotiations of compensation have been determined to be fair and reasonable.

NOW THEREFORE, GBHWC and the Contractor, in consideration of mutual covenant hereinafter set forth, agree as follows:

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## SECTION I

### PURPOSE

To build capacity in the community for substance abuse services and provide consumer-centered and family-centered services that are culturally compatible with the island community; to provide alcohol and drug programs and services for the people of Guam and to encourage the development of privately-funded community based programs to carry-out such programs and services (10 GCA §86101), and to comply with planning, carrying-out and evaluating activities to prevent and treat substance abuse (45 CFR Part 96) as funded by the Substance Abuse Prevention and Treatment (SAPT) Block Grant

## SECTION II

### SCOPE OF WORK

#### **II.1 COLLABORATION & CONTINUUM OF CARE:**

The Contractor agrees to

- II.1a Work with GBHWC and its partners to establish a system of care for substance abuse treatment that is culturally competent
- II.1b Meet regularly to establish standardized assessment and referral protocols.
- II.1c Share resources (i.e. policies and forms), and provide training opportunities for staff development.
- II.1d Identify evidenced-based models (i.e., Matrix Model, Motivational Interviewing, Driving with Care, Trauma Informed Care, etc.) and practices to implement that focuses on core treatment.
- II.1e Identify and justify any adaptations or modifications to the proposed models and/or practices
- II.1f Describe in detail how the project will address issues of age, race, ethnicity, culture and other similar issues
- II.1g Evaluate the psychological, social, and physiological signs and symptoms of alcohol and other drug abuse.
- II.1h Determine the client's appropriateness and eligibility for admission or referral.
- II.1i Experienced with the American Society of Addiction Medicine (ASAM) patient placement criteria for Level III.5 Residential and Level III.2-D Social Detoxification Services.

- II 1j Determine any coexisting conditions (medical, psychiatric, physical, etc.) that indicate the need for additional professional assessment and/or services.
- II 1k Adhere to applicable Territory and Federal laws, regulations, and agency policies governing alcohol and other drug abuse services.
- II 1l Demonstrate the proper skills to prepare reports and relevant records, integrating available information to facilitate the continuum of care.
- II 1m Chart pertinent ongoing information pertaining to the client.
- II 1n Utilize relevant information from written documents for client care.
- II.1o Adhere to Federal Laws including 42 C.F.R. Part II and HIPAA Privacy and Security Standards pertaining to confidentiality. A business associate contract with GBHWC must be established to ensure protection of health records to include engagement with third parties

## **II.2 ASAM Level of Care III.2-D Social Detoxification Services**

The Contractor agrees to

- II 2a Maintain treatment capacity in ASAM Level III.2-D Social Detoxification services with a capacity of two (2) female adults served at any given time by performing and completing the following tasks:
- II 2b Implement Standard Operating Procedures (SOP) geared for an ASAM Level III.2-D to include definitions, admission and continued stay criteria, referral to acute care criteria, criteria to determine social detoxification is not necessary, medication management and other mechanisms essential to support optimal operations
- II 2c Ensure presence of trained and knowledgeable staffs about research techniques to gain further insight into critical factors, such as complications associated with alcohol and other drug use and the admission assessment process. In addition, at least one staff member being a licensed psychologist or psychiatrist or registered nurse or a certified substance abuse treatment counselor available for clinical consultation.
- II 2d Ensure presence of a trained staff member familiar with complications associated with alcohol and other drug use and with community resources awake 24-hours a day to monitor clients' conditions.
- II 2e Conduct assessments using American Society of Addiction Medicine's (ASAM) Six Problem Dimensions Assessment Tool, establish preliminary individualized treatment plans and administer a range of cognitive behavioral and mental health therapies on an individual or group basis to enhance understanding of addiction, the completion of the detoxification process, and to prepare clients for the next level of care.
- II 2f Provide specifically detailed mechanism that will be instituted to give clients an introduction to self-help support groups and disease concepts.
- II.2g Implement the use of evidenced-based models and practices appropriate for social detoxification treatment modality.



- II 2h Identify and justify any adaptations or modifications to the proposed evidenced-based models and/or practices, especially when addressing cultural competency
- II 2i Describe in detail how the project will address issues of age, race, ethnicity, culture and other similar issues.
- II 2j Have services including close observation, supportive staff-client interaction, provision for proper fluid and nutritional components, and provision for client space that offers low to moderate sensory stimulation.
- II.2k Have clearly written protocols to determine the client's appropriateness and eligibility for admission or referral.
- II 2l Demonstrate how to determine any coexisting conditions (medical, psychiatric, physical, etc.) that indicate the need for additional professional assessment and/or services.
- II.2m Ensure a quiet, safe, comfortable, and positive atmosphere in a residential setting.
- II.2n Use clients' detoxification time as preparation for the next level of care.
- II 2o Have staff trained annually in admission, monitoring skills, including signs and symptoms of alcohol and other drug intoxication and withdrawal as well as appropriate treatment of those conditions, supportive care, basic cardiopulmonary resuscitation technique, and assessment and referral procedures. Have documents available at any time to support that these trainings were completed upon site visit by GBHWC staff.
- II 2p Have an agreement with GMHA and/or Naval Hospital to include a linkage component that describes how clients have access to an acute care facility (GMH or Naval Hospital Emergency Room) on a 24-hour basis when clients are experiencing medical complications that need immediate medical attention.

### **II.3 ASAM Level of Care III.5 Rehabilitation Services**

The Contractor agrees to

- II.3a Provide detailed provisions for a 24-hour Residential program that will include a planned regiment of observation, monitoring and treatment, including a minimum of eight (8) up to twelve (12) beds for female adults.
- II 3b Retain physical plant that is quiet, comfortable and therapeutic to accommodate the population served.
- II 3c Include detailed provisions for collaborating with a medical institution that will provide TB testing, AIDS/HIV/STD early intervention services and necessary treatment.
- II 3d Demonstrate experience with the necessary techniques for a High Intensive Clinically-Managed Residential level of care for female adults.
- II.3e The contractor must provide detailed provisions for providing a safe and stable living environment in order to develop recovery skills.
- II.3f Provide provisions that will focus on two categories of residential treatment:

- II 3f a Provide Residential treatment that will be 30 days. This category entails a minimum of five (5) days out of a week of comprehensive services and interventions. It addresses the need for early recovery skills and stabilization and clients participate in continuous interventions for at least eight (8) hours a day. After the 30 days, depending on need, clients may transfer to a lower level of care, or remain in the residential setting but with reduced intervention hours.
- II 3f b Provide Residential treatment that will be up to 180 days. Some clients continue to have a high level of severity and require more residential care after re-assessing with the ASAM Patient Placement Criteria, 2<sup>nd</sup> Revision. For clients needing more than 180 days a written approval from GBHWC is required for reimbursement.
- II 3g Utilize the Matrix Model (see [www.nrepp.samhsa.gov](http://www.nrepp.samhsa.gov) incorporated herein as if fully rewritten) as the primary psychosocial curriculum for this level of care, however other evidence based models may be utilized to supplement, particularly an evidenced-based Trauma Informed Care curriculum focused on female adults.
- II 3h Provide client centered or individualized substance abuse treatment services for female adults needing ASAM Level III 5 Rehabilitation Services.
- II 3i Give pregnant women and women with dependent children preference in admission and/or ensure receipt of the most appropriate services available within forty-eight (48) hours (See 42 U.S.C. 300x-22(b)(1)(C) and 45 C.F.R. 96.124(c)(e)).
- II 3j Administer drug testing as a treatment function with all female clients on a weekly basis.
- II 3k Ensure pregnant women are referred for prenatal care and other needed services to ensure delivery of healthy offsprings.
- II 3l Maintain orderly files of all clients served under its treatment program. Administer and maintain adequate report and record keeping functions from the counselor by documenting the client's progress in achieving her goals, communication between co-workers and the counselor's supervisor feedback. Continue providing access to information that supports other programs that may provide services to the client at a later date and enhances the client's treatment experience.
- II 3m Ensure proper documentation on charting the results of the assessment, treatment plan, writing reports, progress notes, discharge summaries and other client-related data.

## SECTION III

### CONTRACT TERM

- A. **Term.** This fixed price contract shall take effect upon the signature of all the required parties and approval by the Governor of Guam. The initial term of the

*Contract shall be from the effective date through September 30, 2014 with an option for*  
renewal up to two (2) additional one (1) year periods, or the expiration of the  
grant that is funding this contract.

- B Monthly Extension Period** Additionally, there shall be a special monthly extension period after the final renewal term on a month to month basis (each being a "Monthly Extension Period"), to begin immediately after the expiration of the final renewal period, provided that in no event may the parties agree to more than six (6) Monthly Extension Periods. The Monthly Extension Periods may be agreed to by the parties only if the GBHWC is unable to continue the services uninterrupted under a new contract after a new solicitation and procurement undertaken by the GBHWC.
- C Availability of Funds** The term of contract and special Monthly Extension Period, are subject to the availability of federal and local funds from fiscal year to fiscal year and the GBHWC's determination of its best interest.

#### SECTION IV

##### CONTRACTOR'S COMPENSATION FOR SERVICES

- A Annual and Monthly Compensation.** Contractor shall be compensated on a not to exceed fixed amount of FOUR HUNDRED THOUSAND AND NO/100 DOLLARS (\$400,000.00) per fiscal year with a not-to-exceed eleven (11) monthly payments for Thirty-Three Thousand Three Hundred Thirty-Three and No/100 Dollars (\$33,333.00) and one monthly payment of Thirty-Three Thousand Three Hundred Thirty-Seven and No/100 Dollars (\$33,337.00) for not less than ten (10) consumers (2 for social detoxification and 8 for residential) per month upon clearances of monthly invoices to GBHWC, however subject to the availability of funds. No additional costs are allowable without prior written approval by GBHWC. Any cost above the agreed upon amounts shall be at the expense of the Contractor.
- B Invoices.** Any reporting month that there exists a discrepancy in the statistical,

- B Invoices.** Any reporting month that there exists a discrepancy in the statistical, narrative or financial reports submitted by Contractor to GBHWC, 10% of the invoice amount after applying any penalties or disallowed costs, shall be withheld until the discrepancy has been resolved to the satisfaction of GBHWC
- C Final Payment and Release of Claims.** Final payment shall be made upon satisfactory delivery and acceptance of all services as herein specified and performed. Prior to final payment and as a condition precedent thereto, the Contractor shall execute and deliver to GBHWC a release in a form provided by GBHWC of claims against GBHWC and the government of Guam arising under and by virtue of the contract

## SECTION V

### ADDITIONAL TERMS AND CONDITIONS PROFESSIONAL SERVICES

The following clauses utilize the generic term "the contractor" to refer to potential offerors, contractors, vendors, service providers or any other name used in the procurement as to the individual(s) or entity that is in receipt of the solicitation or awarded the contract in the procurement. The generic term "the government of Guam" is used to reference the departments, agencies, boards, officers and employees of the government of Guam. The generic term "this contract" is used to refer to the procurement, the agreement, the collective documents that are part of the procurement, i.e. the request for proposal, the proposal, the agreed cost estimate, the signed forms, the certification and assurance forms and any other documents identified by the parties.

- In the current procurement the government of Guam is the Guam Behavioral Health and Wellness Center. P.L. 32-024 effective changed the name of Department of Mental Health and Substance Abuse to now be Guam Behavioral Health and Wellness Center.

- In the current procurement, the head of the purchasing agency is Rey M. Vega, the Director of Guam Behavioral Health and Wellness Center.

A **General Requirements.** This procurement is subject to all applicable federal and Guam laws and regulations. Guam laws and regulations are available at the Guam Supreme Court Office of Compiler's website <http://www.justice.gov.gu/compileroflaws>. The contractor and the government of Guam agree that the laws of Guam apply to this procurement, and shall govern the validity of this contract and any of its terms or provisions, as well as the rights and duties of the parties. The Guam Procurement Laws are available at the Office of Compiler's website as part of the 5 GCA Ch. 5. The Guam Procurement Regulations are available at the Office of Compiler's website 2 GAR Division 4. Additionally, the Guam Office of Public Accountability <http://www.guamopa.com/>, the Guam Office of Attorney General <http://www.guamag.org/> and the Department of Administration General Service Agency <http://bit.guam.gov/> all have useful procurement information and forms.

- **New Beginnings.** GBHWC New Beginnings program information is available at <http://www.dmhsa.guam.gov>
- **Substance Abuse Prevention and Treatment (SAPT)** grant information is available at <http://www.samhsa.gov>

The contractor expressly consents to the jurisdiction of Guam and to the venue of the courts on Guam with respect to any and all claims which may arise by reason of this contract, and waives any and all rights it may otherwise have to contest the same or to proceed in a different jurisdiction or forum.

The professional services, deliverables and materials under this contract shall comply with all applicable federal and Guam laws and regulations and the contractor shall maintain all licenses and permits. In the event the contract sets forth key personnel positions of stated experiences and training and it is part of

the compliance requirements of the contract, the contractor agrees to maintain those individuals and or positions at all times pertinent to the contract.

The contractor warrants it is current with all Guam taxes. (Income Tax, Business Privilege Tax, Real Property Tax, Hotel Occupancy Tax, Tax Withholding, Use Taxes, etc.)

**B Term – Initial Contract Period and Option(s) for Renewal.** The term of this contract includes an initial contract period and at the government of Guam's option, a renewal or renewal contract periods. The term and any renewal term(s) of this contract are subject to the availability of funding and satisfactory performance by the contractor. All representations and warranties made by the contractor under this contract, including but not limited to the intellectual property indemnification, confidentiality, record retention and access shall survive any expiration or termination of this contract. Additionally, if federal grant funds are part of this contract, and there is any recoupment or recapture of funds expended by the federal government related to the contract requirements that are the contractor's obligations, the government of Guam expressly reserves the right to offset and recoup said funds from the contractor.

**C Price Multi-Year.** The annual cost reimbursement budget amount or other pricing offered by the contractor shall remain the same in the initial contract term and all subsequent renewal terms except as otherwise provided in the contract terms and conditions.

**D Ethical Standards.** With respect to this procurement and any other contract that the contractor may have, or wish to enter into, with the government of Guam, the contractor represents that it has not knowingly influenced, and promises that it will not knowingly influence, any government employee to breach any of the ethical standards set forth in the Guam Procurement Law and in any of the Guam Procurement



## Regulations

- E. Prohibition Against Gratuities and Kickbacks.** With respect to this procurement and any other contract that the contractor may have or wish to enter into with the government of Guam, the contractor represents that he/she/it has not violated, is not violating, and promises that he/she/it will not violate the prohibition against gratuities and kickbacks set forth in the Guam Procurement Regulations.
- F. Prohibition Against Contingent Fees.** The contractor represents that he has not retained any person or agency upon an agreement or understanding for a percentage commission, brokerage, or other contingent arrangement, except for retention of bona fide employees or bona fide established commercial selling agencies, to solicit or secure this contract or any other contract with the government of Guam.
- G. Prohibition of Employment of Sex Offenders.** Pursuant to 5 G.C.A. § 5253: (a) No person convicted of a sex offense under the provisions of 9 GCA Chapter 25, or an offense as defined in GCA Chapter 28 Article 28, on Guam, or an offense in any jurisdiction which includes, at a minimum, all of the elements of said offenses, or who is listed on the Sex Offender Registry, and who is employed by a business contracted to perform services for an agency or instrumentality of the government of Guam, shall work for his employer on the property of the government of Guam other than a public highway; (b). The contractor warrants: (1) that no person providing services on behalf of the contractor has been convicted of a sex offense as set forth in the preceding subsection; and (2) that if any person providing services on behalf of the contractor is convicted of a sex offense under the provisions of 9 GCA Chapter 25 or 9 GCA Chapter 28 Article 2, or an offense in another jurisdiction with, at a minimum, the same

elements as such offenses, or who is listed on the Sex Offender Registry that such person will be immediately removed from working at said agency and that the administrator of said agency be informed of such within twenty-four (24) hours of such conviction

For the purposes of this "Prohibition of Employment of Sex Offenders Clause" in the event the contractor is providing services that involve direct contact with the government of Guam consumers, customers or potential eligible receivers of the government of Guam public health, safety or education program services, all locations where there is contact with those individuals is considered for purposes of this clause in this contract "property of the government of Guam"

#### **H Wage and Benefit Compliance – Contractors Providing Services.**

- (a) The contractor shall comply with 5 GCA § 5801 et seq. and with regard to all persons it employs whose purpose in whole or in part is the direct delivery of services contracted for with the government of Guam in this procurement shall pay such employees in accordance with the Wage Determination for Guam and the Northern Marianas Islands issued and promulgated by the U.S. Department of Labor for such labor as is employed in the direct deliverance of deliverables to the government of Guam. The contractor shall be responsible for flowing down this obligation to its subcontractors
- (b) The Wage Determination most recently issued by the U.S. Department of Labor at the time this contract is awarded to the contractor shall be used to determine wages and benefits which shall be paid to employees pursuant to this clause
- (c) Should any contract contain a renewal clause, then at the time of renewal adjustments, there shall be stipulations contained in that



contract for applying the Wage Determination, so that the Wage Determination promulgated by the U.S Department of Labor on a date most recent to the renewal date shall apply.

- (d) In addition to the Wage Determination detailed above, health and similar benefits for employees having a minimum value as detailed in the Wage Determination issued and promulgated by the U.S. Department of Labor shall apply. The contractor shall pay a minimum of ten (10) paid holidays per annum per employee.
- (e) Any violation of the contractor's obligations or its subcontractors obligations as set forth in "Wage and Benefit Compliance Contractors Providing Services Clause" shall be investigated by the Guam Department of Labor and may include a monetary penalty assessment by the Guam Department of Labor of no less than One Hundred Dollars (\$100.00) per day and no more than One Thousand Dollars (\$1 000.00) per day until such time as a violation has been corrected, as well as the payment of all back wages and benefits due.
- (f) In addition to any and all other breach of contract actions the government of Guam may have under this procurement, in the event there is a violation in the process set forth in the preceding subsection, the contractor may be placed on probationary status by the head of the purchasing agency, for a period of one (1) year. During the probationary status the contractor shall not be awarded any contract by any instrumentality of the government of Guam. The contractor if it is placed on probationary status or has been assessed a monetary penalty pursuant to this "Wage and Benefit Compliance Contractors Providing Services Clause" may appeal such penalty or probationary status to the Superior Court of Guam as set forth in 5 GCA § 5804.
- (g) The contractor's Declaration of Compliance with Wage

Determination with the attached most recent Wage Determination for Guam and the Northern Marianas Islands issued and promulgated by the U.S. Department of Labor is applicable to this contract

- (h) The contractor agrees to provide upon written request by the government of Guam written certification of its compliance with its obligations under this "Wage and Benefit Compliance Contractors Providing Services Clause" as part of each invoice, along with the names of any employees, their positions, and detailed wage and benefits paid in keeping with this section. Additionally upon request by the government of Guam the contractor shall submit source documents as to those individuals that provide direct services in part or whole under this contract and its payments to them of such wages and benefits.

#### **I. Changes.**

- (1) **Change Order.** By a written order, at any time, and without notice to surety, the head of the purchasing agency may, subject to all appropriate adjustments, make changes within the general scope of this contract in any one or more of the following:
  - A. Drawing, designs, or specifications, if the supplies to be furnished are to be specially manufactured for Guam in accordance therewith;
  - B. Method of shipment or packing; or
  - C. Place of delivery
- (2) **Adjustments of Price or Time for Performance.** If any such change order increases or decreases the contractor's cost of, or the time required for performance of any part of the work under this contract, whether or not changed by the order, an adjustment shall be made and the contract modified in writing accordingly. Any adjustment in contract price made pursuant to this clause shall be determined in accordance with the "Price Adjustment Clause" of this contract.

Failure of the parties to agree to an adjustment shall not excuse the contractor from proceeding with the contract as changed, provided that the government of Guam promptly and duly makes such provisional adjustments in payment or time for performance as may be reasonable. By proceeding with the work, the contractor shall not be deemed to have prejudiced any claim for additional compensation, or an extension of time for completion.

- (3) **Time Period for Claim.** Within 30 days after receipt of a written change order under the paragraph (Change Order) of this clause, unless such period is extended by the head of the purchasing agency in writing, the contractor shall file notice of intent to assert a claim for an adjustment. Later notification shall not bar the contractor's claim unless the government of Guam is prejudiced by the delay in notification.
- (4) **Claims Barred After Final Payment.** No claim by the contractor for an adjustment hereunder shall be allowed if notice is not given prior to final payment under this contract.
- (5) **Other Claims Not Barred.** In the absence of such a change order, nothing in this clause shall be deemed to restrict the contractor's right to pursue a claim arising under the contract if pursued in accordance with the "Section N, subsection (1) Notice of Claim of the "Claims Based On The Head Of The Purchasing Agency's or Omissions Claim Clause" or for breach of contract.

#### **Stop Work Order.**

- (1) **Order to Stop Work.** The head of the purchasing agency may, by written order to the contractor, at any time, and without notice to any time, and without notice to any surety, require the contractor to stop all or any part of the work called for by this contract. This order shall be for specified period not exceeding 90 days after the order is delivered to the contractor, unless the parties agree to any further period. Any such order shall be

identified specifically as a stop work order issued pursuant to this clause. Upon receipt of such an order, the contractor shall forthwith comply with its terms and take all reasonable steps to minimize the occurrence of costs allocable to the work covered by the order during the period of work stoppage. Before the stop work expires, or within any further period to which the parties shall have agreed, the head of the purchasing agency shall either:

- (i) Cancel the stop work order; or
- (ii) Terminate the work covered by such order as provided in the "Termination for Default Clause" or the "Termination for Convenience of the Government of Guam Clause" of this contract.

(2) **Cancellation or Expiration of the Order.** If a stop work order issued under this clause is cancelled at any time during the period specified in the order, or if the period of the order or any extension thereof expires, the contractor shall have the right to resume work. An appropriate adjustment shall be made in the delivery schedule or contract price shall be modified in writing accordingly if:

- (i) the stop work order results in an increase in the time required for, or in the contractor's cost properly allocable to, the performance of any part of this contract; and
- (ii) the contractor asserts a claim for such an adjustment within 30 days after the end of the period of work stoppage; provided that, if the head of the purchasing agency decides that the facts justify such action, any such claim asserted may be received and acted upon at any time prior to final payment under this contract.

(3) **Termination of Stopped Work.** If a stop work order is not cancelled and the work covered by such order is terminated for default or convenience, the reasonable costs resulting from the stop work order shall be allowed by adjustment or otherwise.

- (4) **Adjustment of Price.** Any adjustment in contract price made pursuant to this clause shall be determined in accordance with the "Price Adjustment Clause" of this contract.

K **Variation in Quantity.** Upon the agreement of the parties, the quantity of supplies or services or both specified in this contract may be increased by a maximum of ten percent (10%) provided:

- i the unit prices will remain the same (except for any price adjustments otherwise applicable) and
- ii the head of the purchasing agency makes a written determination that such an increase will either be more economical than awarding another contract or that it would not be practical to award another contract

L **Indefinite Quantity Contracts**

- (1) the minimum quantity, if any, the government of Guam is obligated to order and the contractor to provide
- (2) whether there is a quantity the government of Guam expects to order and how this quantity relates to any minimum and maximum quantities that may be ordered under the contract.
- (3) any maximum quantity the government of Guam may order and the contractor must provide; and
- (4) whether the government of Guam is obligated to order its actual requirements under the contract or in the case of a multiple award as defined in 2 GAR Division 4 §3122 (Multiple Source Contracting) that the government of Guam will order its actual requirements from the contractors under the multiple award subject to any minimum or maximum quantity stated.

## **M. Price Adjustment**

(a) **Price Adjustment Methods.** Any adjustment in contract price pursuant to a clause in this contract shall be made in one or more of the following ways:

- i by agreement on a fixed price adjustment before commencement of the pertinent performance or as soon thereafter as practicable;
- ii by unit prices specified in the contract or subsequently agreed upon;
- iii by the costs attributable to the event or situation covered by the clause, plus appropriate profit or fee, all as specified in the contract or subsequently agreed upon;
- iv in such other manner as the parties may mutually agree or
- v in the absence of agreement between the parties, by a unilateral determination by the head of the purchasing agency of the costs attributable to the event or situation covered by the clause, plus appropriate profit or fee, all as computed by the head of the purchasing agency in accordance with generally accepted accounting principles and applicable sections of the regulations promulgated under 2 GAR Division 4 Chapter 7 (Cost Principles) subject to the provisions of 2 GAR Division 4 Chapter 9 (Legal and Contractual Remedies) as modified by the "Mandatory Disputes Clause" of this contract.

(b) **Submission of the Cost or Pricing Data.** The contractor shall provide cost or pricing data for any price adjustments subject to the provisions of 2 GAR Division 4 §3118 (Costs or Pricing Data).

**N. Claims Based on the Head of Purchasing Agency's Actions or Omission.**

(1) **Notice of Claim.** If any action or omission on the part of the head of the purchasing agency or designee of such officer, requiring performance changes within the scope of the contract constitutes the basis for a claim by the contractor for additional compensation, damages, or an extension of time for completion, the contractor shall continue with performance of the contract in compliance with the directions or orders of such officials, but by so doing, the contractor shall not be deemed to have prejudiced any claim for additional compensation, damages, or an extension of time for completion, provided:

(a) The contractor shall have given written notice to the head of the purchasing agency or designee of such officer,

(i) prior to the commencement of the work involved, if at that time the contractor knows of the occurrence of such action or omission;

(ii) within 30 days after the contractor knows of the occurrence of such action or omission, if the contractor did not have such knowledge prior to the commencement of the work; or

(iii) within such further time as may be allowed by the head of the purchasing agency in writing.

This notice shall state that the contractor regards the act or omission as a reason which may entitle the contractor to additional compensation, damages, or an extension of time. The head of the purchasing agency or designee of such officer, upon receipt of such notice, may rescind such action, remedy such omission, or take such other steps as may be deemed advisable in the discretion of the head of the purchasing

agency or designee of such officer.

(b) The notice required by the preceding subparagraph (a) of this paragraph describes as clearly as practicable at the time the reasons why the contractor believes that additional compensation damages or an extension of time may be remedies to which the contractor is entitled; and

(c) The contractor maintains and, upon request, makes available to the head of the purchasing agency within a reasonable time, detailed records to the extent practicable, of the claimed additional costs or basis for an extension of time in connection with such changes.

(2) **Limitations of Clause.** Nothing herein contained, however, shall excuse the contractor from compliance with any rules of law precluding any the government of Guam officers and any contractors from acting in collusion or bad faith in issuing or performing change orders which are clearly not within the scope of the contract.

(3) **Adjustment of Price.** Any adjustment in the contract price made pursuant to this clause shall be determined in accordance with the "Price Adjustment Clause" of this contract.

#### **○ Termination for Defaults**

(a) **Default.** If the contractor refuses or fails to perform any of the provisions of this contract with such diligence as will ensure its completion within the time specified in this contract or any extension thereof, otherwise fails to timely satisfy the contract provisions, or commits any other substantial breach of this contract, the head of the purchasing agency may notify the contractor in writing of the delay or non-performance and if not cured in ten days or any longer time specified in writing by the head of the purchasing agency, such officer may terminate the contractor's right to proceed with the contract or such part of the contract as to which there has been delay or a failure to properly perform. In the



event of termination in whole or in part, the head of the purchasing agency may procure similar supplies or services in a manner and upon terms deemed appropriate by the head of the purchasing agency. The contractor shall continue performance of the contract to the extent it is not terminated and shall be liable for excess costs incurred in procuring similar goods or services.

(b) **Contractor's Duties.** Notwithstanding termination of the contract and subject to any directions from the head of the purchasing agency, the contractor shall take timely, reasonable, and necessary action to protect and preserve property in possession of the contractor in which the government of Guam has an interest.

(c) **Compensation.** Payment for completed supplies delivered and accepted by the government of Guam shall be at the contract price. Payment for the protection and preservation of property shall be in an amount agreed upon by the contractor and the head of the purchasing agency. If the parties fail to agree, the head of the purchasing agency shall set an amount subject to the contractor's rights under 2 GAR Division 4 Chapter 9 (Legal and Contractual Remedies) as modified by the "Mandatory Disputes Resolution Clause" of this contract. The government of Guam may withhold from amounts due the contractor such sums as the head of the purchasing agency deems to be necessary to protect the government of Guam against loss because of outstanding liens or claims of former lien holders and to reimburse the government of Guam for the excess costs incurred in procuring similar goods and services.

(d) **Excuse for Nonperformance or Delayed Performance.** Except with respect to defaults of subcontractors, the contractor shall not be in default by reason of any failure in performance of this contract in accordance with its terms (including any failure by the contractor to make progress in the prosecution of the work here under which endangers such performance) if the contractor has notified the head of the purchasing agency within 15 days after the cause of the delay and the failure arises out of causes such as: acts of God; acts of the public

enemy; acts of the government of Guam and any other governmental entity in its sovereign or contractual capacity; fires; floods; epidemics; quarantine restrictions; strikes or other labor disputes; freight embargoes; or unusually severe weather. If the failure to perform is caused by the failure of a subcontractor to perform or to make progress, and if such failure arises out of causes similar to those set forth above, the contractor shall not be deemed to be in default, unless the supplies or services to be furnished by the subcontractor were reasonably obtainable from other sources in sufficient time to permit the contractor to meet the contract requirements. Upon request of the contractor, the head of the purchasing agency shall ascertain the facts and extent of such failure, and, if such officer determines that any failure to perform was occasioned by any one or more of the excusable causes and that but for the excusable cause the contractor's progress and performance would have met the terms of the contract, the delivery schedule shall be revised accordingly, subject to the rights of Guam under the "Termination for Convenience of the Government of Guam Clause" of this contract. (As used in this paragraph of this clause the term "subcontractor" means subcontractor at any tier.)

(e) **Erroneous Termination for Default.** If after notice of termination of the contractor's right to proceed under the provisions of this clause, it is determined for any reason that the contractor was not in default under the provisions of this clause, or that the delay was excusable under the provisions of the (Excuse for Nonperformance or Delayed Performance) paragraph of this clause, the rights and obligations of the parties shall be the same as if the notice of termination had been issued pursuant to the Termination for Convenience of the Government of Guam Clause of this contract.

(f) **Additional Rights and Remedies.** The rights and remedies provided in this clause are in addition to any other rights and remedies provided by law or under this contract.

**P. Liquidated Damages (With Termination of Default Clause).** When the contractor

is given notice of delay or nonperformance as specified in the (Default) paragraph of the "Termination for Default Clause" above and fails to cure in the time specified, the contractor shall be liable for damages for delay in the amount of one-fourth of one-percent (1%) of outstanding order per calendar day from date set for cure until either the government of Guam reasonably obtains similar supplies or services if the contractor is terminated for default, or until the contractor provides the supplies or services if the contractor is not terminated for default. To the extent that the contractor's delay or nonperformance is excused under the (Excuse for Nonperformance or Delayed Performance) paragraph of the "Termination for Default Clause" above, liquidated damages shall not be due the government of Guam. The contractor remains liable for damages caused other than by delay.

○ **Termination for Convenience of the Government of Guam.**

(a) **Termination.** The head of the purchasing agency may, when the interest of the government of Guam so require, terminate this contract in whole or in part for the convenience of the government of Guam. The head of the purchasing agency shall give written notice of the termination to the contractor specifying the part of the contract terminated and when termination becomes effective.

(b) **Contractor's Obligations.** The contractor shall incur no further obligations in connection with the terminated work and on the date set in the notice of termination the contractor will stop work to the extent specified. The contractor shall also terminate outstanding orders and subcontracts as they relate to the terminated work. The contractor shall settle the liabilities and claims arising out of the termination of subcontracts and orders connected with the terminated work. The head of the purchasing agency may direct the contractor to assign the contractor's right, title, and interest under terminated orders or subcontractors to the government of Guam. The contractor must still complete the work not terminated by the notice of termination and may incur obligations as are necessary to do so.

(c) **Right to Supplies.** The head of the purchasing agency may require the

contractor to transfer title and deliver to the government of Guam in the manner and to the extent directed by the head of the purchasing agency:

- (1) any completed supplies; and
- (2) such partially completed supplies and materials, parts, tools, dies, jigs, fixtures, plans, drawings, information, and contract rights (hereinafter called "manufacturing material") as the contractor has specifically produced or specially acquired for the performance of the terminated part of this contract

The contractor shall, upon direction of the head of the purchasing agency, protect and preserve property in the possession of the contractor in which the government of Guam has an interest. If the head of the purchasing agency does not exercise this right, the contractor shall use best efforts to sell such supplies and manufacturing materials in accordance with the standards of Uniform Commercial Code of Guam. Title 13 G.C.A. §2706 is quoted at the end of this clause. Utilizing this §, in no way implies that the government of Guam has breached the contract by exercise of this "Termination for Convenience of the Government of Guam Clause."

(d) **Compensation.**

- (1) The contractor shall submit a termination claim specifying the amounts due because of the termination for convenience together with cost or pricing data to the extent required by 2 GAR Division 4 §3118 (Cost or Pricing Data) bearing on such claim. If the contractor fails to file a termination claim within one year from the effective date of termination, the head of the purchasing agency may pay the contractor, if at all, an amount set in accordance with the preceding subsection (c) of this clause.
- (2) The head of the purchasing agency and the contractor may agree to a settlement provided the contractor as has filed a termination claim supported by cost or pricing data to the extent required by 2 GAR Division §3118 (Costs or Pricing Data) and that the settlement does not exceed the

total contract price plus settlement costs reduced by payments previously made by the government of Guam, the proceeds of any sales of supplies and manufacturing materials under the subsection(3) of this clause, and the contract price of the work not terminated.

(3) Absent complete agreement under the "Contractor's Obligation" subsection (b) above, the head of the purchasing agency shall pay the contractor the following amounts, provided payments agreed to under the "Contractor's Obligation" subsection (b) shall not duplicate payments under this subparagraph "Compensation":

- (i) contract prices for supplies or services accepted under the contract;
- (ii) costs incurred in preparing to perform and performing the terminated portion of the work plus a fair and reasonable profit on such portion of the work (such profit shall not include anticipatory profit or consequential damages) less amounts paid or to be paid for accepted supplies or services, provided, however, that if it appears that the contractor would have sustained a loss if the entire contract would have been completed, no profit shall be allowed or included and the amount of compensation shall be reduced to reflect the anticipated rate of loss;
- (iii) costs of settling and paying claims arising out of the termination of subcontracts or orders pursuant to section (2) of this "Compensation" paragraph. These costs must not include costs paid in accordance with the preceding subsection (c) (ii) of this paragraph;
- (iv) the reasonable settlement costs of the contractor including accounting, legal, clerical, and other expenses reasonably necessary for the preparation of settlement claims and supporting data with respect to the terminated portion of the contract for the termination and settlement of subcontracts thereunder, together with reasonable storage, transportation, and other costs incurred in connection with the protection or disposition of property allocable to the terminated portion of this contract. The total sum to be paid the contractor under this subparagraph shall not exceed the

total contract price plus the reasonable settlement costs of the contractor reduced by the amount of payments otherwise made, the proceeds of any sales of supplies and manufacturing materials under the "Contractor's Obligations" subparagraph (b) above, and the contract price of work not terminated

(4) Cost claimed, agreed to, or established under the "Contractor's Obligations" subparagraph (b) and "Right to Supplies" subparagraph (c) of this paragraph shall be in accordance with 2 GAR Division 4 Chapter 7 (Cost Principles)

13 GCA §2706 (UCC) states

§2706 *Seller's Resale including Contract for Resale*

(1) Under the conditions stated in §2703 on seller's remedies, the seller may resell the goods concerned or the undelivered balance thereof. Where the resale is made in good faith and in a commercially reasonable manner, the seller may recover the difference between the resale price and the contract price together with any incidental damages allowed under the provisions of this division (§2710), but less expenses saved in consequence of the buyer's breach.

(2) Except as otherwise provided in subdivision (3) or unless otherwise agreed, resale may be at public or private sale including sale by way of one or more contracts to sell or identification to an existing contract of the seller. Sale may be as a unit or in parcels and at any time and place and on any terms but every aspect of the sale including the method, manner, time, place and terms must be commercially reasonable. The resale must be reasonably identified as referring to the broken contract, but it is not necessary that the goods be in existence or that any or all of them have been identified to the contract before the breach.

(3) Where the resale is at private sale the seller must give the buyer reasonable notification of his intention to resell.

(4) Where the resale is at public sale:

(a) Only identified goods can be sold except where there is a recognized market for a public sale of futures in goods of the kind; and

(b) It must be made at a usual place or market for public sale if one is reasonably available and except in the case of goods which are perishable or threaten to decline in value speedily the seller must give the buyer reasonable notice of the time and place of resale; and

(c) If the goods are not to be within the view of those attending the sale the notification of sale must state the place where the goods are located and provide for their reasonable inspection by prospective bidders, and

(d) The seller may buy

(5) A purchaser who buys in good faith at a resale takes the goods free of any rights of the original buyer even though the seller fails to comply with one or more of the requirements of this section

(6) The seller is not accountable to the buyer for any profit made on any resale. A person in the position of a seller (§2707) or a buyer who has rightfully rejected or justifiably revoked acceptance must account for any excess over the amount of his security interest as hereinafter defined (subdivision (3) of §2711)

**R Cost Reimbursement Contract Reimbursement Contract Termination for Default and/or For Convenience.** All steps shall be taken by the contractor to ensure a smooth transition of the program to prevent any interruption of the services to the clients and to preserve the integrity of the program. The contractor, who has been terminated by the government of Guam for default or for convenience or whose contract has expired by its terms shall immediately prepare to relinquish all program related information files equipment service contributions and program income (contributions donations and gifts) remaining balances and all other operational and administrative and service documents and/or items to the government of Guam. In the event there are government of Guam or federal reports needed to close out the program file, the contractor shall provide those

**S Mandatory Disputes Resolution Clause.** In the event of a conflict between this Mandatory Disputes Resolution Clause and any other terms in this contract, it is the intent of the government of Guam and the contractor that the terms of this clause are to be given precedence.

(1) **Disputes - Contractual Controversies.** The government of Guam and the contractor agree to attempt resolution of all controversies which arise under or are by virtue of, this contract through mutual agreement. If the controversy is not resolved by mutual agreement, then the contractor shall request the

head of the purchasing agency, or their designee, in writing to issue a final decision within sixty days after receipt of the written request in keeping with 5 GCA § 5427 (c). The head of the purchasing agency or their designee shall immediately furnish a copy of the decision to the contractor by certified mail with a return receipt requested, or by any other method that provides evidence of receipt.

(2) **Absence of a Written Decision within Sixty Days.** If the head of the purchasing agency, or their designee does not issue a written decision within sixty days after written request for a final decision, or within such longer period as may be agreed upon by the parties, then the contractor may proceed as though the head of the purchasing agency, or their designee had issued a decision adverse to the contractor.

(3) **Appeals to the Office of Public Accountability.** The head of the purchasing agency, or their designee's decision shall be final and conclusive unless fraudulent or unless the contractor appeals the decision administratively to the Public Auditor in accordance with 5 GCA § 5706.

(4) **Disputes – Money Owed To or By the Government of Guam.** This subsection applies to appeals of the government of Guam's decision on a dispute. For money owed by or to the government of under this contract, the contractor shall appeal the decision in accordance with the "Government Claims Act", 5 GCA § 6101 et. seq., by initially filing a claim with the Office of the Attorney General no later than eighteen months after the decision is rendered by the government of Guam or from the date when a decision should have been rendered. For all other claims by or against the government of Guam arising under this contract, the Office of the Public Auditor has jurisdiction over the appeal from the decision of the government of Guam. Appeals to the Office of the Public Auditor must be made within sixty days of government of Guam's decision or from the date the decision should have been made.



(5) **Exhaustion of Administrative Remedies.** The contractor shall exhaust all administrative remedies before filing an action in the Superior Court of Guam in accordance with applicable laws.

(6) **Performance of Contract Pending Final Resolution by the Court.** The contractor shall comply with the government of Guam's decision and proceed diligently with performance of this contract pending final resolution by the Superior Court of Guam of any controversy arising under, or by virtue of, this contract, except where the contractor claims a material breach of this contract by the government of Guam. However, if the head of the purchasing agency determines in writing that continuation of services under this contract is essential to the public's health or safety, then the contractor shall proceed diligently with performance of the contract notwithstanding any claim of material breach by the government of Guam.

## **T Cost Reimbursement**

### **Standards For Financial Management.**

#### **(1) Financial Reporting**

The contractor shall provide complete, accurate, and current financial disclosures of the project or program in accordance with any financial reporting requirements, as set forth in the financial provisions.

#### **(2) Accounting Records.**

The contractor shall continuously maintain and update records identifying the source and use of funds. The records shall contain information pertaining to the contract, authorizations, obligations, unobligated balances, assets, outlays, and income.

- **Internal Control**

The contractor shall maintain effective control over and accountability for all funds and assets. The contractor shall keep effective internal controls to ensure that all government of Guam funds received are separately and properly

allocated to the activities described in the contract. The contractor shall adequately safeguard all such property and shall ensure that it is used solely for authorized purposes.

- **Source Documentation**

The contractor shall support all accounting records with source documentation. These documentations include, but are not limited to, cancelled checks, paid bills, payrolls, contract and subgrant contract documents, and so forth. All costs invoiced by contract in this contract must be reasonable, lawful, allocable, and accounted for in accordance with generally accepted accounting principles set forth in 2 GAR Division 4 § 7101 or in any federal assistance instrument applicable to the contract.

(3) **Reimbursable Cost Principles**

The contractor shall support all accounting records with source documentation. These documentations include, but are not limited to, cancelled checks, paid bills, payrolls, contract and subgrant and/or contract documents and so forth.

- **Allowable Cost**

Total allowable cost of the contract is the sum of allowable direct costs actually incurred in the performance of the contract in accordance with the terms of the contract, plus the properly allowable indirect costs, less any applicable credits.

Cost shall be allowed to the extent they are:

- reasonable as defined in 2 GAR Division 4 § 7101 (d)
- allocable as defined in 2 GAR Division 4 § 7101 (e)
- lawful under any applicable law
- not unallowable under 2 GAR Division 4 § 7101(f)

*Treatment of Special Costs or § 7101 (g) Cost Requiring Prior Approval to Allowable as Direct Costs*

In the case of costs invoiced for reimbursement, they must be actually incurred or accrued and accounted for in accordance with generally accepted accounting principles.

**(4) Applicable Credits**

Applicable credits are receipts or price reductions which reduce expenditures allocable to contracts as direct or indirect costs, as defined in 2 GAR Division 4 § 7101 (h)

In the event the contractor receives discounts, rebates and or other applicable credits accruing to or received by the contractor or any subcontractor under the contract, to the extent those credits are allocable to the allowable portion of the cost billed to the government of Guam; allowable costs will be paid to the contractor net of all discounts, rebates and other such applicable credits. The contractor must separately identify for each cost submitted for payment to the government of Guam the amount of cost that is allowable, must identify all unallowable costs; or the contractor must exclude all unallowable costs from its billing documents and certify that only allowable costs are submitted for payment and records have been established that maintain the visibility of unallowable costs, including directly associated costs in a manner suitable for contract cost determination and verification

The contractor must identify the amount of each discount, rebate and other applicable credit on bills and invoices presented to the government of Guam for payment and individually identify the amount as a discount, rebate or in case of other applicable credits, the nature of the credit. The government of Guam may permit the contractor to report this information on a less frequent basis than monthly, but no less frequently than annually. The contractor must identify the method by which it will report discounts, rebates and other applicable credits allocable to the contract that are not reported prior to conclusion of the contract.

The contractor must maintain documentation of costs and discounts, rebates and other applicable credits, and must furnish such documentation upon request to the government of Guam, the Guam Public Auditor, the United States Department of Health Inspector General or their authorized representative

Credits shall be applied to reduce direct or indirect costs. The government of Guam shall be entitled to a cash refund if the related expenditures have paid to the contractor. No expenditure may be made in this contract that permits or results in the contractor receiving payments in excess of the contractor's actual, net allowable costs

#### **U Miscellaneous Other Terms and Conditions.**

##### **1. Payment and Release of Claims**

Final payment shall be made upon satisfactory delivery and acceptance of all products and services as herein specified and performed under the contract. Prior to final payment and as a condition precedent thereto, the contractor shall execute and deliver to government of Guam a release in a form approved by the government of Guam of claims against the government of Guam arising under and by virtue of the contract

##### **2 Written Notice of Claims**

All written notice of claims shall be governed by Guam law

##### **3. Responsibility for Accuracy of Work**

The contractor is responsible for the professional and technical accuracy of all services, work and materials furnished under this contract. The contractor shall, without additional cost to the government of Guam, re-do services, correct or revise all errors or deficiencies in its services, work and material identified during the term of the contract, and any applicable warranty period. The contractor shall devote its best efforts to the duties and responsibilities under the contract in accordance with the laws, rules,

regulations and policies of the government of Guam. The government of Guam's review, approval, acceptance of, and payment of fees for services required under the contract, shall not be construed to operate as a waiver of any rights under the contract or of any cause of action arising out of the contractor's failure of performance except as provided herein and the contractor shall be, and remain liable, to the government of Guam for all direct costs which may be incurred by the government of Guam as result of the contractor's negligent performance of any of the services or work which are performed under the contract.

**4. Retention and Access to Records and Other Review.**

The contractor, including subcontractors, if any, shall maintain all books, documents, papers, accounting records, and other evidence pertaining to costs incurred and to make such materials available at their respective offices at all reasonable times during the contract period for three (3) years from the date of final payment under the contract for inspection by the government of Guam. Each subcontract of the contractor pursuant to the contract shall include a provision containing the conditions of this "Retention and Access to Records and Other Review Clause"

In the event that federal funds are part of the contract, reference and access by the government of Guam in this "Retention and Access to Records and Other Review Clause" shall be expanded to also include to the federal grantor and the U.S. Inspector General's Office or any duly authorized delegate of the federal government

**5. Property of Documents**

All briefs, memoranda and other incidental work or materials furnished hereunder shall be and remain the property of the government of Guam including all publication rights and copyright interests, and may be used by the government of Guam without any additional cost to the government of Guam, except as provided herein. All documents that form part of the contract are the property of the government of Guam and cannot be

reproduced without the government of Guam's authorization, except as provided herein.

**6 Indemnity.**

The contractor agrees to save and hold harmless the government of Guam, its departments, agencies, officers, agents, representatives, successors, and assigns of other governmental agencies from any and all suits or actions of every nature and kind, which may be brought forth, or on account of, any injury, death, or damage arising or growing out of the acts or omissions of the contractor, the contractor's officers, agents, servants, or employees under the contract.

**7 The Government of Guam Assumes No Liability.**

The government of Guam assumes no liability for any accident or injury that may occur to the contractor, its officers, agents, representatives, successors and or dependents, or personal property while in route to or from Guam/or on Guam, or during any travel mandated by the terms of this agreement. The government of Guam shall not be liable to the contractor for any services or work performed prior to there being an approved awarded contract, and the contractor expressly waives any and all claims for services performed or materials and supplies purchased in expectation of the contract, prior to an approved awarded contract.

**8 Insurance.**

The contractor shall procure and maintain in effect Workers Compensation, Commercial General Liability, and Comprehensive General Liability Insurance coverage for the operation of the services set forth in this contract. The contractor shall provide certificates of such insurance to the government of Guam when required and shall immediately report in writing to the government of Guam any insurance claims filed.

- a. Workers Compensation Insurance that covers all employees of the contractor working in any capacity in the contractor's services under this contract, in the amount as required by Guam law.
- b. Commercial General Liability Insurance on an "Occurrence Basis" with limits of liability not less than one million dollars (\$1,000,000.00) per occurrence and/or combined single-limit bodily injury and property damage. The contractor shall ensure the insurance is issued by a company authorized to do business on Guam with minimum limits of not less than one million dollars (\$1,000,000.00) for bodily injuries or death per occurrence, and not less than three hundred thousand (\$300,000.00) for damages to property. Such policy shall insure the government of Guam and its respective agents and employees with respect to liability as a result of the operation of the services set forth in this contract.

9. **Program Transitions.**

All steps shall be taken by the contractor to ensure a smooth transition of the program to prevent any interruption of the services to the clients and to preserve the integrity of the program. The contractor, who has not been awarded a new contract or renewal of an existing contract under this program, shall immediately prepare to relinquish all program related information, files, equipment, service contributions, and program income contributions, donations, and gifts) remaining balances and all other operational and administrative and service documents and/or items to the government of Guam.

10. **Business Privilege Tax - Taxes.**

The contractor is responsible for paying its Business Privilege Tax on payments received under the contract.

11. **Technology Access For Blind Or Visually Impaired.**

The contractor acknowledges that no government funds may be expended

for the purchase of information technology equipment and software for use by employees, program participants, or members of the public unless it provides blind or visually impaired individuals with access, including interactive use of equipment and services, that is equivalent to that provided to individuals who are not blind or visually impaired

12. **Health Insurance Portability and Accountability (HIPPA).**

The contractor shall comply with the Health Insurance Portability and Accountability Act (HIPPA of 1006, P.L. 104-1991 and the Federal "Standards for Privacy of Individually identifiable "Health Information" promulgated under 45 CFR Part 160 and Part 164, Subparts A and E

13. **Client Confidentiality.**

The contractor shall ensure information obtained directly or indirectly from a recipient client under this contract shall be kept confidential and not released in a form that identifies the person without informed consent of the person or of his or her legal representative, unless the disclosure is required by court order or for program monitoring by authorized Federal, or Guam monitoring agencies (Ref. 45 CFR 1321.51 and 42 CFR Part II) Privacy Rule Standards for Privacy of Individually Identifiable Health Information, Ref. 45 CFR Part 160 and Part 164, Subparts A and E.

14. **Retention and Access Requirements For Records.**

The contractor shall retain all records pertinent to the contract for a period of no less than 3 years from the expiration or termination date. As used in this provision "records" includes books, documents, accounting procedures and practice, and other data, regardless of the type or format. The contractor shall provide access and the right to examine all records related to the contract to the government of Guam, Guam Public Auditor and the U.S. Department of Health Inspector General or their authorized representative.

If any litigation, claim, negotiation, audit, or other action involving the records has been started before the end of the 3-year period, the



records must be kept until all issues are resolved, or until the end of the regular 3-year period, whichever is later.

Records for non-expendable property acquired in whole or in part, with funds from this contract funds must be retained for 3 years after its final disposition.

The contractor shall provide access to any project site(s) to the government of Guam, Guam Public Auditor and the U.S. Department of Health Inspector General or their authorized representative. The rights of access in this section shall not be limited to the required retention period but shall last as long as the records are kept.

15. **Special Reporting Requirements for Non-Profit Organizations.**

The contractor, if a non-profit organization, in addition to any other terms and conditions of the contract shall comply with the reporting requirements set forth in P.L. 32-068 Chapter XIII § 11 and this clause. In the event one of the contractor's subcontractors is a non-profit organization the provisions of this clause shall also be deemed to apply to the contractor's subcontractor, and contractor is obligated to submit its non-profit subcontractor's information in the same manner and time periods.

The contractor shall maintain accurate financial records of all monies paid to it under the contract.

The contractor shall provide to the government of Guam a budgetary breakdown by object category as to all services under the contract. An initial proposed budgetary breakdown is part of the request for proposal, and the agreed cost proposal, budget, staffing request and are incorporated into the contract's scope of services.

The contractor shall provide to government of Guam a quarterly report describing its activities during the reporting period and the results it achieved no later than twenty (20) days after the end of each Quarter.

The contractor must provide prior written notification to the government of Guam of all procurement of equipment and services of Five Thousand

Dollars (\$5,000.00) or more as to its professional services related to this contract, or with regard to items to be invoices as part of the contract.

The contractor shall provide access to duly authorized representative of the government of Guam, the Guam Public Auditor, or their authorized representatives, to any and all appropriate records for the purpose of audit and examination of books, documents, papers, and records of funds expended as part of the contract. The contractor shall upon written request by the government of Guam, the Guam Public Auditor or their authorized representatives provide source documentation, including but not limited to copies of checks or receipts, employee pay statement, inventory receipt, attendance records, utility bills.

The contractor is subject to the Single Audit Rules shall provide annually to GBHWC copies of its Audit Reports for all time periods covered as part of the contract.

The contractor shall provide certified detailed inventory listing of each Fiscal Year's purchases under the contract to the government of Guam as well as a Fiscal Year-end report of all expenditures of funds under the contract no later than November 15, the initial year, and November 15, of the each subsequent year.

In the event the contractor fails to timely provide any reports or items set forth in this section to the government of Guam after prior written reasonable notice by the government of Guam to contractor and contractor's failure to cure the contract default, the government of Guam in addition to other contractual rights and remedies under this contract may withhold payment of Ten Percent (10%) of any amounts that are invoiced under this contract by the contractor.

**V. Severability.** The provisions of the contract will be deemed severable, and the unenforceability of any one or more provisions will not affect the enforceability of any other provisions. In addition, if any provision of this contract is declared unenforceable,

the parties will substitute an enforceable provision that to the maximum extent possible in accordance with applicable law preserves the original intentions and economic positions of the parties

**W No Waiver.** No failure or delay by either party in exercising any right, power or remedy will operate at a waiver of such right, power or remedy, and no waiver will be effective unless it is in writing and signed by the waiving party. If either party waives any right, power or remedy, such waiver will not waive any successive or other right, power or remedy the party may have under this contract

**X Assignment, Successors and Assigns.** Neither party may assign or otherwise transfer this contract or any of the rights that it grants without the prior written consent of the party. Any purported assignment in violation of the preceding sentence will be void and of no effect. This contract will be binding upon the parties' respective successors and permitted assigns

**Y Community-Based Non-Profit Organization Professional Services Local Grant Funds.** This procurement is funded in part by the Guam Drug Detoxification Rehabilitation Program grant set forth in 10 GCA §86109, and the contractors shall comply with the terms and conditions set forth in 10 GCA §86109 and any program guidelines and regulations. Additionally, the contractor agrees to adhere to the Guam public policy with regard to the program: "to provide comprehensive inpatient and community-based outpatient mental health, alcohol and drug programs and services for the people of Guam and to continually strive to improve, enhance, and promote the physical and mental well-being of the people of Guam who experience the life disrupting effects of mental illness, alcoholism, drug abuse or at risk to suffer those effects and who need assistance: to provide such assistance in an effective and efficient manner in order to minimize community disruption and strengthen the quality of personal family and community life": 10 GCA §86101.

**Z SAMHSA Substance Abuse Prevention Treatment Block Grant CFDA 93.959 Federal Terms and Conditions.** This procurement is funded in part by the SAMHSA Substance Abuse Prevention Treatment Block Grant CFDA 93.959, federal grant terms and conditions, laws, regulations and guidelines are part of this contract, and the contractors Federal Certifications and Assurances Form that includes a copy of the Notice of Grant awarded is incorporated herein as if fully re-written.

IN WITNESS WHEREOF, the parties have entered into this Agreement on the dates indicated by their respective names.

CONTRACTOR

GOVERNMENT OF GUAM



Robert J. Zimmerman, Executive Director  
Elim Pacific Ministries, dba Oasis Empowerment Center

Date

April 21 2014



Rey M. Vega, Director

Guam Behavioral Health and Wellness Center

Date

4/22/2014

CERTIFIED FUNDS AVAILABLE:



Peter Alexis Ada, Deputy Director

Certifying Officer

Date

4/22/14

Account # 5100A142000CA001230

Amount # \$100,003.00 - 4/17/9/2014  
~~\$100,011.00 (Projected)~~

Vendor # 00081905

Period Covering July, August and September 2014 /

13-0706

11:23 AM

JUL 08 2014

Bureau of Budget and  
Management Research

CLEARED PER BBMR'S REVIEW

CLEARED PER  
BBMR'S REVIEW

Anthony C. Blaz, Acting Director

Bureau of Budget Management Research

Date: 7-11-14

APPROVED AS TO LEGALITY & FORM

Leonardo M. Rapadas

Attorney General of Guam

Date: 8/6/14

DMHSA 13-0706



APPROVED BY GOVERNOR OF GUAM

I Maga'lalen Guahan

Date: AUG 11 2014

DEPARTMENT OF ADMINISTRATION  
DIVISION OF ACCOUNTS

Registration Date: 08/11/2014

Registered No. C140601530

Check No. 00081905

Registered By: 8/14/2014



ORIGINAL



GUAM BEHAVIORAL  
HEALTH AND WELLNESS  
CENTER

## ATTACHMENT

### CONTRACTUAL AGREEMENT

Residential and Social Detoxification Substance  
Treatment for Adult Females

1. Federal Grant Fund Certifications and Assurances  
GBHWC RFP 03-2014, Pages 66-70 of 87
2. Federal Grant Award Letters  
GBHWC RFP 03-2014, Pages 71-78 of 87
3. Sample Business Associate Agreement Provisions  
GBHWC RFP 03-2014, Pages 79-86 of 87



Acknowledged by:

Elim Pacific Ministries, dba Oasis  
Empowerment Center

Guam Behavioral Health  
and Wellness Center

Robert J. Zimmerman  
Executive Director  
Date: 6/30/2014  
*Holly Rustick  
Grants Manager*

Rey M. Vega  
Director  
Date: 6/18/14

## **Federal Grant Fund Certifications and Assurances**

### **1. Certification Regarding Debarment and Suspension**

The undersigned (authorized official signing for the organization) certifies to the best of his or her knowledge and belief, that the organization, defined as the primary participant in accordance with 45 CFR Part 76, and its principals: are not presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from covered transactions by any Federal Department or agency; have not within a 3-year period preceding this proposal been convicted of or had a civil judgment rendered against them for commission of fraud or a criminal offense in connection with obtaining, attempting to obtain, or performing a public (Federal, State, or local) transaction or contract under a public transaction; violation of Federal or State antitrust statutes or commission of embezzlement, theft, forgery, bribery, falsification or destruction of records, making false statements, or receiving stolen property; are not presently indicted or otherwise criminally or civilly charged by a governmental entity (Federal, State, or local) with commission of any of the offenses enumerated in paragraph (b) of this certification; and have not within a 3-year period preceding this application/proposal had one or more public transactions (Federal, State, or local) terminated for cause or default.

Should the undersigned not be able to provide this certification, an explanation as to why should be set forth in a letter with the letter head of the organization on it and accompany this form in the proposal package.

The undersigned agrees by submitting this proposal that it will include, without modification, the clause titled "Certification Regarding Debarment, Suspension, Ineligibility, and Voluntary Exclusion--Lower Tier Covered Transactions" in all lower tier covered transactions (i.e., transactions with subgrantees and/or contractors) and in all solicitations for lower tier covered transactions in accordance with 45 CFR Part 76

### **2. Certification Regarding Drug-Free Workplace Requirements**

The undersigned (authorized official signing for the organization) certifies that the organization will, or will continue to, provide a drug-free work-place in accordance with 45 CFR Part 76 by:

- a. Publishing a statement notifying employees that the unlawful manufacture, distribution, dispensing, possession or use of a controlled substance is prohibited in the grantee's work-place and specifying the actions that will be taken against employees for violation of such prohibition;
- b. Establishing an ongoing drug-free awareness program to inform employees about--
  - (1) The dangers of drug abuse in the workplace;
  - (2) The grantee's policy of maintaining a drug-free workplace;
  - (3) Any available drug counseling, rehabilitation, and employee assistance programs; and
  - (4) The penalties that may be imposed upon employees for drug abuse violations occurring in the workplace;

c. Making it a requirement that each employee to be engaged in the performance of the grant be given a copy of the statement required by paragraph (a) above;

d. Notifying the employee in the statement required by paragraph (a), above, that, as a condition of employment under the grant, the employee will--

(1) Abide by the terms of the statement; and

(2) Notify the employer in writing of his or her conviction for a violation of a criminal drug statute occurring in the workplace no later than five calendar days after such conviction;

e. Notifying the agency in writing within ten calendar days after receiving notice under paragraph (d)(2) from an employee or otherwise receiving actual notice of such conviction. Employers of convicted employees must provide notice, including position title, to every grant officer or other designee on whose grant activity the convicted employee was working, unless the Federal agency has designated a central point for the receipt of such notices. Notice shall include the identification number(s) of each affected grant;

f. Taking one of the following actions, within 30 calendar days of receiving notice under paragraph (d) (2), with respect to any employee who is so convicted--

(1) Taking appropriate personnel action against such an employee, up to and including termination, consistent with the requirements of the Rehabilitation Act of 1973, as amended; or

(2) Requiring such employee to participate satisfactorily in a drug abuse assistance or rehabilitation program approved for such purposes by a Federal, State, or local health, law enforcement, or other appropriate agency;

g. Making a good faith effort to continue to maintain a drug-free workplace through implementation of paragraphs (a), (b), (c), (d), (e), and (f).

For purposes of paragraph (e) regarding agency notification of criminal drug convictions, the DHHS has designated the following central point for receipt of such notices:

Office of Grants and Acquisition Management  
Office of Grants Management  
Office of the Assistant Secretary for Management and Budget  
Department of Health and Human Services  
200 Independence Avenue, S.W., Room 517-D  
Washington, D.C. 20201

Notice is also required to the government of Guam Department contract designated contact.

### **3. Certifications Regarding Lobbying**

Title 31, United States Code, Section 1352, entitled "Limitation on use of appropriated funds to influence certain Federal contracting and financial transactions," generally prohibits recipients of Federal grants and cooperative agreements from using Federal (appropriated) funds for lobbying the Executive or Legislative Branches of the Federal Government in connection with a



SPECIFIC grant or cooperative agreement. Section 1352 also requires that each person who requests or receives a Federal grant or cooperative agreement must disclose lobbying undertaken with non-Federal (non-appropriated) funds. These requirements apply to grants and cooperative agreements EXCEEDING \$100,000 in total costs (45 CFR Part 93).

The undersigned (authorized official signing for the organization) certifies, to the best of his or her knowledge and belief, that:

- (1) No Federal appropriated funds have been paid or will be paid, by or on behalf of the undersigned to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with the awarding of any Federal contract, the making of any Federal grant, the making of any Federal loan, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any Federal contract, grant, loan, or cooperative agreement.
- (2) If any funds other than Federally appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with this Federal contract, grant, loan, or cooperative agreement, the undersigned shall complete and submit Standard Form-LLL, "Disclosure of Lobbying Activities," in accordance with its instructions. (If needed, Standard Form-LLL, "Disclosure of Lobbying Activities," its instructions, and continuation sheet are included at the end of this application form.)
- (3) The undersigned shall require that the language of this certification be included in the award documents for all subawards at all tiers (including subcontracts, subgrants, and contracts under grants, loans and cooperative agreements) and that all subrecipients shall certify and disclose accordingly.

This certification is a material representation of fact upon which reliance was placed when this transaction was made or entered into. Submission of this certification is a prerequisite for making or entering into this transaction imposed by Section 1352, U.S. Code. Any person who fails to file the required certification shall be subject to a civil penalty of not less than \$10,000 and not more than \$100,000 for each such failure.

#### **4. Certification Regarding Program Fraud Civil Remedies Act (PFCRA)**

The undersigned (authorized official signing for the organization) certifies that the statements herein are true, complete, and accurate to the best of his or her knowledge, and that he or she is aware that any false, fictitious, or fraudulent statements or claims may subject him or her to criminal, civil, or administrative penalties. The undersigned agrees that the organization will comply with the U.S. Department of Public Health Service terms and conditions of the grant award that is part of the funding for this procurement.

## 5. Certification Regarding Environmental Tobacco Smoke

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, daycare, 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 residence, 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.

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 entity.

By signing the certification, the undersigned certifies that the organization 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 organization agrees that it will require that the language of this certification be included in any subawards which contain provisions for children's services and that all subrecipients shall certify accordingly.

The U.S. Department of Public Health Services strongly encourages all contract grant fund recipients to provide a smoke-free workplace and promote the non-use of tobacco products. This is consistent with the PHS mission to protect and advance the physical and mental health of the American people.

## Certification Regarding Non-Discrimination.

The undersigned certifies that the organization shall comply with all Federal statutes relating to nondiscrimination. These include but are not limited to: **(a) Title VI of the Civil Rights Act of 1964 (P.L. 88-352)** which prohibits discrimination on the basis of race, color or national origin; **(b) Title IX of the Education Amendments of 1972, as amended (20 U.S.C. §§1681-1683, and 1685-1686), which prohibits discrimination on the basis of sex;** **(c) Section 504 of the Rehabilitation Act of 1973, as amended (29 U.S.C. §§794), which prohibits discrimination on the basis of handicaps;** **(d) the Age Discrimination Act of 1975, as amended (42 U.S.C. §§6101-6107), which prohibits discrimination on the basis of age;** (e) the Drug Abuse Office and Treatment Act of 1972 (P.L. 92-255), as amended, relating to nondiscrimination on the basis of drug abuse; (f) the Comprehensive Alcohol Abuse and Alcoholism Prevention, Treatment and Rehabilitation Act of 1970 (P.L. 91-616), as amended, relating to nondiscrimination on the basis

of alcohol abuse or alcoholism; (g) §§523 and 527 of the Public Health Service Act of 1912 (42 U.S.C. §§290 dd-3 and 290 ee-3), as amended, relating to confidentiality of alcohol and drug abuse patient records; (h) Title VIII of the Civil Rights Act of 1968 (42 U.S.C. §§3601 et seq.), as amended, relating to non-discrimination in the sale, rental or financing of housing; (i) any other nondiscrimination provisions in the specific statute(s) under which application for Federal assistance is being made; and (j) the requirements of any other nondiscrimination statute(s) which may apply to the application.

#### **Certification Regarding the Hatch Act**

The undersigned certifies that the organization shall comply with the provisions of the Hatch Act (5 U.S.C. §§1501-1508 and 7324-7328) which limit the political activities of employees whose principal employment activities are funded in whole or in part with Federal funds.

#### **Single Audit Act**

The undersigned certifies the organization shall cause to be performed the required financial and compliance audits in accordance with the Single Audit Act of 1984.

#### **Certification as to Acknowledgement of Receipt of Notice of Grant Award and Compliance With Terms and Conditions.**

The undersigned certifies it has received a copy of the Notice of Grant Award of the federal grant funds that are part of this procurement with its accompanying terms and conditions, and attaches a copy of the Notice of Grant award to this form. The undersigned certifies the organization shall comply with all applicable requirements of all other Federal laws, executive orders, regulations and policies governing the program.

Robert J. Zimmerman, Executive Director

Printed Name and Title of Official



Signature of Official Authorized  
to Sign Application

February 17, 2017

Date

**Attachment No. 008**

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**SECTION I - AWARD DATA - 2B08T1010014-13**

FEDERAL FUNDS APPROVED:	\$890,619
AMOUNT OF THIS ACTION (FEDERAL SHARE):	\$890,619
CUMULATIVE AWARDS TO DATE:	\$890,619
UNAWARDED BALANCE OF CURRENT YEAR'S FUNDS	\$0

**Fiscal Information:**

CFDA Number:	93.959
EIN:	1980018947C1
Document Number:	13B1GUSAPT
Fiscal Year:	2013

	IC	CAN	13
TI	C96T034	\$890,619	

PCC: SAPT / OC: 4115

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**SECTION II - PAYMENT/HOTLINE INFORMATION - 2B08T1010014-13**

Payments under this award will be made available through the HHS Payment Management System (PMS). PMS is a centralized grants payment and cash management system, operated by the HHS Program Support Center (PSC), Division of Payment Management (DPM). Inquiries regarding payment should be directed to: The Division of Payment Management System, PO Box 5021, Rockville, MD 20852. Help Desk Support - Telephone Number: 1-877-614-5533

The HHS Inspector General maintains a toll-free hotline for receiving information concerning fraud, waste, or abuse under grants and cooperative agreements. The telephone number is 1-800-HHS-TIPS (1-800-447-8477). The mailing address is: Office of Inspector General, Department of Health and Human Services, Attn: HOTLINE, 330 Independence Ave., SW, Washington, DC 20201

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**SECTION III - TERMS AND CONDITIONS - 2B08T1010014-13**

- 1) Except for any waiver granted explicitly elsewhere in this section, this award does not constitute approval for waiver of any Federal statutory/regulatory requirements for a SABG
- 2) Funds awarded under this grant must be obligated and expended by September 30, 2014
- 3) None of the funds provided under this grant may be used to pay the salary of an individual at a rate in excess of Level II of the Executive Schedule
- 4) This award is made under the condition that the State will comply with 45 CFR Part 96 and any revisions to such regulations
- 5) Restrictions on Grantee Lobbying - Appropriations Action Section 503
  - (a) No part of any appropriation contained in this Act shall be used, other than for formal and recognized executive-legislative relationships, for publicity or propaganda purposes, for the preparation, distribution, or use of any lot, pamphlet, booklet, publication, radio, television, or video presentation designed to support or defeat legislation pending before the Congress or any State legislature, except in presentation to the Congress or any State legislative body itself

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(b) No part of any appropriation contained in this Act shall be used to pay the salary or expenses of any grant or contract recipient, or agent acting for such recipient, related to any activity designed to influence legislation or appropriations pending before the Congress or any State legislature

6) Grantees shall submit a Federal Financial Report (SF 425) by December 31, 2014 which is 90 days after the end of the obligation and expenditure period of this grant. The SF-425 shall report total funds obligated and total funds expended by the grantee. The grantee shall note the date of the last obligation and the date of the last expenditure in Remarks Section of the SF-425

7) This award is subject to the requirements of Section 106 (g) of the Trafficking Victims Protection Act of 2000, as amended (22 U.S.C. 7104). For the full text of the award terms go to <http://samhsa.gov/grants/trafficking.aspx>

#### Terms/Conditions for FFY 2013 SABG RE Tobacco

1) The State is required to maintain methodologically sound procedures for the measurement of compliance with the tobacco requirements listed in the application. Although improvement in the following activities is encouraged, all modifications in the conduct of the following activities must be approved by the Substance Abuse and Mental Health Services Administration's Center for Substance Abuse Prevention prior to implementation:

Activities described in Annual Synar Report Appendix B that include: (a) creation of the sampling frame, (b) probability sampling of tobacco outlets that meets the SAMHSA precision requirement of 3 percentage point for the retailer violation rate with respect to a right-sided 95% confidence level.

Activities described in Annual Synar Report Appendix C that include: (a) methods of recruitment and training of adult and youth inspectors, (b) method of verifying age of inspectors, (c) method of accounting for distribution of youth and (d) purchase attempt procedures; and Synar reporting procedures. These procedures are designed to ensure that violation rates for the State may be estimated in a valid and stable fashion from year to year.

2) The State is required to complete all random, unannounced inspections for the annual Synar survey for the Federal Fiscal Year 2014 application by September 30, 2013.

3) The State is required to use minors 15 years old and older in the conduct of all random, unannounced inspections for the annual Synar survey.

4) The State is required to maintain a retailer violation rate at 20 percent or below in order to comply with the requirements of section 1926 of the Public Health Services Act.

#### SABG Application Target Rate

FFY 2014	20%
FFY 2015	20%

The Substance Abuse and Mental Health Services Administration's (SAMHSA) Center for Substance Abuse Treatment, in collaboration with the Center for Substance Abuse Prevention and SAMHSA's Office of Financial Resources' Division of Grants Management will notify all states and jurisdictions of the final FY 2013 SABG appropriation when it becomes available. States and jurisdictions will be required to subsequently revise and re-submit a FY 2013 Planned Expenditures for Substance Abuse Prevention and Treatment (Table 8a) and related planned expenditure checklists to reflect the final authorized FY 2013 SABG appropriation.

The state's SABG reports are in substantial compliance with the authorizing legislation (42 U.S.C. 300x-21-66) and implementing regulation (45 CFR 96.120-137) for the program involved.



SA Block Grant  
Department of Health and Human Services  
Substance Abuse and Mental Health Services Administration  
Center for Substance Abuse Treatment

Notice of Award

Issue Date: 09/14/2012

Grant Number: 2B08T010014-12

Contact Person:  
Wilfred Aflague

Program: Substance Abuse Prevention & Treatment Block Grant

GUAM DEPT OF MENTAL HLTH/SUBSTANCE ABUSE  
Wilfred Aflague  
Drug and Alcohol Branch  
790 Governor Carlos G. Camacho Road  
Tamuning, GU 96913

Award Period: 10/01/2011 - 09/30/2012

Dear Grantee

The Substance Abuse and Mental Health Services Administration hereby awards a grant in the amount of \$1,001,449 (see "Award Calculation" in Section I) to GUAM DEPT OF MENTAL HLTH/SUBSTANCE ABUSE in support of the above referenced project. This award is pursuant to the authority of Subparts II&III.E, Title XIX, PHS Act/45 CFR Part 96 and is subject to the requirements of this statute and regulation and of other referenced, incorporated or attached terms and conditions.

Acceptance of this award including the "Terms and Conditions" is acknowledged by the grantee when funds are drawn down or otherwise obtained from the grant payment system.

If you have any questions about this award, please contact your Grants Management Specialist and your Government Project Officer listed in your terms and conditions.

Sincerely yours

*Virginia Simmons*

Virginia Simmons  
Grants Management Officer  
Division of Grants Management

See additional information below.

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**SECTION I – AWARD DATA – 2B08TI010014-12**

FEDERAL FUNDS APPROVED: \$1,001,449  
AMOUNT OF THIS ACTION (FEDERAL SHARE): \$1,001,449  
CUMULATIVE AWARDS TO DATE: \$1,001,449  
UNAWARDED BALANCE OF CURRENT YEAR'S FUNDS: \$0

**Fiscal Information:**

CFDA Number: 93.959  
EIN: 1980018947C1  
Document Number: 2B1GUSAPT  
Fiscal Year: 2012

	IC	CAN	12
TI	C95T034		\$1,001,449

PCC: SAPT / OC: 4115

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**SECTION II – PAYMENT/HOTLINE INFORMATION – 2B08TI010014-12**

Payments under this award will be made available through the HHS Payment Management System (PMS). PMS is a centralized grants payment and cash management system, operated by the HHS Program Support Center (PSC), Division of Payment Management (DPM). Inquiries regarding payment should be directed to: The Division of Payment Management System, PO Box 6021, Rockville, MD 20852 Help Desk Support – Telephone Number 1-877-614-5533

The HHS Inspector General maintains a toll-free hotline for receiving information concerning fraud, waste, or abuse under grants and cooperative agreements. The telephone number is 1-800-HHS-TIPS (1-800-447-8477). The mailing address is: Office of Inspector General, Department of Health and Human Services, Attn: HOTLINE, 330 Independence Ave., SW, Washington, DC 20201

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**SECTION III – TERMS AND CONDITIONS – 2B08TI010014-12**

- 1) Except for any waiver granted explicitly elsewhere in this section, this award does not constitute approval for waiver of any Federal statutory/regulatory requirements for a SABG
- 2) Funds awarded under this grant must be obligated and expended by September 30, 2013
- 3) None of the funds provided under this grant may be used to pay the salary of an individual at a rate in excess of Level II of the Executive Schedule
- 4) This award is made under the condition that the State will comply with 45 CFR Part 96 and any revisions to such regulations
- 5) Restrictions on Grantee Lobbying - Appropriations Action Section 503
  - (a) No part of any appropriation contained in this Act shall be used, other than for formal and recognized executive-legislative relationships, for publicity or propaganda purposes, for the preparation, distribution, or use of any kit, pamphlet, booklet, publication, radio, television, or video presentation designed to support or defeat legislation pending before the Congress or any State legislature except in presentation to the Congress or any State legislative body itself

Page-2

(b) No part of any appropriation contained in this Act shall be used to pay the salary or expenses of any grant or contract recipient, or agent acting for such recipient, related to any activity designed to influence legislation or appropriations pending before the Congress or any State legislature

6 Grantees shall submit a Federal Financial Report (SF 425) by December 31, 2013 which is 90 days after the end of the obligation and expenditure period of this grant. The SF-425 shall report total funds obligated and total funds expended by the grantee. The grantee shall note the date of the last obligation and the date of the last expenditure in Remarks Section of the SF-425

7) This award is subject to the requirements of Section 106 (g) of the Trafficking Victims Protection Act of 2000, as amended (22 U.S.C 7104). For the full text of the award term, go to <http://samhsa.gov/grants/trafficking.aspx>

8 This award reflects the funding of the FY2012 allocation for the SABG to your State

9 This award action is not subject to the FFATA sub award and executive compensation reporting requirements. New (type 1) non-discretionary awards made on or after October 1, 2010 and all subsequent awards (i.e., all other moneyed actions related to that particular award) allowable by statute must meet the FFATA subaward and executive compensation reporting requirements. This award is not a new (type 1) non-discretionary award; therefore it is not subject to the FFATA and executive compensation reporting requirements.

#### Terms/Conditions for FFY 2012 SABG RE Tobacco

1 Guam is required to maintain methodologically sound procedures for the measurement of compliance with the tobacco requirements listed in the application. Although improvement in the following activities is encouraged, all modifications in the conduct of the following activities must be approved by the Substance Abuse and Mental Health Services Administration's Center for Substance Abuse Prevention prior to implementation:

Activities described in Annual Synar Report Appendix B that include: (a) creation of the sampling frame; (b) probability sampling of tobacco outlets that meets the SAMHSA precision requirement of 3 percentage point for the retailer violation rate with respect to a right-sided 95% confidence level.

Activities described in Annual Synar Report Appendix C that include: (a) methods of recruitment and training of adult and youth inspectors, (b) method of verifying age of inspectors, (c) method of accounting for distribution of youth and (d) purchase attempt procedures, and

Synar reporting procedures. These procedures are designed to ensure that violation rates for Guam may be estimated in a valid and stable fashion from year to year.

2) Guam is required to complete all random, unannounced inspections for the annual Synar survey for the Federal Fiscal Year 2013 application by September 30, 2012.

3) Guam is required to use minors 15 years old and older in the conduct of all random, unannounced inspections for the annual Synar survey.

4) Guam is required to maintain a retailer violation rate at 20 percent or below in order to comply with the requirements of section 1925 of the Public Health Services Act.

#### SABG Application Target Rate

FFY 2013	20%
FFY 2014	20%



#### Special Terms of Award

The Territory is in substantial compliance with the reporting provisions of Title XIX, Part B Subpart II and Subpart III of the Public Health Service (PHS) Act (42 U.S.C. 300x-21-66). However, SAMHSA has not made an official determination as to whether the Territory is in compliance with the maintenance of effort (MOE) requirement of the Substance Abuse Prevention and Treatment Block Grant program under section 1930 of Title XIX, Part B, Subpart II of the PHS Act (42 U.S.C. 300x-30), as implemented by regulations codified in 45 C.F.R. 96.134. Although the compliance issue has not been resolved to date, the Territory is being provided with the FY 2012 Notice of Award contingent upon the Territory submitting a request for waiver of the MOE requirement in accordance with section 1930(c) of the PHS Act. The request shall include supporting documentation regarding eligibility for waiver based on extraordinary economic conditions criteria during the applicable TFYs.

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**Attachment No. 009**



SABG

Department of Health and Human Services  
Substance Abuse and Mental Health Services Administration  
Center for Substance Abuse Treatment

Notice of Award

Issue Date: 08/19/2013

Grant Number: 2B08TI010014-12

Contact Person:  
Wilfred Aflague

Program: Substance Abuse Prevention & Treatment Block Grant

GUAM DEPT OF MENTAL HLTH/SUBSTANCE ABUSE  
Wilfred Aflague  
Drug and Alcohol Branch  
790 Governor Carlos G. Camacho Road  
Tamuning, GU 96913

Award Period: 10/01/2012 - 09/30/2014

Dear Grantee:

The Substance Abuse and Mental Health Services Administration hereby awards a grant in the amount of \$880,619 (see "Award Calculation" in Section I) to GUAM DEPT OF MENTAL HLTH/SUBSTANCE ABUSE in support of the above referenced project. This award is pursuant to the authority of Subparts II&III.B, Title XIX, PHS Act/45 CFR Part 96 and is subject to the requirements of this statute and regulation and of other referenced, incorporated or attached terms and conditions.

Acceptance of this award including the "Terms and Conditions" is acknowledged by the grantee when funds are drawn down or otherwise obtained from the grant payment system.

If you have any questions about this award, please contact your Grants Management Specialist and your Government Project Officer listed in your terms and conditions.

Sincerely yours,

Christine L. Chen  
Grants Management Officer  
Division of Grants Management

See additional information below.

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**Website:**

<http://www.hhs.gov/ocr/privacy/hipaa/understanding/coveredentities/contractprov.html>

**Business Associate Contracts****SAMPLE BUSINESS ASSOCIATE AGREEMENT PROVISIONS**

(Published January 25, 2013 by US Dept. of Health and Human Services)

**Introduction**

A "business associate" is a person or entity, other than a member of the workforce of a covered entity, who performs functions or activities on behalf of, or provides certain services to, a covered entity that involve access by the business associate to protected health information. A "business associate" also is a subcontractor that creates, receives, maintains, or transmits protected health information on behalf of another business associate. The HIPAA Rules generally require that covered entities and business associates enter into contracts with their business associates to ensure that the business associates will appropriately safeguard protected health information. The business associate contract also serves to clarify and limit, as appropriate, the permissible uses and disclosures of protected health information by the business associate, based on the relationship between the parties and the activities or services being performed by the business associate. A business associate may use or disclose protected health information only as permitted or required by its business associate contract or as required by law. A business associate is directly liable under the HIPAA Rules and subject to civil and, in some cases, criminal penalties for making uses and disclosures of protected health information that are not authorized by its contract or required by law. A business associate also is directly liable and subject to civil penalties for failing to safeguard electronic protected health information in accordance with the HIPAA Security Rule.

A written contract between a covered entity and a business associate must: (1) establish the permitted and required uses and disclosures of protected health information by the business associate; (2) provide that the business associate will not use or further disclose the information other than as permitted or required by the contract or as required by law; (3) require the business associate to implement appropriate safeguards to prevent unauthorized use or disclosure of the information, including implementing requirements of the HIPAA Security Rule with regard to electronic protected health information; (4) require the business associate to report to the covered entity any use or disclosure of the information not provided for by its contract, including incidents that constitute breaches of unsecured protected health information; (5) require the business associate to disclose protected health information as specified in its contract to satisfy a covered entity's obligation with respect to individuals' requests for copies of their protected health information, as well as make available protected health information for amendments (and incorporate any amendments, if required) and accountings; (6) to the extent the business associate is to carry out a covered entity's obligation under the Privacy Rule, require the business associate to comply with the requirements applicable to the obligation; (7) require the business

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however, the state is required to prepare and submit responses to any program staff requests for revision to the state's SABG reports within the specified timeframe

2-25-14

associate to make available to HHS its internal practices, books, and records relating to the use and disclosure of protected health information received from, or created or received by the business associate on behalf of, the covered entity for purposes of HHS determining the covered entity's compliance with the HIPAA Privacy Rule; (8) at termination of the contract, if feasible, require the business associate to return or destroy all protected health information received from or created or received by the business associate on behalf of, the covered entity; (9) require the business associate to ensure that any subcontractors it may engage on its behalf that will have access to protected health information agree to the same restrictions and conditions that apply to the business associate with respect to such information; and (10) authorize termination of the contract by the covered entity if the business associate violates a material term of the contract. Contracts between business associates and business associates that are subcontractors are subject to these same requirements.

This document includes sample business associate agreement provisions to help covered entities and business associates more easily comply with the business associate contract requirements. While these sample provisions are written for the purposes of the contract between a covered entity and its business associate, the language may be adapted for purposes of the contract between a business associate and subcontractor.

This is only sample language and use of these sample provisions is not required for compliance with the HIPAA Rules. The language may be changed to more accurately reflect business arrangements between a covered entity and business associate or business associate and subcontractor. In addition, these or similar provisions may be incorporated into an agreement for the provision of services between a covered entity and business associate or business associate and subcontractor, or they may be incorporated into a separate business associate agreement. These provisions address only concepts and requirements set forth in the HIPAA Privacy, Security, Breach Notification, and Enforcement Rules, and alone may not be sufficient to result in a binding contract under State law. They do not include many formalities and substantive provisions that may be required or typically included in a valid contract. Reliance on this sample may not be sufficient for compliance with State law, and does not replace consultation with a lawyer or negotiations between the parties to the contract.

### **Sample Business Associate Agreement Provisions**

Words or phrases contained in brackets are intended as either optional language or as instructions to the users of these sample provisions.

#### **Definitions**

##### **Catch-all definition:**

The following terms used in this Agreement shall have the same meaning as those terms in the HIPAA Rules: Breach, Data Aggregation, Designated Record Set, Disclosure, Health Care Operations, Individual, Minimum Necessary, Notice of Privacy Practices, Protected Health Information, Required By Law, Secretary, Security Incident, Subcontractor, Unsecured Protected Health Information, and Use.

### Specific definitions:

- (a) Business Associate. "Business Associate" shall generally have the same meaning as the term "business associate" at 45 CFR 160.103, and in reference to the party to this agreement shall mean [Insert Name of Business Associate]
- (b) Covered Entity. "Covered Entity" shall generally have the same meaning as the term "covered entity" at 45 CFR 160.103, and in reference to the party to this agreement shall mean [Insert Name of Covered Entity].
- (c) HIPAA Rules. "HIPAA Rules" shall mean the Privacy, Security, Breach Notification, and Enforcement Rules at 45 CFR Part 160 and Part 164.

### **Obligations and Activities of Business Associate**

Business Associate agrees to:

- (a) Not use or disclose protected health information other than as permitted or required by the Agreement or as required by law;
- (b) Use appropriate safeguards, and comply with Subpart C of 45 CFR Part 164 with respect to electronic protected health information, to prevent use or disclosure of protected health information other than as provided for by the Agreement;
- (c) Report to covered entity any use or disclosure of protected health information not provided for by the Agreement of which it becomes aware, including breaches of unsecured protected health information as required at 45 CFR 164.410, and any security incident of which it becomes aware;  
  
[The parties may wish to add additional specificity regarding the breach notification obligations of the business associate, such as a stricter timeframe for the business associate to report a potential breach to the covered entity and/or whether the business associate will handle breach notifications to individuals, the HHS Office for Civil Rights (OCR), and potentially the media, on behalf of the covered entity.]
- (d) In accordance with 45 CFR 164.502(e)(1)(iii) and 164.508(b)(2), if applicable, ensure that any subcontractors that create, receive, maintain, or transmit protected health information on behalf of the business associate agree to the same restrictions, conditions, and requirements that apply to the business associate with respect to such information;
- (e) Make available protected health information in a designated record set to the [Choose either "covered entity" or "individual or the individual's designee"] as necessary to satisfy covered entity's obligations under 45 CFR 164.524;

[The parties may wish to add additional specificity regarding how the business associate will respond to a request for access that the business associate receives directly from the individual (such as whether and in what time and manner a business associate is to provide the requested access or whether the business associate will forward the individual's request to the covered entity to fulfill) and the timeframe for the business associate to provide the information to the covered entity.]

(f) Make any amendment(s) to protected health information in a designated record set as directed or agreed to by the covered entity pursuant to 45 CFR 164.526, or take other measures as necessary to satisfy covered entity's obligations under 45 CFR 164.526.

[The parties may wish to add additional specificity regarding how the business associate will respond to a request for amendment that the business associate receives directly from the individual (such as whether and in what time and manner a business associate is to act on the request for amendment or whether the business associate will forward the individual's request to the covered entity) and the timeframe for the business associate to incorporate any amendments to the information in the designated record set.]

(g) Maintain and make available the information required to provide an accounting of disclosures to the [Choose either "covered entity" or "individual"] as necessary to satisfy covered entity's obligations under 45 CFR 164.528:

[The parties may wish to add additional specificity regarding how the business associate will respond to a request for an accounting of disclosures that the business associate receives directly from the individual (such as whether and in what time and manner the business associate is to provide the accounting of disclosures to the individual or whether the business associate will forward the request to the covered entity) and the timeframe for the business associate to provide information to the covered entity.]

(h) To the extent the business associate is to carry out one or more of covered entity's obligation(s) under Subpart E of 45 CFR Part 164, comply with the requirements of Subpart E that apply to the covered entity in the performance of such obligation(s); and

(i) Make its internal practices, books, and records available to the Secretary for purposes of determining compliance with the HIPAA Rules.

### **Permitted Uses and Disclosures by Business Associate**

(a) Business associate may only use or disclose protected health information

[Option 1 – Provide a specific list of permissible purposes.]

[Option 2 – Reference an underlying service agreement, such as "as necessary to perform the services set forth in Service Agreement."]

[In addition to other permissible purposes, the parties should specify whether the business associate is authorized to use protected health information to de-identify the information in accordance with 45 CFR 164.514(a)-(c). The parties also may wish to specify the manner in which the business associate will de-identify the information and the permitted uses and disclosures by the business associate of the de-identified information.]

(b) Business associate may use or disclose protected health information as required by law.

(c) Business associate agrees to make uses and disclosures and requests for protected health information

[Option 1] consistent with covered entity's minimum necessary policies and procedures

[Option 2] subject to the following minimum necessary requirements: [Include specific minimum necessary provisions that are consistent with the covered entity's minimum necessary policies and procedures.]

(d) Business associate may not use or disclose protected health information in a manner that would violate Subpart E of 45 CFR Part 164 if done by covered entity [if the Agreement permits the business associate to use or disclose protected health information for its own management and administration and legal responsibilities or for data aggregation services as set forth in optional provisions (e), (f), or (g) below, then add "except for the specific uses and disclosures set forth below"]

(e) [Optional] Business associate may use protected health information for the proper management and administration of the business associate or to carry out the legal responsibilities of the business associate

(f) [Optional] Business associate may disclose protected health information for the proper management and administration of business associate or to carry out the legal responsibilities of the business associate, provided the disclosures are required by law, or business associate obtains reasonable assurances from the person to whom the information is disclosed that the information will remain confidential and used or further disclosed only as required by law or for the purposes for which it was disclosed to the person, and the person notifies business associate of any instances of which it is aware in which the confidentiality of the information has been breached.

(g) [Optional] Business associate may provide data aggregation services relating to the health care operations of the covered entity.

### **Provisions for Covered Entity to Inform Business Associate of Privacy Practices and Restrictions**

(a) [Optional] Covered entity shall notify business associate of any limitation(s) in the notice of privacy practices of covered entity under 45 CFR 164.520, to the extent that such limitation may affect business associate's use or disclosure of protected health information.



(b) [Optional] Covered entity shall notify business associate of any changes in, or revocation of, the permission by an individual to use or disclose his or her protected health information, to the extent that such changes may affect business associate's use or disclosure of protected health information.

(c) [Optional] Covered entity shall notify business associate of any restriction on the use or disclosure of protected health information that covered entity has agreed to or is required to abide by under 45 CFR 164.522, to the extent that such restriction may affect business associate's use or disclosure of protected health information.

### **Permissible Requests by Covered Entity**

[Optional] Covered entity shall not request business associate to use or disclose protected health information in any manner that would not be permissible under Subpart E of 45 CFR Part 164 if done by covered entity. [Include an exception if the business associate will use or disclose protected health information for, and the agreement includes provisions for data aggregation or management and administration and legal responsibilities of the business associate.]

### **Term and Termination**

(a) Term. The Term of this Agreement shall be effective as of [Insert effective date], and shall terminate on [Insert termination date or event] or on the date covered entity terminates for cause as authorized in paragraph (b) of this Section, whichever is sooner.

(b) Termination for Cause. Business associate authorizes termination of this Agreement by covered entity, if covered entity determines business associate has violated a material term of the Agreement [and business associate has not cured the breach or ended the violation within the time specified by covered entity]. [Bracketed language may be added if the covered entity wishes to provide the business associate with an opportunity to cure a violation or breach of the contract before termination for cause.]

#### (c) Obligations of Business Associate Upon Termination

[Option 1 – if the business associate is to return or destroy all protected health information upon termination of the agreement]

Upon termination of this Agreement for any reason, business associate shall return to covered entity [or, if agreed to by covered entity, destroy] all protected health information received from covered entity, or created, maintained, or received by business associate on behalf of covered entity, that the business associate still maintains in any form. Business associate shall retain no copies of the protected health information.

[Option 2—if the agreement authorizes the business associate to use or disclose protected health information for its own management and administration or to carry out its legal responsibilities and the business associate needs to retain protected health information for such purposes after termination of the agreement]

Upon termination of this Agreement for any reason, business associate, with respect to protected health information received from covered entity, or created, maintained, or received by business associate on behalf of covered entity, shall

- 1 Retain only that protected health information which is necessary for business associate to continue its proper management and administration or to carry out its legal responsibilities.
- 2 Return to covered entity [or, if agreed to by covered entity, destroy] the remaining protected health information that the business associate still maintains in any form:
- 3 Continue to use appropriate safeguards and comply with Subpart C of 45 CFR Part 164 with respect to electronic protected health information to prevent use or disclosure of the protected health information, other than as provided for in this Section, for as long as business associate retains the protected health information.
- 4 Not use or disclose the protected health information retained by business associate other than for the purposes for which such protected health information was retained and subject to the same conditions set out at [Insert section number related to paragraphs (e) and (f) above under "Permitted Uses and Disclosures By Business Associate"] which applied prior to termination; and
- 5 Return to covered entity [or, if agreed to by covered entity, destroy] the protected health information retained by business associate when it is no longer needed by business associate for its proper management and administration or to carry out its legal responsibilities

[The agreement also could provide that the business associate will transmit the protected health information to another business associate of the covered entity at termination, and/or could add terms regarding a business associate's obligations to obtain or ensure the destruction of protected health information created, received, or maintained by subcontractors.]

(d) Survival The obligations of business associate under this Section shall survive the termination of this Agreement

#### **Miscellaneous [Optional]**

(a) [Optional] Regulatory References. A reference in this Agreement to a section in the HIPAA Rules means the section as in effect or as amended.

(b) [Optional] Amendment. The Parties agree to take such action as is necessary to amend this Agreement from time to time as is necessary for compliance with the requirements of the HIPAA Rules and any other applicable law.

(c) [Optional] Interpretation Any ambiguity in this Agreement shall be interpreted to permit compliance with the HIPAA Rules

**Acknowledgement of Receipt of Sample Business Associates Agreement Provisions  
(Published January 25, 2013 by Department of Health and Human Services).**

The undersigned certifies it has received a copy and agrees to its terms if applicable to the offeror or 3<sup>rd</sup> party engagement(s).

Robert J. Zimmerman Executive Director

Printed Name and Title of Official



Signature of Official Authorized

Date February 13, 2014

Attachment No. 010