

April 10, 2017

**BOARD OF COUNTY COMMISSIONERS
ORANGE COUNTY, FLORIDA**

RFP #Y17-1018-DG

**HEALTH AND SUPPORT SERVICES FOR PERSONS WITH HIV SPECTRUM
DISEASE – RYAN WHITE PART A**

ADDENDUM NO. 1

This addendum is hereby incorporated into the bid documents of the solicitation referenced above. The following items are clarifications to the original document.

1. The Orange County Board of County Commissioners, Orange County, Florida, invites interested parties to submit proposals no later than 2:00 PM, Thursday, ~~April 20, 2017~~ **April 27, 2017**, for providing health and support services for persons with HIV Spectrum Disease to the Board of County Commissioners.

2. Replace Attachment A – Sample Contract with revised Attachment A – Sample Contract attached.

3. Addition of Attachment G – Federal Code 45 CFR 75.365 – Restriction of Public Access to Records

4. **QUESTION:** How many references do we need to provide on the “Table of References to any contracts held” form?

ANSWER: There’s no established number but you should list a contact for contracts held.

5. **QUESTION:** For the list of Board members, we are asked to provide the age of each member. Because of privacy concerns, will you accept an age range for each member, such as 25-30, 31-35, etc.?

ANSWER: Yes.

6. **QUESTION:** Is it understood correctly that if awarded, the funds will be backdated to March 1, 2017?

ANSWER: No, the funds will be awarded from the date the contract is executed.

7. **QUESTION:** We are asked to provide Part 1 and Part 2 files on USB also. Do we submit one USB drive with both parts on it? Or do we submit two USB drives, one with Part 1 on it and another with Part 2 on it?

ANSWER: One USB drive with both parts on it is acceptable.

8. **QUESTION:** On page 6 of the RFP, the Proposal Title Pages are referred to as Attachment D.
- ANSWER:** Per page ii of the Table of Contents, this should read “Attachment C – Proposal Title Page(s).”
9. **QUESTION:** When is the anticipated award posting date?
- ANSWER:** May 10, 2017
10. **QUESTION:** How many awards are anticipated to be awarded?
- ANSWER:** There’s no cap on the number of awards that will be issued.
11. **QUESTION:** Is there a maximum amount an organization can request in the application?
- ANSWER:** There is not a maximum amount per organization. This is a cost reimbursement contract, so even if an agency is awarded a contract, they will be paid based on the amount of services performed. Amount requested should be based on anticipated number of services the agency is able to deliver.
12. **QUESTION:** We are provided with forms F101 and F102. We see language that states these are to be submitted once contract is issued. Are we to use these forms to submit the proposed budget for this RFP or will you be providing other budget templates?
- ANSWER:** The agency must use these forms for their estimated budget for requested funds. Once the agency is awarded the funds, they will need to resubmit the budget based on actual awarded amount.
13. **QUESTION:** Would the Business Associate Agreement be applicable for Department of Health since it is a covered entity and so is exempt from signing per 45 CFR 164.502(e)?
- ANSWER:** Yes, all agencies must submit the Business Associate Agreement.
14. **QUESTION:** What are the insurance requirements for the Department of Health?
- ANSWER:** In the event the Agency is a State department or division, or a political subdivision of the State of Florida, indemnification shall follow the provisions of Section 768.28, Florida Statutes per revised contract.
15. **QUESTION:** The Florida Department of Health has an approved indirect cost rate agreement (federal) stating that we can use 24.86% of total salary + fringe. Can we submit a budget using our approved indirect cost rate?
- ANSWER:** Ryan White Grant caps the administrative cost to 10% of awarded amount.

16. **QUESTION:** Page 17, Item H, Training (Part 1) – where are the requirements for the Special Term and Condition entitled “Training Plan” in the RFP?
- ANSWER:** Agency Training shall meet at least the topics listed in the attached Training Plan (Attachment F). If the Agency offers additional trainings, the topics and frequency shall be listed in the bottom of the Training Plan provided.
17. **QUESTION:** Page 20, Item 5, Training (Part 2) – is there a page limit for this question? Training is also included in Part 1.
- ANSWER:** There is no page limit for Training (Part 2).
18. **QUESTION:** Page 22, Items l, m, and n – Part 2, Service Delivery Model Questions – are new. Can we have up to two (2) extra pages to address these items? Increase page limit from 7 to 9 pages for the Service Delivery Model section?
- ANSWER:** No, answers shall be limited to the page limit listed in the RFP.
19. **QUESTION:** Previous RFP’s had the employment data form, but it’s not included with this RFP. Is it not needed anymore?
- ANSWER:** No, employment data form is no longer required.
20. **QUESTION:** Page 22, Item N – Quality Management Funds – where should costs be included in the budget forms? What type of costs does this cover?
- ANSWER:** Quality funds may be available to assist their clinical quality management program (CQM). The amount requested for these funds should not be included in the overall budget requested but should be listed in the budget form with a note indicating it is part of the CQM program. For example, if funds are requested to cover a position, the position and salary/benefits amount should be listed in Form 102 with a clear note stating it will part of the CQM program in the brief job description column.
21. **QUESTION:** Page 23, Item 5, Budget Questions, Item A – we complete only forms F101 and F102 correct? Does this meet the requirements for budget narrative justification?
- ANSWER:** Yes, Forms F101 and F102 are the only budget forms required. A budget narrative justification is not required.
22. **QUESTION:** Question states that “A total dollar amount for indirect/administrative charges without a detailed breakdown on the budget form will not be accepted.” Is this still applicable? If not, where should the detailed breakdown be provided?
- ANSWER:** No, this is no longer applicable. Indirect/administrative charges no longer need to be detailed. They are limited to 10% of the awarded amount.

23. **QUESTION:** Page 24b – where should the detailed description of how unit costs are determined be provided in the budget? Bottom of one of the forms? If so, which one?

ANSWER: 24b is no longer required.

24. **QUESTION:** Page 24c – what is the maximum allowable rate? Did not see this under Scope of Services Billing Medical.

ANSWER: 24c is no longer required.

25. **QUESTION:** Page 36 – please explain Billing Services Cost - \$89,000 \$44,550 per position.

ANSWER: The Billing Services – Cost Reimbursement (Page 36) relates to the clinical quality management (CQM) program that may be funded as indicated in Page 22 of RFP. The dollar amount allocated will be based on the budget submitted and approved.

VII. A) Billing Requirements 3) 1. Shall be modified and read:

This will be a cost reimbursement contract for clinical quality management (CQM) programs approved by the Recipient. The recipient will pay the agency for all costs incurred, more specifically as described below, in accordance with the terms and conditions of the contract for a total dollar amount not to exceed **\$(insert amount)**.

26. **QUESTION:** Work Plan attachment – what are the performance measures established by the Ryan White Part A program that the Quality Management Plan should address? Is there a website that can provide a list of these measures?

ANSWER: Ryan White Part A uses the HIV/AIDS Bureau Performance core measures: HIV Viral Load Suppression, Prescription of HIV Antiretroviral Therapy, HIV Medical Visit Frequency, Gap in HIV Medical Visits and Pneumocystis jiroveci Pneumonia (PCP) Prophylaxis. For more details on the measures, please visit <https://hab.hrsa.gov/sites/default/files/hab/About/clinical-quality-management/coremeasures.pdf>

If the agency's quality plan measures additional outcomes as part of their plan, they should be listed in the Work Plan.

27. **QUESTION:** What are the anticipated available funds for each category:

ANSWER: Outpatient Ambulatory Health Services (OAHS) - \$1,474,545.00
Minority AIDS Initiative (MAI) - \$455,250.00
Total grant award - \$1,929,795.00

All other terms and conditions remain unchanged.

ACKNOWLEDGEMENT OF ADDENDA

- a. The bidder shall acknowledge receipt of this addendum by completing the applicable section in the solicitation or by completion of the acknowledgement information on the addendum. Either form of acknowledgement must be completed and returned not later than the date and time for receipt of the proposal.

- b. Receipt acknowledged by:

Authorized Signer

Date Signed

Title

Name of Bidder

ATTACHMENT A

CONTRACT #Y17-1018-DG

THIS CONTRACT (hereinafter “Contract”) is made and entered into this ___ day of _____, 20____, by and between Orange County, Florida, a charter county and political subdivision of the State of Florida (hereinafter “County” or “Recipient”) whose address is 201 South Rosalind Avenue, Orlando, Florida 32801 and (**Insert name of Agency**) a qualified not-for-profit (**enter type of entity**), registered under the laws of the State of Florida whose address is (**insert address**) (hereinafter “Agency”).

RECITALS

WHEREAS, the Ryan White HIV/AIDS Treatment Extension Act of 2009, amending the Ryan White HIV/AIDS Treatment Modernization Act of 2006, (hereinafter the “Ryan White Program”) was created to provide life-saving care for those individuals who have been diagnosed with HIV/AIDS; and

WHEREAS, the County has been designated as a Recipient for the Health Resources and Services Administration (hereinafter “HRSA”) for the Orlando Eligible Metropolitan Area (hereinafter the “Orlando EMA”); and

WHEREAS, the County is authorized to purchase certain life-saving care services for eligible individuals living with HIV/AIDS located within the Orlando EMA (hereinafter referred to as “Consumer”) through grant money received under the Ryan White Program (hereinafter “Grant”); and

WHEREAS, Grant funds (hereinafter referred to as “Grant Funds” or “Funds”) may be used for the provision of core and support HIV/AIDS services for eligible Consumers (hereinafter referred to as “Services”); and

WHEREAS, the County has designated its Ryan White Part A Program to serve as its authorized designee (hereinafter referred to as “Recipient”) in overseeing and managing the procurement of these Services associated with the Grant; and

WHEREAS, the Agency has experience in the provision of the Services contemplated herein; and

WHEREAS, the Recipient has determined the Agency’s proposed Services to be essential in fulfilling the County’s Grant obligations and desires to enter into a contract with the Agency for such Services.

NOW, THEREFORE, in consideration of the mutual covenants and conditions set forth herein, the sufficiency of which is hereby acknowledged, the parties agree as follows:

ARTICLE I

Section 1. **Recitals.** The above recitals are true and correct and are hereby incorporated as a material part of this Contract by reference.

ARTICLE II

SERVICES

Section 1. **Service Performance.** All Services provided by the Agency shall be performed in a diligent, safe, courteous, and timely manner in accordance with this Contract and the Associated federal requirements.

Section 2. **Scope of Service.** The Agency shall provide those services described in Scope of Services, attached hereto and incorporated by this reference as **Attachment “A.”**

Section 3. **Orlando EMA Service Area.** Unless otherwise specified by the Recipient, the Agency shall render Services within the Orlando EMA which shall include Orange County, Osceola County, Seminole County, and Lake County, Florida.

Section 4. **Service Providers.** The Agency shall make available the personnel identified in its approved work plan(s), as described in Article III, Section 7 of this Contract, (hereinafter referred to as “Service Providers”), barring illness, accident or other unforeseeable events. The Agency shall provide optimal continuity of care to each Consumer by assuring that such personnel administer Services whenever possible. Should it be necessary for the Service Provider to be changed, the Agency shall ensure that the Consumer receives a qualified replacement and shall make every reasonable effort to notify the Consumer of such change by providing the name and contact information of the new Service Provider, as soon as may be practicable.

Within fifteen (15) calendar days of any vacancy or change in the Agency’s Ryan White Part A funded staff, the Agency shall also be responsible for providing written notification to the Recipient which shall include any plans to fill such vacancies and a proposed time line.

ARTICLE III

AGENCY OBLIGATIONS

Section 1. **Incorporation.** Unless otherwise approved by the Recipient, the Agency shall be and remain for the term of this Contract, and any extension thereafter, a private not-for-profit entity and shall provide evidence of such by furnishing its Internal Revenue Service

501(c)(3) and the State of Florida not-for-profit status documentation as part of the proposal and as may otherwise be requested by the Recipient.

Section 2. **Contract Liaison.** The Agency shall designate a contract liaison, which shall be identified in writing in its submitted Work Plan, to monitor the Agency's performance of the provisions set forth in this Contract (hereinafter referred to as "Contract Liaison"). The Agency shall ensure that the Contract Liaison will be available to meet with the Recipient's staff to review activities on an "as needed" basis, or as otherwise requested by the Recipient. Should there be any change in the Agency's Contract Liaison, the Recipient shall be promptly notified of such change in writing in accordance with Article XVI, Section 2 of this Contract.

Section 3. **Medicaid Certification.** The Agency shall possess Medicaid certification in order to provide any Medicaid-covered services. Funds received under this Contract may not be used to pay for Medicaid covered services for Consumers who are Medicaid beneficiaries.

Section 4. **Evaluation and Research.** The Agency agrees to participate in research, evaluation studies, or needs assessments sponsored by the Recipient, the Health Resources & Services Administration ("HRSA"), or the HIV/AIDS Health Services Planning Council (hereinafter referred to as "Planning Council") in order to evaluate the effect of Consumer service activities, or on the appropriateness and quality of Services. In addition, the Agency agrees to actively participate in on-going meetings or task forces aimed to increase, enhance, and maintain coordination and collaboration among HIV/AIDS related health and support agencies. The Agency shall notify the Recipient in advance of any research or studies being conducted or participated in by the Agency that may involve any Consumers receiving Ryan White Part A funded services or Services under this Contract.

Section 5. **Grievance Procedures.** The Agency shall establish internal grievance procedures and shall cooperate with the Recipient's office in addressing all complaints and/or problems identified by Consumers and/or other Service providers. The Agency's internal grievance procedures shall include, at a minimum, the following: (i) written notification to the Recipient's office at the time a Consumer's grievance is received; (ii) the opportunity for the grievant to meet with the Agency's Executive Director, board member(s), or other Agency designee; and (iii) on-site availability of the Orlando EMA Consumer Grievance Policies and Procedures along with associated forms. The Agency shall ensure that the grievance policy is posted in plain sight and copies made available to Consumers upon request.

Section 6. **Planning Council Notices.** The Agency is required to post notices related to any Consumer services provided by the Recipient regarding HIV/AIDS Health Services Planning Council and Orange County Ryan White Part A activities.

Section 7. **Program Implementation and Work Plan.** The Agency is required to submit a detailed work plan ("Work Plan"). The Work Plan, along with any other necessary

attachments reflecting a target start date for Services, shall be submitted no more than thirty (30) calendar days after receipt of written notice of the Contract award. The Work Plan shall include a cover sheet and a narrative describing goals, objectives, activities, and responsible staff personnel (name and percent of time to be dedicated to Part A activities). The Agency shall notify the Recipient, in writing, of any proposed deviations from the approved Work Plan which shall require prior Recipient written approval.

Section 8. **Property Accounting.** The Agency shall keep a written inventory, which shall be readily available upon inspection by the Recipient or its designee, of all equipment valued at Five-Hundred Dollars (\$500.00) or more purchased with Ryan White Part A Grant Funds. The Agency must seek and gain Recipient approval prior to the purchase of any equipment valued at an amount greater than Five-Hundred Dollars (\$500.00). The Agency further agrees to protect, insure, and maintain such equipment for its useful life. Such equipment shall be deemed as property of the Recipient and shall not be sole, leased, lent, encumbered, or in any other way disposed of by the Agency without Recipient's prior written approval. Upon termination of this Contract, the Agency shall return all equipment, purchased with Ryan White Part A Grant Funds, to the Recipient unless directed by the Recipient otherwise.

Section 9. **Standard Forms.** The Agency shall incorporate all standard forms developed and distributed by the Recipient into its policies and procedures. Alternative forms may be used only upon the prior written approval of the Recipient.

Section 10. **Continuous Service.** In accordance with Article VIII, the Agency shall be obligated to budget its funds to allow for continuous service throughout the entire term of this Contract. Failure by the Agency to provide continuous service and proper documentation of services may be grounds for termination of this Contract and may result in the denial of participation for any contract funding under the Ryan White Part A Grant during the next grant cycle. The Agency is encouraged to meet regularly with the Recipient throughout the term of this Contract to advise of budget status and any changes in budget expectations.

Section 11. **Service Schedule.** The Agency shall provide Services in accordance with the times and days of the week set forth in the Scope of Service (**Attachment "A"**), unless otherwise approved by the Recipient in writing. In addition, a method for providing 24-hour on-call access shall be published and made accessible to the Consumers and other Service providers.

Section 12. **Licenses and Permits.** The Agency shall possess and maintain, throughout the term of this Contract, all applicable licenses and permits for its operations in accordance with federal, State, and local laws and regulations.

Section 13. **Employees.**

- a) The Agency shall require all licensed professionals to have appropriate training and experience in the field in which he/she practices and to possess all required licenses and occupational licenses in accordance with Florida State laws. The Agency shall ensure that all such required licenses and occupational license remain current and in good standing for the duration of this Contract including any extensions.
- b) The Agency shall ensure that its employees abide by and comply with the Health Insurance Portability and Accountability Act (“HIPAA”), State and federal laws and local regulations, as well as all ethical standards consistent with those established in that profession.
- c) The Agency’s policies and procedures shall include a mechanism by which the Agency shall take appropriate progressive disciplinary actions for Agency staff members found to have violated such policies and procedures, any HIPAA provisions, or State or federal laws or regulations.
- d) The Agency shall maintain records of employees by job classification, name, date(s) of employment, ethnicity, gender, and age. Such records shall be maintained in accordance with Article IV of this Contract.
- e) The Agency shall train their staff and establish a written training plan for all staff and volunteers to ensure proper training in HIPAA and HIV/AIDS services and resources. A copy of the Agency’s HIPAA regulations shall be provided to each employee and volunteer with written acknowledgement of receiving such regulations.
- f) The Agency shall ensure that all staff and volunteers have sufficient education, knowledge, skills, and experience to competently serve the drug abuse population.
- g) All new employees and volunteers shall undergo initial orientation and training and shall sign a confidentiality pledge acknowledging their awareness and understanding of such HIPAA and other federal and State laws, regulations, and policies.
- h) The Agency shall ensure that all staff and volunteers participate in ongoing annual training which shall include, at a minimum, confidentiality/HIPAA, age and cultural competency, community and social support resources, community HIV/AIDS resources, risk management, process improvement, customer services, ethics, HIV disease information updates, and an update of Ryan White Part A continuum of care and funded services.

- i) Training plans shall list all topics for training and the total hours of staff time devoted to staff development during each grant term. Plans shall be updated as appropriate and submitted to the Recipient's office in accordance with Article XII, of this Contract.

ARTICLE IV

RECORDS AND CONFIDENTIALITY

Section 1. Records Management.

- a) The Agency shall safely store and retain all records including, but not limited to, Consumer's records, medical records, files, reports, prescriptions, plans, bills, invoices, or other Consumer's records of any type created by the Agency, its employees, or contractors pertaining to this Contract and the associated Consumers according to HIPAA requirements; the requirements set forth in the Federal Code 45 CFR §75.365 ("Restriction on Public Access to Records")(Attachment "B"); other applicable federal and State laws; and HRSA and Public Health Standard (hereinafter "PHS") requirements. Records shall be complete and accurate for each Consumer receiving Services under this Contract as required by HIPAA regulations, federal and State law, regulations, and/or the prevailing standards of medical care including the applicable Medicaid and Medicare Provider Manuals. Additionally, records shall not be destroyed without providing prior written notification to the Recipient or its designee.
- b) All records maintained by the Agency including, but not limited to, Consumer records, Agency account records, financial records, program records, and other such records associated with its operations, shall be kept in an organized and orderly manner and in a format acceptable to the Recipient.
- c) The Agency shall make all such records available to the Recipient for inspection during normal working hours for a period of up to five (5) years after the termination of this Contract. In the event of litigation, claim, or audit prior to the end of the five (5) year period, records shall be maintained by the Agency until such time as the litigation, claims, or audit findings involving such records has been resolved. The federal awarding agency, Inspectors General, the Comptroller General of the United States, the Recipient, or its duly authorized agents, shall have full access and the right to examine any such records including, but not limited to, any documents, papers, or other records pertinent to the federal award during that time period in order to make audits, examinations, excerpts, and transcripts. Access to Agency records, as

described in this Article and otherwise required in this Contract, shall be in accordance with the requirements set forth in the Federal Code 45 CFR §75.361 (“Retention Requirements for Records”) and any other applicable sections set forth in 45 CFR §75 (hereinafter collectively referred to as the “Uniform Administrative Requirements, Cost Principles and Audit Requirements for HHS Awards”), a copy of which is attached hereto and incorporated by this reference as **Attachment “B.”**

- d) Original or certified copies of records shall be provided to the Recipient upon its request. Failure to comply with such request on a timely basis shall constitute a breach of this Contract which may result in termination.
- e) Requests for copies of records from a Consumer (or their legal representative) shall be handled in accordance with applicable HIPAA regulations, federal and State laws and shall be in writing, including the signature of the requesting party, and shall be released within ten (10) business days from the receipt of such Consumer’s request by the Agency.
- f) The Agency shall comply with HIPAA and Florida’s “Public Records Law” as set forth in the Florida Statutes and as more specifically set forth in this Article.
- g) In the event of any conflict between the provisions of this Article and the Federal Code 45 CFR §75 Uniform Administrative Requirements (**Attachment “B”**), the Federal Code shall take precedence. All records relating to this Contract shall be retained in accordance with the requirements set forth in the Florida State record retention schedule.

Section 2. **Requirements for Personal Information Protection.**

- a) In accordance with Chapter 501, Florida Statutes, the Agency shall take reasonable measures to protect and secure data in electronic form containing Consumer personal information.
- b) Consumer personal information shall mean an individual’s initials, first name or first initial and last name in combination with the following:
 - 1) A social security number;
 - 2) A driver’s license or identification card number, passport number, military identification number, or other similar number issued on a government document used to verify identity;

- 3) A financial account number or credit or debit card number in combination with any required security code, access code, or password that is necessary to permit access to an individual's financial account;
 - 4) Any information regarding an individual's medical history, mental or physical condition, or medical treatment or diagnosis by a health care professional;
 - 5) An individual's health insurance policy number or subscriber identification number and any unique identifier used by a health insurer to identify the individual; or
 - 6) Any other identifier, as referenced in the Department of Health and Human Services "Safe Harbor Standards."
- c) Personal information shall also include a user name or e-mail address, in combination with a password or security question and answer that would permit access to an online account.
- d) The Agency shall take reasonable measures to protect and secure data in electronic form containing the personal information, identified in this Section (collectively hereinafter referred to as "Personal Information"), that the Agency has been contracted to maintain, store, or process on behalf of the County or Recipient.
- e) The Agency shall provide notice to the County as expeditiously as possible, but no later than ten (10) days following the determination of the breach, or reasonable suspicion of a breach, of any system containing data in electronic form that the Agency has been contracted to maintain, store or process on behalf of the County. Breach shall mean any unauthorized access of data in electronic form regardless of its source.
- f) Notice of any such breach to the County shall include the following:
- 1) A synopsis of the events surrounding the breach including the date(s) or date range of the breach of security;
 - 2) The number of individuals who were or potentially have been affected by the breach;
 - 3) A description of the Personal Information that was accessed or reasonably believed to have been accessed as part of the breach of security;

- 4) The name, address, telephone number, and e-mail address of the employee, agent, contractor, or business associate from whom additional information may be obtained concerning the breach; and
- 5) Any additional information requested by the County.

Section 3. **Confidentiality.**

- a) As part of the Recipient's requirements for HIPAA compliance, the Agency shall execute the Orlando EMA-Ryan White Part A Business Associate Agreement (hereinafter "BA Agreement") a copy of which is attached hereto and incorporated into this Contract by this reference as "**Attachment C.**"
- b) The Agency shall establish and implement policies and procedures that shall ensure compliance with all State and federal laws and regulations for the protection of confidential Consumer records and electronic exchange of confidential information. Established policies and procedures relating to the creation and storage of all records shall comply with HIPAA Private and Security Rules, regulations set forth by Centers for Medicare and Medicaid Services (CMS), the Agency for Health Care Administration (AHCA), the Florida Department of Health (DOH), and applicable federal and State laws and local regulations. Such security statements shall include, but not be limited to, the following:
 - 1) Areas in which Consumer contact occurs, the Agency must allow for exchange of personal health or medical information (personal health or medical information hereinafter collectively referred to as "PHI") in a private and confidential manner;
 - 2) Documentation signed and dated by the Consumer acknowledging that the Consumer has been fully informed of his/her HIPAA rights to confidentiality;
 - 3) The existence of a controlled and secured area for storing and maintaining active and inactive Consumer files and medical records in accordance with HIPAA requirements;
 - 4) That Consumer records are handled and not removed from the Agency's premises, unless done so in accordance with the law;
 - 5) Access to Consumer records is restricted to authorized personnel of the Agency or the Recipient and business associates with whom there is a fully executed and current BA Agreement on file;

- 6) Retention of the original or a certified copy of the Consumer's records by the Agency;
- 7) Consumer's medical records are not to be left unattended in areas accessible to unauthorized individuals;
- 8) Access to electronic data is strictly controlled;
- 9) Consumer's medical records and or other PHI are released only upon receipt of written authorization that has been signed by the Consumer or their legal representative;
- 10) Requests by Consumers to review their personal files, including medical records, is honored in a timely fashion and such review is performed in the presence of an authorized Agency staff member;
- 11) Signed acknowledgments by new employees that they are aware of and understand HIPAA and other confidentiality laws, regulations, and policies (hereinafter "Confidentiality Agreement") a copy of which shall be in the respective employee file and available to the Recipient upon request;
- 12) Establishment of security policies and procedures limiting access to confidential modem numbers, passwords, electronic files, and medical records relating to Ryan White Part A;
- 13) The development and implementation of HIPAA policies and procedures addressing Consumer file and medical record identification, copying and faxing, filing methods, storage, retrieval, organization and maintenance, access and security, confidentiality, retention, and release of information; and
- 14) When applicable, ensuring compliance by the Agency, its staff members, and Service providers with all HIPAA laws and HRSA regulations.

Section 4. Public Records Compliance Requirements.

- a.) Agency shall comply with Florida State public records law and shall maintain all public records required by the Recipient for services performed under this Contract.
- b.) Upon request from the Recipient or the Program Administrator, Agency shall provide copies of the requested records or allow the records to be inspected

or copied within a reasonable time, at a cost that does not exceed the cost provided by the Florida Statutes.

c.) Agency shall ensure that all records which are exempt or confidential, and exempt from public records disclosure requirements, are not disclosed except as authorized by law for the duration of this Contract and following completion of this Contract if Agency does not transfer the records back to the County.

d.) In the event Agency fails to comply with the public records law requirements, Agency may be subject to penalties under Section 119.10, Florida Statutes.

e.) **IF AGENCY HAS QUESTIONS REGARDING THE APPLICATION OF CHAPTER 119, FLORIDA STATUTES, AS TO AGENCY'S DUTY TO PROVIDE PUBLIC RECORDS RELATING TO THIS CONTRACT, AGENCY SHALL CONTACT THE COUNTY'S CUSTODIAN OF PUBLIC RECORDS AT:**

**Procurement Public Records Liaison
400 E. South Street, 2nd Floor, Orlando, FL 32801
ProcurementRecords@ocfl.net, 407-836-5897**

ARTICLE V

COMPUTER REQUIREMENTS

Section 1. Based upon funding, and at the sole discretion of the Recipient, the Agency may be provided with the appropriate number of licenses for authorized registered users allowing access to the Recipient approved electronic data management system ("EDMS") database which is the official repository of data related to the Ryan White Part A program. Should such funding be exhausted or otherwise limited to prevent or otherwise limit the number of user identifications to be provided, the Recipient shall determine, in its sole discretion, the number of user identifications provided to the Agency who shall maintain accurate documentation relating to such user identifications. The Agency shall sign Recipient's tracking forms for all user identifications received.

Section 2. The Agency shall utilize the EDMS system and/or any other software, as designated by the Recipient, in the maintaining of all records and submission of reports relating to this Contract.

Section 3. The Agency agrees to comply with the terms and conditions set forth herein, as well as those described in the BA Agreement (**Attachment "C"**).

Section 4. The Agency shall designate individuals to serve as Registered Users and provide the Recipient with the names of such individuals. A Registered User is an individual who is an employee of the Agency and who is designated by the Agency and agreed to by the Recipient. This term shall not include volunteers, as they shall not have access to the Recipient's EDMS system. Designated Registered Users shall require Recipient approval prior to using the shared server. Registered Users shall comply with all data entry conventions established for the EDMS system.

Section 5. Registered Users shall complete a User Agreement, the original of which shall be submitted to the Recipient and a copy retained in the respective employee file. Registered Users shall not have access to the EDMS system until the executed User Agreement has been received and approved by the Recipient.

Section 6. The Agency acknowledges and agrees that each authorized user name and password for the EDMS system, pursuant to this Contract, shall be used solely by the individual to whom it was assigned. Under no circumstances shall the Agency approve or otherwise permit such licenses, user names, and/or passwords to be used or shared by or between individuals. Any such sharing or unauthorized transferring of such licenses, user name, and/or passwords or the use thereof shall constitute a breach of this Contract and may result in termination.

Section 7. No agent or employee of the Agency shall be permitted access to the shared server without having duly executed a Confidentiality Agreement, a copy of which shall be retained on-site by the Agency.

Section 8. The Agency shall notify the Recipient, in writing, at least five (5) business days prior to any Registered User's final day of employment. If termination is unexpected, the Recipient shall be provided with immediate written notification.

Section 9. The Agency shall inform the Recipient, in writing, of any misuse by a Registered User of the EDMS, as well as if a Registered User should change positions with the Agency resulting in a discontinued need for access to the system.

Section 10. The Agency shall inform the Recipient, in writing, of any new hire within one (1) week of the first day of employment to ensure the employee receives the appropriate Registered User status.

Section 11. The Agency acknowledges and agrees that any Recipient notification associated with this Article shall be made in accordance with Article XVI, Section 2 of this Contract.

Section 12. Agency acknowledges and agrees that the Agency and Registered Users shall be jointly and severally liable for any misuse of the EDMS system.

Section 13. Internet Requirements

- a) The Agency shall have a functional computer system with Internet browser (Explorer 6.0 or greater) which is adequate to operate the Recipient's approved EDMS.
- b) The Agency shall obtain and maintain high-speed internet access and a corporate e-mail account, with the capacity to transit attachments and data files, as required by the County. The Agency shall be solely responsible for any cost incurred relating to the Internet connection, including phone/data lines and associated monthly service.

ARTICLE VI

CONSUMER ELIGIBILITY AND FEES

Section 1. Screening for Eligibility.

- a) The Agency shall make all necessary efforts to ensure that Consumers are appropriately screened for eligibility under all other pertinent benefits programs. Funds from Ryan White Part A must be used as a last resort in the payment for Consumer Services. The Agency shall have established policies and procedures for seeking to obtain other funding sources for all Consumers served and for documenting such efforts. The Agency shall ensure that all Consumers are screened for other payer sources including, but not limited to, Medicaid, Medicare, or other available public or private programs.
- b) Individuals shall be screened for the Ryan White Part A Program prior to being designated as a Consumer by the Agency. Such screening shall include, but not limited to, the following information which must be in the Consumer's record.
 - 1) The individual shall have a legal address located within Orange County, Osceola County, Seminole County, or Lake County, Florida.
 - 2) The individual must be documented as being HIV+ through the following:
 - i) A positive Western Blot;
 - ii) A positive HIV viral test such as PCR or P24 antigen;
 - iii) A detectable HIV viral load; or
 - iv) An anonymous HIV positive test with a waiver of anonymity which has been signed and witnessed.

- v) Genotype lab results.
- 3) Verification of income as specified in the County's Eligibility Policies and Procedures and as set forth in the Request for Proposal.
- c) Copies of eligibility documentation (residency status, medical, and income verifications) shall be kept by the Agency on-site in the Consumer's file and entered into EDMS with copies made available to the Recipient upon request.

Section 2. **Fees.**

- a) Consumers shall be screened and determined to be financially eligible to receive Service(s) and, if applicable, may be assessed fees based on the federal poverty guidelines, maximum allowable charges as established by The Ryan White HIV/AIDS Treatment Modernization Act (Section 2605(e)), the Orlando EMA eligibility standards, and the current Recipient's sliding fee schedule (hereinafter "Fee Schedule").
- b) Fees assessed to each Consumer, if any, shall be documented in the respective Consumer's file and entered into the EDMS with copies maintained on-site by the Agency.
- c) In the event that the Agency institutes other Consumer charges, the Agency shall base such charges by use of the current federal poverty guidelines and maximum allowable charges, as shown in the Fee Schedule.
- d) All Consumer payments collected by the Agency shall be deemed as program income and shall be documented in the Consumer's record and reported in the EDMS system and handled in accordance with 45 CFR§ 92.25(g)(1) and 45 CFR §74.24(b)(3), as more specifically described herein.

ARTICLE VII

CIVIL RIGHTS

Section 1. There shall be no discrimination against any employee, Consumer, or person served on account of race, color, sex, age, religion, ancestry, national origin, handicap, or marital status in the performance of this Contract.

Section 2. It is expressly understood that, upon receipt of evidence of such discrimination, the Recipient shall have the right to terminate this Contract for breach of contract, in accordance with Article X herein.

Section 3. The Agency shall comply with Title VI of the Civil Rights Act of 1964 (42 USC 2000d) in regard to persons served under this Contract.

Section 4. The Agency shall comply with Title VII of the Civil Rights Act of 1964 (42 USC 2000e) in regard to employees or applicants for employment.

Section 5. The Agency shall comply with Section 504 of the Rehabilitation Act of 1973 in regard to employees or applicants for employment and individuals served.

ARTICLE VIII

FUNDING AND BUDGET REQUIREMENTS

Section 1. **Funding.**

- a) Funds are received under the HIV Emergency Relief Grant, CFDA 93.914, for this Contract and shall be utilized as a payor of last resort and be used to supplement, not supplant, state and local HIV/AIDS related funding or in-kind resources made available in the year for which this Contract is awarded to provide HIV/AIDS related services to persons living with HIV/AIDS. The Agency shall comply with all of the terms and conditions outlined by the Department of Health and Human Services (“HHS”) grants, policy statements, and other requirements imposed by Program statutes and regulations, and HHS administration regulations, as applicable.
- b) The Agency understands that this Contract receives one-hundred percent (100%) of its funding from federal funds, and in the event the federal government disallows payment, for whatever reason, and requires repayment of the Funds, the Agency shall be responsible for reimbursing the County for the total amount owed.
- c) The Agency understands and agrees that the Services provided to the Consumers are on an “as needed basis,” and that the dollar values referred to herein in no way constitute a guarantee of the level of effort that may be requested by the Agency or a guaranteed payment of the total maximum amount payable.
- d) Should the Recipient, in its sole discretion, find that the Agency is not utilizing Grant Funds in a sufficient manner the Recipient reserves the right to reduce or otherwise alter the funding amount of this Contract. Notification of such funding modification shall be provided in accordance with Article XVI herein.

- e) The Recipient shall be the final authority as to the availability of Funds and as to how available Funds will be allocated among its various service agencies.
- f) All discretionary awards issued by HRSA, on or after October 1, 2006, are subject to the HHS Grants Policy Statement (HHS GPS).

Section 2. **Budget.** The following requirements shall apply to this Contract regardless of the payment method.

- a) The Agency shall submit to the Recipient a categorical line-item budget for each term of the Contract, whether the payment method is line-item budget, fixed-price unit rate, or another form of payment. If the Contract amount is increased or decreased at any time during the Contract term, the Agency shall provide a revised budget within thirty (30) days of the funding change. The categorical line-item budget shall be approved by the Recipient and the Agency shall make all necessary changes recommended by the Recipient.
- b) The Agency shall use their approved condition of award budget (which shall include the categorical line-item budget) as the original budget. Any expenditure made by the Agency relating to this Contract and the associated Grant shall be within the approved budget including administrative costs which shall not exceed ten-percent (10%) of the total Contract amount, as applicable.
- c) The Agency shall maintain sufficient financial resources to meet any expenses incurred during the period of time between the provision of Services and payment by the Recipient.

ARTICLE IX

BILLING REQUIREMENTS AND PAYMENT METHODS

Section 1. **Billing Requirements.**

- a) The Agency shall submit all invoices and/or requests for reimbursement to the Recipient by the fourth (4th) business day of each month. Submittals shall include a completed Cost Reimbursement Line Item Budget Invoice (hereinafter “Cost Reimbursement Invoice”) or a Fixed-Priced Unit Rate Invoice (hereinafter “Fixed-Priced Invoice”) (collectively referred to as “Invoices”) as applicable and as set forth in the Scope of Service (**Attachment “A”**).

- b) All requests for payment and/or reimbursement shall include the applicable Invoice and all supporting documentation necessary for processing, which shall be as identified in Scope of Service, **Attachment “A.”** Invoices shall be forwarded to the Recipient’s office as identified in Article XVI of this Contract.
- c) Each Invoice shall be completed in its entirety. Any Invoice that is incomplete or which fails to include the required supporting documentation shall be deemed incomplete and rejected.
- d) Failure by the Agency to provide Invoices in a timely manner, complete and error-free, shall reflect on the administrative performance rating of the Agency for subsequent funding awards.
- e) The Agency shall actively pursue and bill any third-party coverage available for contribution toward the costs of Services incurred by the Consumer.
- f) The Agency agrees to reimburse the Recipient any monies received from any third-party coverage, after payment has been made by the Recipient. Reimbursements shall be any amounts received up to the amount paid by the Recipient. The Agency shall report to the Recipient any payment received from, or pending claims with, any third-party when submitting Invoices to the Recipient, to the Agency at the address identified in Article XVI, Section 2.
- g) The Agency expressly understands that it is liable for, and accepts responsibility for repayment of, any Funds disbursed under the terms of this Contract that may be deemed to have been disbursed in error. Repayment by the Agency to the Recipient shall be within ninety (90) calendar days from the date of demand by the Recipient. Failure by the Agency to comply with this requirement shall be handled in accordance with the Federal Code 45 CFR §75.391 (“Collections of Amounts Due”) (**Attachment “B”**).
- h) Any specific issues relating to billing for this Contract shall be as more specifically described in the Scope of Service (**Attachment “A”**).
- i) The Agency is prohibited from using Grant Funds for any of the following:

(i) to purchase or improve land, or purchase or construct or make permanent improvements to any building, except for minor remodeling;

(ii) to support syringe service programs inclusive of syringe exchange, access, and disposal;

(iii) foreign travel;

(iv) to make payments to recipients of Services for which payment has already been made or reasonably can be expected by a third-party payer including Medicaid, Medicare, and/or other State or local entitlement programs, prepaid health plans, or private insurance;

(v) to make payments to recipients of Service to purchase financial loans or gifts, social services unrelated to HIV/AIDS, or reimbursements or payments of any kind to a Consumer;

(vi) to purchase non-expendable property, which shall be defined as tangible personal property of a non-consumable nature that has an acquisition cost of \$500 (Five Hundred Dollars) or more per unit and an unexpected useful life of at least one (1) year, and hardback bound books that are not circulated to students or to the general public, the value or cost of which is \$250 (Two Hundred Fifty Dollars) or more; or

(vii) to pay the salary of an individual at a rate in excess of an Executive Level II salary of the federal executive pay schedule, in accordance with the Consolidated Appropriation Act, 2012 (P.L. 112-74), enacted December 23, 2011.

j) Items requiring prior approval from the awarding federal agency shall be as indicated in 45 CFR part 75.

k) In the event of any conflict between the provisions set forth in this Article and the requirements of the Federal Code 45 CFR §75 (**Attachment “B”**), the Federal Code shall take precedence.

Section 2. **Payment Method.**

a) If the Contract is a Cost Reimbursement Line-Item Budget, the Agency shall provide the following:

- (i) Reimbursements/invoices shall be submitted on a monthly basis. All expenses shall require necessary supporting documentation and sufficient detail to verify and validate that the expenses were incurred.
 - (ii) All requests for authorized expenses shall be submitted to the Recipient's office and will be processed for payment only after all documentation has been verified for completeness.
 - (iii) The completed invoice shall include a copy of the approved annual budget, current month requested expenditures, and copies of invoices with documentation evidencing proof of payment.
 - (iv) Specific issues relating to the invoice/payment under this Contract shall be more specifically described in the Scope of Service (**Attachment "A"**).
- b) If the Contract is a Fixed-Priced Unit Rate, the Agency shall provide the following:
- (i) Reimbursements/invoices shall be submitted on a monthly basis and billed at the Fixed-Price Unit Rate, as described in the Scope of Service (**Attachment "A"**).
 - (ii) Under this reimbursable method of payment, the Agency shall not be required to submit time sheets with their invoice; however, all employees providing Services under this Contract shall be required to keep current time sheets which shall be made available to the Recipient for all monitoring visits or as otherwise requested by the Recipient and or designee.
 - (iii) Specific issues relating to invoices/payments under this Contract shall be more specifically described in the Scope of Service (**Attachment "A"**).
- c) It is anticipated that the Recipient, or its authorized representative, will provide payment to the Agency, or applicable Service provider, within forty-five (45) days from the date of receipt and in accordance with the Local Government Prompt Payment Act, as set forth in Chapter 218,

Florida Statutes. Invoices that are incomplete or that fail to include the necessary supporting documentation may result in delay or possible denial of payment.

- d) The Recipient reserves the right to withhold or deny payment for the Agency's failure to: (i) provide any and all required reports and/or documents due from the Agency as part of this Contract or any modification thereto; or (ii) the Agency's failure to otherwise comply with all of the terms and conditions set forth herein.
- e) The Recipient reserves the right to reduce future payments due to the Agency by the amount owed to the Recipient which is not repaid within ninety (90) days after the Recipient's request.

ARTICLE X

TERM AND TERMINATION

Section 1. Term.

- a) The term of this Contract shall be from March 1, (**INSERT YEAR**) to February 28/29, (**INSERT YEAR**). The Agency shall provide all contracted Services for the entire Contract period. Failure to provide Services during such time will place the Agency in non-compliance with this Article and may result in the Agency being prohibited from applying for grant funds for the following grant term.
- b) This Contract may be renewed for two (2) additional one-year terms at the sole discretion of the Recipient, upon the written agreement of both parties. Recipient shall notify Agency of any intent to renew this Contract no less than thirty (30) days prior to the Contract termination.

Section 2. Termination.

- a) Termination of this Contract shall be in accordance with the Policies and Procedures of Orange County and the requirements of the Federal Code 45 CFR §75.372 ("Termination") (**Attachment "B"**).
- b) Except as otherwise set forth herein, either party may terminate this Contract, without cause, thirty (30) calendar days after receipt of written notice of termination by the other party. In the event of termination, the Recipient shall pay for Services rendered, prorated to the date of termination. If payments were made to the Agency prior to

rendering of such Services, the Agency shall remit to the Recipient all excess money paid, prorated to the date of termination.

- c) It is further agreed that in the event Ryan White Part A Funds to finance all or part of this Contract do not become available, the obligations of each party hereunder may be terminated upon no less than twenty-four (24) hour notice. Such notice shall be made in writing and delivered to the other party and shall be delivered in accordance with Article XVI, Section 2 of this Contract.
- d) If the Agency breaches any term of this Contract, the Recipient may, in its sole discretion and by written notice of breach to the Agency, terminate the whole or any part of this Contract.
- e) Termination as a result of breach of contract shall be upon no less than twenty-four (24) hour notice, and shall be made in writing delivered in accordance with Article XVI, Section 2 of this Contract. Waiver by either party of breach of any provision of this Contract shall not be deemed to be a waiver of any other or subsequent breach nor shall it be construed to be a modification of the terms of this Contract.
- f) After receipt of a notice of termination, and except as otherwise directed, the Agency shall:
 - 1) Discontinue providing Services under the Contract on the date and to the extent specified in the notice of termination;
 - 2) Place no further orders or subcontracts for materials, services, or facilities relating to this Contract;
 - 3) Terminate all orders and subcontracts to the extent that they relate to the performance of the terminated work;
 - 4) Handle all property and records as directed by the Recipient;
 - 5) Prepare all necessary reports and documents required under the terms of the Contract up to the date of termination, including the final report due at the end of the Contract, if any, without reimbursement for Services rendered in completing said reports beyond the termination date; and
 - 6) Take any other actions as directed by the Recipient in writing.

- g) Unless otherwise authorized by the Recipient, and for those exceptions set forth in the Federal Code 45 CFR §75.375 (“Effects of Suspension and Termination”) (**Attachment “B”**), the Agency shall not be reimbursed for any costs incurred as a result of obligations incurred during a suspension or after termination of this Contract.
- h) Termination based upon the Agency’s failure to comply with federal statutes, regulations, or terms and conditions of the federal award contemplated under this Contract may be considered in evaluating future applications for funding received by the Recipient from the Agency.
- i) In the event the federal award is terminated or partially terminated, both the Recipient and the Agency shall be responsible for complying with the requirements of the Federal Code 45 CFR §§75.381 and 75.386 (“Closeouts” and “Post-closeout Adjustments and Continuing Responsibilities” respectively) (**Attachment “B”**).
- j) In the event of conflict between the provisions set forth in this Article and the requirements of the Federal Code (**Attachment “B”**), the Federal Code shall take precedence.

ARTICLE XI

ASSIGNMENT AND SUBCONTRACTS

Section 1. The parties deem the Services to be rendered by the Agency to be personal in nature. The Agency shall not assign any rights or duties under this Contract to any other party without prior written permission by the Recipient. If the Agency attempts to assign any rights or duties without prior written permission by the Recipient, the Recipient, in its sole discretion, may declare this Contract to be void. The Agency thereupon agrees to forfeit and to remit to the Recipient all payments made pursuant to this Contract for the entire term of the Contract.

Section 2. The Agency shall not enter into any subcontracts for any of the work or the performance of any of the Services contemplated under this Contract without obtaining prior written approval of the Recipient, which shall be attached to the original Contract and subject to such conditions and provisions as the Recipient may deem necessary. Notwithstanding the foregoing, and unless provided for herein, the Recipient’s prior written approval shall not be required for purchases made by the Agency of such articles, supplies, and equipment which are both necessary and incidental to the performance of the work required under this Contract. It shall further be agreed to by the parties that in no event shall the Recipient be responsible, by its approval of any subcontracts or other provisions set forth in this Contract, for any financial obligations not otherwise provided for in this Contract or amendments thereto.

ARTICLE XII

RECORDKEEPING, MONITORING, AND AUDITING

Section 1. **Recordkeeping.**

- a) The Agency shall establish and utilize the best accounting practices in the maintenance of all records relating to this Contract. Such practices shall be in compliance with the general acceptable accounting principles and shall fully and accurately reflect, track, and document the Agency's financial activities, in accordance with 45 CFR part 75 subpart D.
- b) All Funds received by the Agency from the Ryan White Program shall be kept in accounts separate and apart from all other funds and accounts of the Agency.
- c) The Agency shall establish and maintain separate accounting records for the Agency's activities with sufficient documentation to identify the associated expenditures (e.g. detailed invoices, cancelled checks, payroll journals, bank statement reconciliations, etc.) and establish that such expenditures are allowable, necessary, and reasonable under the Contract.
- d) The Agency is strictly prohibited from co-mingling Ryan White Part A federal funds with funds received by the Agency relating to any other Agency activity.
- e) The Agency, as a sub-recipient of this Contract, shall be subject to the federal ruling as applicable and as revised, in accordance with 45 CFR part 75 Uniform Administrative Requirements, Cost Principles and Audit Requirements for Federal Awards.

Section 2. **Monitoring and Evaluation.**

- a) The Agency shall systematically and expeditiously furnish the Recipient any and all data needed for the purpose of Program monitoring and evaluation. This data shall include information on the Services provided and any other data that may be required by the Recipient, in its sole discretion, to adequately evaluate the Program cost and effectiveness of the Services provided.
- b) Program and financial monitoring shall be performed periodically by the Recipient with a Letter of Findings provided, if applicable, and shall be in compliance with the National Monitoring Standards for Ryan White Recipients. The Agency shall respond to any such Letter of Findings with a

Corrective Action Plan and Implementation Schedule, as instructed by the Recipient, within thirty (30) days of the date of the Letter of Findings.

- c) The Agency agrees to reimburse the Recipient any and all monies identified as over-payment or ineligible as a result of monitoring findings.
- d) The Recipient shall have all legal and equitable remedies available to it including, but not limited to, injunctive relief, right to termination of monthly contribution payments, and/or restitution for any use by the Agency of Grant Funds determined to be not in conformance with the terms and conditions of this Contract.
- e) Failure to submit a Correction Action Plan and Implementation Schedule shall constitute a breach and may result in the termination of this Contract.
- f) Reports shall be provided as stipulated in the Table of Deliverables, a copy of this is attached hereto and incorporated by this reference as **Attachment “D.”**
- g) Financial reports shall be performed in accordance with the Federal Code 45 CFR §75.341 (“Financial Reporting”) (**Attachment “B”**). In the event of any conflict between the provisions set forth in this Article and the requirements of the Federal Code, the Federal Code shall take precedence.
- h) Monitoring and program performance shall be completed in accordance with the Federal Code 45 CFR §75.342 (“Monitoring and Reporting Program Performance”) (**Attachment “B”**), as applicable. In the event of a conflict between the provisions of this Contract and the requirements of the Federal Code, the Federal Code shall take precedence.

Section 3. **Auditing.**

- a) The Orange County Comptroller (hereinafter “Comptroller”) (or their authorized designee) shall have the right to audit the Agency’s use of Funds disbursed under this Contract, from time to time, for compliance by the Agency with the terms, conditions, and obligations set forth herein. The Agency shall provide full access to all records, documents, and information, whether paper or electronic data, necessary for the Comptroller or a designee to perform such audit.
- b) **Audit Requirements.** The Agency agrees to provide certification to the Recipient that a single audit was not required and the Agency shall then submit an Audited Financial Statement. In determining the federal award amounts expended during its fiscal year, the Agency shall consider all sources

of federal awards including federal resources received from the Sate or other agencies. Audit requirements stipulate that Recipient and sub-Recipients that spend \$750,000 or more during their fiscal year in the federal awards must have a single or program-specific audit conducted for that year, in accordance with the provisions of 45 CFR part 75.500 subpart F (“Audit Requirements”).

- 1) *Single Audit.* A non-federal entity that expends \$750,000 or more during the non-federal entity’s fiscal year in the federal awards must have a single audit conducted, in accordance with section 75.514 (“Scope of Audit”), except when the entity elects to have a program-specific audit conducted, in accordance with 45 CFR part 75.501, section (c).
- 2) *Exemption.* When the federal awards expended by the non-federal entity are less than \$750,000 federal awards during the non-federal entity’s fiscal year, the non-federal entity is exempt from federal audit requirements for that year, except as otherwise required in 45 CFR part 75.503, with relation to other audit requirements. Exemption from audit requirements does not relate to the availability of records for review. The non-federal agency shall have records available for review or audit by appropriate officials of the federal agency, pass-through entity, and Government Accountability Officer (“GAO”).

Section 4. **Audit Submission.**

- a.) Audits shall be submitted to the Recipient no later than thirty (30) days after the auditor’s report is received by the Agency. All audits shall be completed no later than one-hundred eighty (180) days after the close of the Agency’s fiscal year, or as specified and in accordance with Federal Code 45 CFR part 75.500, subpart F (“Audit Requirements”).
- b.) A copy of the Single Audit Reporting Package, including the associated management letter, which was conducted in accordance with 45 CFR part 75 subpart F or the applicable Audited Financial Statements, shall be forwarded to the Recipient, with a copy provided to the Orange County Comptroller’s Office, at the following:

Orange County Board of County Commissioner
Ryan White Part A Program
Attn: Administrator
2002-A East Michigan Street
Orlando, Florida 32802-1393

Orange County Comptroller's Office
Finance and Accounting Department
Attn: Grants Section
P.O. Box 38
Orlando, Florida 32802

- c.) The Federal Audit Clearinghouse – Audits must be submitted to the Federal Audit Clearinghouse either thirty (30) days after receipt of the auditor's report, or nine (9) months after the end of the entity's fiscal year (FY) end date. Such audits shall be submitted electronically via the following website: <http://harvester.census.gov/fac/collect/ddeindex.html>.
- d.) Failure to comply with this requirement shall be deemed as a breach of this Contract and may result in the withholding or denial of any requests for payment or reimbursement from the Agency.

ARTICLE XIII

REPORTING

Section 1. The Agency shall keep records of the Consumers served and the corresponding Services provided thereto. The Agency shall submit reports, based upon such records, as may be required and requested by the Recipient and the HHS, as specified in the County's Ryan White Part A Grant Agreement.

Section 2. All reports submitted by the Agency to the Recipient shall include the elements outlined in Table of Deliverables (**Attachment "D"**).

- a) All reports are subject to on-site verification and monitoring provider reports. Failure to submit any and all reports, in a manner deemed acceptable by the Recipient, by the date(s) and time(s) specified, may result in the Agency being in breach of this Contract and possibly resulting in termination. Inaccurate, incomplete, or falsified data will, at a minimum, constitute an inadequate report that will not be accepted by the Recipient.
- b) Reporting of utilization/demographic data will require the Agency to use the data management system specified by the Recipient and any custom reports designated by the Recipient.

- c) The Agency shall provide a Ryan White HIV/AIDS Program Services Report (“RSR”) to the Recipient, as required by HRSA and in the manner prescribed by the Recipient.
- d) The Agency shall collect and report to the Recipient, in a format to be provided, information on specific service outcome measures (performance measures) as identified by the Recipient, and as may be more specifically described in the Ryan White Part A provider manual.
- e) Late submissions and/or failure to comply with Contract reporting requirements shall be deemed as a finding against the Agency, and shall be considered a breach of contract which may result in termination of this Contract and affect future funding recommendations.

Section 3. In the event of any conflict between the provisions of this Article and the requirements of the Federal Code (**Attachment “B”**), the Federal Code shall take precedence.

ARTICLE XIV

INDEMNIFICATION, SAFETY AND INSURANCE

Section 1. **Indemnification.** To the fullest extent permitted by law, the Agency shall defend, indemnify, and hold harmless the County, as Recipient, its officials, agents, and employees from and against any and all claims, suits, judgments, demands, liabilities, damages, costs and expenses (including attorney’s fees) of any kind or nature whatsoever arising directly or indirectly out of or caused in whole or in part by any act or omission of the Agency or its sub-consultants or providers (if any), anyone directly or indirectly employed by them, or anyone for whose acts any of them may be liable; excepting those acts or omissions arising out of the sole negligence of the County. In the event the Agency is a State department or division, or a political subdivision of the State of Florida, indemnification shall following the provisions of Section 768.28, Florida Statutes.

Section 2. **Protection of Persons and Property.** While working or performing Services at County facilities, the Agency shall be responsible for initiating, maintaining and supervising all safety precautions and programs in connection with the performance of this Contract.

- a) The Agency shall take all reasonable precautions for the safety and protection of:
 - 1) All employees and all persons whom the Agency suffers to be on the premises and other persons who may be affected thereby;

- 2) All property, materials and equipment on the premises under the care, custody or control of the Agency; and
 - 3) Other property at or surrounding the premises including trees, shrubs, lawn, sidewalks and walkways, pavement, and roadways.
- b) The Agency agrees that the County does not guarantee the security of any equipment or personal property brought by the Agency, its agents or employees, onto the County property and that the County shall in no way be liable for damage, destruction, theft or loss of any equipment and appurtenances regardless of the reason for such damage, destruction, theft or loss.
- c) The Agency shall comply with, and shall ensure that its contractors comply with, all applicable safety laws or ordinances, rules, regulations, standards and lawful orders from authority bearing on the safety of persons or property for their protection from damage, injury or loss. This includes, but is not limited to, the following.
- 1) Occupational Safety & Health Act (OSHA)
 - 2) National Institute for Occupational Safety & Health (NIOSH)
 - 3) National Fire Protection Association (NFPA)

The Agency must also comply with the guidelines set forth in the Orange County Safety & Health Manual. The manual can be accessed online at the address below:

<http://www.ocfl.net/VendorServices/OrangeCountySafetyandHealthManual.aspx>

- d) In any emergency affecting the safety of persons or property, the Agency will act with reasonable care and discretion to prevent any threatened damage, injury or loss.

Section 3. **Insurance.**

- a) The Agency agrees to maintain, on a primary basis and at its sole expense, at all times throughout the duration of this Contract the following types of insurance coverage with limits and on forms (including endorsements) as described herein. These requirements, as well as the County's review and acceptance of insurance maintained by the Agency is not intended to and shall not in any manner limit or qualify the liabilities assumed by the Agency under

this Contract. Agency is required to maintain any coverage required by federal and state workers' compensation or financial responsibility laws including, but not limited to, Chapters 324 and 440, Florida Statutes, as may be amended from time to time.

- b) The Agency shall require and ensure that each of its sub-Vendors/sub-Contractors providing Services hereunder (if any) procures and maintains, until the completion of their respective services, insurance of the types and to the limits specified herein.
- c) Insurance carriers providing coverage required herein must be licensed to conduct business in the State of Florida and must possess a current A.M. Best's Financial Strength Rating of A-Class VIII or better. *(Note: State licenses can be checked via www.floir.com/companysearch and A.M. Best Ratings are available at www.ambest.com.)*

The Agency shall ensure that all Providers and sub-consultants providing Services under this Contract procure and maintain, for the duration of their involvement in this Contract, insurance coverage in such types and with limits sufficient to protect the interests of the County and the Recipient.

- d) Required Coverage:
 - (i) Commercial General Liability – The Agency shall maintain coverage issued on the most recent version of the ISO form as filed for use in Florida, or its equivalent, with a limit of liability of not less than **\$(Insert applicable dollar amount)**, per occurrence. Agency further agrees coverage shall not contain any endorsement(s) excluding or limiting Product/Completed Operations, Contractual Liability, or Separation of Insureds. The General Aggregate limit shall either apply separately to this Contract or shall be at least twice the required occurrence limit. In the event that an Agency is a political subdivision of the State of Florida, permission is hereby granted for the Agency to self-insure its liabilities to the limits specified by law including, but not limited to, Section 768.28, Florida Statutes.

(ii) Required Endorsements:

- Additional Insured – CG 20 26 or CG 20 10/CG 20 37 or their equivalents. (Note: If blanket endorsements are being submitted, please include the entire endorsement and the applicable policy number.)

- Waiver of Transfer of Rights Recover – CG 24 04 or its equivalent. (Note: If blanket endorsements are being submitted, please include the entire endorsement and the applicable policy number.)
- (iii) Workers' Compensation - The Agency shall maintain coverage for its employees with statutory workers' compensation limits, and no less than \$100,000 (One Hundred Thousand Dollars) each incident of bodily injury or disease for Employers' Liability. Elective exemptions, as defined in Chapter 44, Florida Statutes, will be considered on a case-by-case basis. Any Agency using an employee leasing company shall complete the Leased Employee Affidavit.
- (iii) Professional Liability – with a limit of not less than \$1,000,000 (One Million Dollars) per occurrence / claim.
- (iv) When a self-insured retention or deductible exceed \$100,000 (One Hundred Thousand Dollars), the County reserves the right to request a copy of the Agency's most recent annual report or audited financial statement. For policies written on a "Claims-Made" basis, the Agency agrees to maintain a retroactive date prior to or equal to the effective date of this Contract. In the event the policy is canceled, non-renewed, switched to occurrence form, or any other event which triggers the right to purchase a Supplemental Extended Reporting Period (SERP) during the life of this Contract, the Agency agrees to purchase the SERP with a minimum reporting period of not less than two (2) years. Purchase of the SERP shall not relieve the Agency of the obligation to provide replacement coverage.
- e) By entering into this Contract, the Agency agrees to provide a waiver of subrogation or a waiver of transfer of rights of recovery, in favor of the County, for the general liability policies as required herein. When required by the insurer, or should a policy condition not permit the Agency to enter into a pre-loss agreement to waive subrogation without an endorsement, then the Agency agrees to notify the insurer and request the policy be endorsed with a Waiver of Subrogation or a Waiver of Transfer of Rights of Recovery Against Others endorsement.
- f) Prior to execution and commencement of any operations/services provided under this Contract, the Agency shall provide the County with current certificates of insurance evidencing all required coverage. In addition to the certificate(s) of

insurance, the Agency shall also provide endorsements for each policy as specified above. All specific policy endorsements shall be in the name of the Orange County Board of County Commissioners.

g) For continuing service contracts, renewal certificates shall be submitted immediately upon request by either the County or the County's contracted certificate compliance management firm. The certificates shall clearly indicate that the Agency has obtained insurance of the type, amount, and classification as required for strict compliance with this insurance section. Agency shall notify the County, not less than thirty (30) business days (ten (10) business days for non-payment of premium) of any material change in or cancellation/non-renewal of insurance coverage. The Agency shall provide evidence of replacement coverage to maintain compliance with the aforementioned insurance requirements to the County or its certificate management representative five (5) business days prior to the effective date of the replacement policy(ies).

h) The certificate holder shall read:

Orange County Board of County Commissioners
c/o Procurement Division
400 E. South Street, 2nd Floor
Orlando, Florida 32801

ARTICLE XV

QUALITY ASSURANCE AND MANAGEMENT

Section 1. The Agency shall have in place a written quality assurance and continuous quality improvement process providing for ongoing quality assurance activities with regular feedback to staff to promote performance improvement and quality care, in accordance with Orlando EMA Quality Management Plan, contractual requirements and Standards of Care. In the event of a conflict between the Standards of Care and the Contract with the County, in all cases the Contract shall take precedence. The Agency shall cooperate with the Recipient's quality assurance staff and consultants, reporting requirements and quality management activities. The Agency shall develop and measure Program outcomes and service performance and provide the corresponding results to the Recipient upon request.

Section 2. The Agency shall develop one Agency-wide quality management ("QM") plan ("QM Plan") encompassing all HIV/AIDS care and prevention services. This QM Plan shall be reviewed and updated as needed by the Agency QM committee ("QM Committee") as assigned by the medical or executive director. The written QM Plan shall include, at a minimum, the

following components: (i) objectives delineating specific goals reflecting the Program and EMA mission, vision, and values; and (ii) a Quality Management Committee, its purpose, composition, meeting requirements, and related documentation.

Section 3. The Agency shall implement a QM program that assesses the extent to which care and services provided are consistent with federal Public Health Services and HRSA Guidelines, and Orlando EMA Standards of Care (“QM Program”). The QM Program must, at a minimum, provide the following: (i) identify the leadership and accountability of the medical director or executive director of the Program; (ii) develop and measure Program outcomes and service performance to determine progress toward established benchmarks and goals, with the results being provided to the Recipient; (iii) develop a Consumer feedback process utilizing information captured from the Consumer Advisory Boards (CAB), satisfaction surveys and other methods; (iv) detail the grievance process that will be used to address and to resolve Consumer grievances, and the manner in which the data will be tracked, trended, and reported to the QM Committee for improvements in care and services; (v) detail a plan for random service chart audits, and a means by which the results of the audits will be reported and discussed in the QM Committee meetings.

Section 4. The Consumer Advisory Board shall meet at least quarterly throughout the term of this Contract, and its members shall consist of at least fifty-percent (50%) of people living with HIV/AIDS.

ARTICLE XVI

NOTICES

Section 1. Notice of Default.

- a) Notwithstanding anything herein to the contrary, no party shall be considered in default for failure to perform the terms and conditions hereof, unless said party shall have first received written notice specifying the nature of such failure, and said party fails to cure the same within the time specified in such notice, or in the event no such time is provided within thirty (30) days of receipt of such written notice, unless otherwise provided for herein.
- b) Any remedy taken by the Recipient against the Agency for non-compliance shall be in accordance with the Federal Code 45 CFR §75.374 (“Opportunities to Object, Hearings and Appeals”) (**Attachment “B”**) and provide the Agency with an opportunity to object and provide information and documentation challenging the suspension or termination.
- c) In the event of any conflict between the provisions of this Article and the requirements of the Federal Code, the Federal Code shall take precedence.

Section 2. **Notices.** Any notice required or permitted hereunder shall be delivered by hand delivery, express courier, or certified mail, return receipt requested, and shall be effective upon receipt of the same. Notices shall be delivered to each of the parties at the following addresses or at such other addresses as specified by written notice in compliance with the terms of this paragraph.

RECIPIENT: Orange County, Florida
Attention: Administrator/ Ryan White Part A Program
2002-A East Michigan Street
Orlando, Florida 32802-1393

Copy to: Orange County Administrator
P.O. Box 1393
Orlando, Florida 32802-1393

Copy to: Orange County, Florida
Attn: Manager / Procurement Division
P.O. Box 1393
Orlando, Florida 32802-1393

AGENCY: (insert name and address of Agency)

ARTICLE XVII

MISCELLANEOUS

Section 1. **Subaward/Sub-recipient Federal Award Agreement Checklist.** In accordance with the requirements of the Federal Code, as more specifically described in the Federal Code 45 CFR §75.352(“Requirements for Pass-Through Entities”) (**Attachment “B”**), the Recipient shall be responsible for completing the Subaward/Sub-recipient Federal Award Checklist (“Checklist”), a copy of which is included in **Attachment “B”** and incorporated by this reference as **Attachment “B-1.”** The Agency shall fully cooperate with the Recipient in completing the Checklist by promptly providing all necessary information/documentation. Failure by the Agency to comply with this requirement will be considered a breach of contract and may result in termination of this Contract.

Section 2. **Remedies for Non-Compliance.** In the event the Agency fails to comply with federal statutes, regulations, or the terms and conditions of the federal award considered under this Contract, the Recipient may impose, in its sole discretion, additional conditions as more specifically described in Federal Code 45 CFR §75.207 (“Specific Awards Conditions”) (**Attachment “B”**). Should the Recipient determine that such non-compliance cannot be remedied as a result of imposing the Specific Conditions, the Recipient reserves the right to

impose those actions set forth in Federal Code 45 CFR §75.371 (“Remedies for Non-compliance”) (**Attachment “B”**), as may be deemed appropriate.

Section 3. **Post-closeout Adjustments and Continuing Responsibilities.** The closeout of the federal award issued to the Agency under this Contract shall not affect the authority of the Recipient to recover Grant Funds from the Agency, as more specifically described in Federal Code 45 CFR §75.386 (“Post-closeout Adjustments and Continuing Responsibilities”) (**Attachment “B”**). In the event of any conflict between the provisions of this Contract and the Federal Code or the Federal Code section herein referenced, the Federal Code shall take precedence.

Section 4. **Supplies and Services.** The Agency shall use its best efforts to obtain all supplies and services for use in the performance of this Contract at the lowest practicable cost.

Section 5. **HRSA Requirements.** The Agency shall provide in writing to the employees and volunteers, in the predominant native language of the workforce, the following notice in accordance with 41 U.S.C. §4712:

Notice to Employees of Recipient, Contractor, Subcontractors of Whistleblower Protection Rights (41 U.S.C. § 4712)

Protected Disclosures

- As an employee of Recipient, contractor or subcontractors of the Ryan White Program, you may not be discharged, demoted, or otherwise discriminated against for disclosing information that you reasonably believe is evidence of:
 - 1) Gross mismanagement of a federal contract or grant;
 - 2) A gross waste of federal funds;
 - 3) An abuse of authority relating to a federal contract or grant;
 - 4) A substantial and specific danger to public health or safety; or
 - 5) A violation of law, rule, or regulation related to a federal contract or grant (including the competition for, or negotiation of, a contract or grant).

- You may disclose suspected wrongdoing and submit complaints to any of the following:
 - 1) A Member of Congress or a representative of a committee of Congress;
 - 2) An Inspector General;
 - 3) Government Accountability Office;
 - 4) A federal employee responsible for contract or grant oversight or management at the relevant agency;

- 5) An official from the Department of Justice or other law enforcement agency;
- 6) A court or grand jury; or
- 7) A management official or other employee of the Recipient, contractor or subcontractor, who has the responsibility to investigate, discover, or address misconduct.

Section 6. **Reference to HRSA and County on Provider Literature.** When issuing statements, press releases, brochures, flyers, fund raising and other documents describing projects or programs funded in whole or in part with federal money, all agencies receiving federal funds shall clearly state : (i) the percentage of the total costs of the program or project which will be financed with federal money; (ii) the dollar amount of federal funds for the project or program; and (iii) the percentage and dollar amount of the total costs of the project or program that will be financed by non-governmental sources.

Section 7. **Anti-Kickback Statute.** The Recipient and Agency, as recipients and sub-recipients respectively of federal funds, are subject to the strictures of the Medicare and Medicaid anti-kickback statute (42 U.S.C. §1320a-7b(b)) and should be cognizant of the risk of criminal and administrative liability under this statute, specifically under 42 U.S.C. §1320 7b(b) “Illegal Remunerations” which states, in part, that whoever knowingly and willfully: (A) solicits or receives (or offers or pays) any remuneration (including kickback, bribe, or rebate) directly or indirectly, overtly or covertly, in cash or in kind, in return for referring (or to induce such person to refer) any individual to a person for the furnishing or arranging for the furnishing of any item or service; OR (B) in return for purchasing, leasing, or ordering, or recommending purchasing, leasing, or ordering, or to purchase, lease, or order, any goods, facility services, or item for which payment may be made in whole or in part under subchapter XIII of this chapter, or a State health care program, shall be guilty of a felony and upon conviction thereof, shall be fined not more than \$25,000 (Twenty- Five Thousand Dollars) or imprisoned for not more than five (5) years, or both.

Section 8. **Technical Assistance.** The Agency agrees to accept technical assistance from the Recipient with administrative programmatic issues related to the provision of Services.

Section 9. **Venue.** All claims, controversies, or disputes arising out of this Contract shall be settled as required herein or by law in the Ninth Judicial Circuit, Orange County, Florida.

Section 10. **No Partnership or Agency.** All Agency personnel shall be considered to be, at all times, the sole employees of the Agency under its sole discretion, and not employees or agents of the County or Recipient. Nothing in this Contract is intended to, or shall be construed in any manner as to, create or establish the relationship of master/servant, principal/agent, employer/employee, or joint venture partnership between the County and the Agency.

Section 11. **Severability.** If any sentence, phrase, paragraph, provision or portion of this Contract is held to be invalid or unconstitutional by a court of competent jurisdiction, such portion shall be considered an independent provision and the finding shall have no effect on the validity of the balance of this Contract.

Section 12. **Entire Agreement.** This Contract constitutes the entire agreement, including terms and conditions, agreed upon by the parties and shall supersede and replace all prior agreements or understandings, written or oral, relating to the matters set forth herein. Any alternations, variations, modifications, or waivers of provisions of this Contract shall only be valid when they have been reduced to writing, duly signed, and attached to the original of this Contract. The parties agree to renegotiate this Contract if revisions of any applicable laws or regulations make changes in this Contract necessary. All items incorporated by reference are as through physically attached.

Section 13. **Applicable Law.** The Agency shall comply with all applicable requirements, policies guidelines, and circulars prescribed by the U.S. Government agencies/departments of Health and Human Services, Public Health Services, HRSA HIV/AIDS Bureau, and the Office of Management and Budget. This Contract and the provisions contained herein shall be construed, controlled, and interpreted according to the laws of the State of Florida.

Section 14. **Debarment and Suspension.** An executive order was signed by the President directing federal agencies to ensure that federal agencies and any state or other agency receiving federal funds are not contracting or awarding grants to persons, organizations, or companies who have been excluded from participating in federal contracts or grants. This process is to avoid the consequences of contracting with agencies that have been debarred from receiving federal funds as stipulated in Executive Order 12549, which refers to Federal Executive Order Number 12549. The Recipient will ensure that debarment checks are conducted prior to contracting with any agency and annually thereafter. The Agency shall provide the Recipient with a Dun & Bradstreet Identifier in order to ascertain debarment status. In the event the Agency is found to have violated any of the provisions described in Executive Order 12549, which refers to Federal Executive Order Number 12549, and Section 17-314 of the Orange County Code the Agency may be suspended or permanently debarred from the right to be included on the vendor list as well as having any submitted bid or response from the Agency rejected.

Section 15. **SAM Registration.** All non-federal agencies must be registered under sam.gov. The Central Contractor registry (CCR) has been replaced. The General Services Administration has moved the CCR to the System for Award Management (SAM), go to <http://www.sam.gov>.

Section 16. **Trafficking Victims Protection Act.** Federal funds are subject to the requirements of section 106 (g) of the Trafficking Victims Protection Act 2000, as amended (22 U.S.C. 7104).

Section 17. **Fraud, Waste and Abuse Hotline.** The DHHS Inspector General maintains a toll-free hotline for receiving information concerning fraud, waste, or abuse under grants and cooperative agreements. The contact information is: Office of Inspector General Department of Health & Human Services, Attn: Hotline, 300 Independence Avenue Southwest, Cohen Building, Rm 5140, Washington D.C. 20201, e-mail: htips@os.dhhs.gov or telephone (1-800-447-8477 (1-800-HHS-TIPS)).

Section 18. **Captions.** Titles used throughout this Contract are intended for ease of reference only and are not intended to be dispositive.

[REMAINDER OF PAGE INTENTIONALLY LEFT BLANK]

IN WITNESS WHEREOF, this Contract has been fully executed on behalf of the parties hereto by their duly authorized representatives, as of the date first above written.

ORANGE COUNTY, FLORIDA

By: _____

Carrie Woodell, MPA, CFCM, CPPO,
C.P.M., CPPB, APP
Manager, Procurement Division

AGENCY:
(INSERT AGENCY NAME)

By: _____

Print Name: _____

Title: _____

DRAFT

ATTACHMENT “G” INDEX:

- 1) **45 CFR §75.207 (Specific Award Conditions)**
- 2) **45 CFR §75.341 (Financial Reporting)**
- 3) **45 CFR §75.342 (Monitoring and Reporting Program Performance)**
- 4) **45 CFR §75.352 (Requirements for Pass-Through Entities)**
- 5) **45 CFR §75.361 (Retention Requirements for Records)**
- 6) **45 CFR §75.364 (Access to Records)**
- 7) **45 CFR §75.365 (Restrictions on Public Access to Records)**
- 8) **45 CFR §75.371 (Remedies for Non-Compliance)**
- 9) **45 CFR §75.372 (Termination)**
- 10) **45 CFR §75.373 (Notification of Termination Requirement)**
- 11) **45 CFR §75.374 (Opportunities to Object, Hearings and Appeals)**
- 12) **45 CFR §75.375 (Effects of Suspension and Termination)**
- 13) **45 CFR §75.381 (Closeout)**
- 14) **45 CFR §75.386 (Post-Closeout Adjustments and Continuing Responsibilities)**
- 15) **45 CFR §75.391 (Collection of Amounts Due)**

45 CFR §75.207 Specific award conditions.

- (a) The HHS awarding agency or pass-through entity may impose additional specific award conditions as needed in accordance with paragraphs (b) and (c) of this section, under the following circumstances:
 - (1) Based on the criteria set forth in §75.205;
 - (2) When an applicant or recipient has a history of failure to comply with the general or specific terms and conditions of a Federal award;
 - (3) When an applicant or recipient fails to meet expected performance goals as described in §75.210, or;
 - (4) When the applicant or recipient is not otherwise responsible.
- (b) These additional Federal award conditions may include items such as the following:
 - (1) Requiring payments as reimbursements rather than advance payments;
 - (2) Withholding authority to proceed to the next phase until receipt of evidence of acceptable performance within a given period of performance;
 - (3) Requiring additional, more detailed financial reports;
 - (4) Requiring additional project monitoring;
 - (5) Requiring the non-Federal entity to obtain technical or management assistance; or
 - (6) Establishing additional prior approvals.
- (c) The HHS awarding agency or pass-through entity must notify the applicant or non-Federal entity as to:

- (1) The nature of the additional requirements;
 - (2) The reason why the additional requirements are being imposed;
 - (3) The nature of the action needed to remove the additional requirement, if applicable;
 - (4) The time allowed for completing the actions if applicable, and
 - (5) The method for requesting reconsideration of the additional requirements imposed.
- (d) Any specific conditions must be promptly removed once the conditions that prompted them have been corrected.

45 CFR §75.341 Financial reporting.

Unless otherwise approved by OMB, the HHS awarding agency may solicit only the standard, OMS-approved government-wide data elements for collection of financial information (at time of publication the Federal Financial Report or such future collections as may be approved by OMB and listed on the OMB Web site). This information must be collected with the frequency required by the terms and conditions of the Federal award, but no less frequently than annually nor more frequently than quarterly except in unusual circumstances, for example where more frequent reporting is necessary for the effective monitoring of the Federal award or could significantly affect program outcomes, and preferably in coordination with performance reporting.

45 CFR §75.342 Monitoring and reporting program performance.

- (a) *Monitoring by the non-Federal entity.* The non-Federal entity is responsible for oversight of the operations of the Federal award supported activities. The non-Federal entity must monitor its activities under Federal awards to assure compliance with applicable Federal requirements and performance expectations are being achieved. Monitoring by the non-Federal entity must cover each program, function or activity. See also §75.352.
- (b) *Non-construction performance reports.* The HHS awarding agency must use standard, OMS-approved data elements for collection of performance information (including performance progress reports, Research Performance Progress Report, or such future collections as may be approved by OMS and listed on the OMS Web site).

- (1) The non-Federal entity must submit performance reports at the interval required by the HHS awarding agency or pass-through entity to best inform improvements in program outcomes and productivity. Intervals must be no less frequent than annually nor more frequent than quarterly except in unusual circumstances, for example where more frequent reporting is necessary for the effective monitoring of the Federal award or could significantly affect program outcomes. Annual reports must be due 90 calendar days after the reporting period; quarterly or semiannual reports must be due 30 calendar days after the reporting period. Alternatively, the HHS awarding agency or pass-through entity may require annual reports before the anniversary dates of multiple year Federal awards. The final performance report will be due 90 calendar days after the period of performance end date. If a justified request is submitted by a non-Federal entity, the HHS awarding agency may extend the due date for any performance report.

- (2) The non-Federal entity must submit performance reports using OMS-approved government-wide standard information collections when providing performance information. As appropriate in accordance with the above-mentioned information collections, these reports will contain, for each Federal award, brief information on the following unless other collections are approved by OMS:
 - (i) A comparison of actual accomplishments to the objectives of the Federal award established for the period. Where the accomplishments of the Federal award can be quantified, a computation of the cost (for example, related to units of accomplishment) may be required if that information will be useful. Where performance trend data and analysis would be informative to the HHS awarding agency program, the HHS awarding agency should include this as a performance reporting requirement.

 - (ii) The reasons why established goals were not met, if appropriate.

 - (iii) Additional pertinent information including, when appropriate, analysis and explanation of cost overruns or high unit costs.

- (c) *Construction performance reports.* For the most part, onsite technical inspections and certified percentage of completion data are relied on heavily by HHS awarding agencies and pass-through entities to monitor progress under Federal awards and subawards for construction. The HHS awarding agency may require additional performance reports only when considered necessary.

- (d) *Significant developments.* Events may occur between the scheduled performance reporting dates that have significant impact upon the supported activity. In such

cases, the non-Federal entity must inform the HHS awarding agency or pass-through entity as soon as the following types of conditions become known:

- (1) Problems, delays, or adverse conditions which will materially impair the ability to meet the objective of the Federal award. This disclosure must include a statement of the action taken, or contemplated, and any assistance needed to resolve the situation.
 - (2) Favorable developments which enable meeting time schedules and objectives sooner or at less cost than anticipated or producing more or different beneficial results than originally planned.
- (e) The HHS awarding agency may make site visits as warranted by program needs.
- (f) The HHS awarding agency may waive any performance report required by this part if not needed.

45 CFR § 75.352 Requirements for pass-through entities.

All pass-through entities must:

- (a) Ensure that every subaward is clearly identified to the subrecipient as a subaward and includes the following information at the time of the subaward and if any of these data elements change, include the changes in subsequent subaward modification. When some of this information is not available, the pass-through entity must provide the best information available to describe the Federal award and subaward. Required information includes:
 - (1) Federal Award Identification.
 - (i) Subrecipient name (which must match the name associated with their unique entity identifier);
 - (ii) Subrecipient's unique entity identifier;
 - (iii) Federal Award Identification Number (FAIN);
 - (iv) Federal Award Date (see §75.2 Federal award date);
 - (v) Subaward Period of Performance Start and End Date;

- (vi) Amount of Federal Funds Obligated by this action;
 - (vii) Total Amount of Federal Funds Obligated to the subrecipient;
 - (viii) Total Amount of the Federal Award;
 - (ix) Federal award project description, as required to be responsive to the Federal Funding Accountability and Transparency Act (FFATA);
 - (x) Name of HHS awarding agency, pass-through entity, and contact information for awarding official,
 - (xi) CFDA Number and Name; the pass-through entity must identify the dollar amount made available under each Federal award and the CFDA number at time of disbursement;
 - (xii) Identification of whether the award is R&D; and
 - (xiii) Indirect cost rate for the Federal award (including if the de minimis rate is charged per §75.414).
- (2) All requirements imposed by the pass-through entity on the subrecipient so that the Federal award is used in accordance with Federal statutes, regulations and the terms and conditions of the Federal award.
 - (3) Any additional requirements that the pass-through entity imposes on the subrecipient in order for the pass-through entity to meet its own responsibility to the HHS awarding agency including identification of any required financial and performance reports;
 - (4) An approved federally recognized indirect cost rate negotiated between the subrecipient and the Federal Government or, if no such rate exists, either a rate negotiated between the pass-through entity and the subrecipient (in compliance with this part), or a de minimis indirect cost rate as defined in §75.414(f).
 - (5) A requirement that the subrecipient permit the pass-through entity and auditors to have access to the subrecipient's records and financial statements as necessary for the pass-through entity to meet the requirements of this part; and
 - (6) Appropriate terms and conditions concerning closeout of the subaward.

- (b) Evaluate each subrecipient's risk of noncompliance with Federal statutes, regulations, and the terms and conditions of the subaward for purposes of determining the appropriate subrecipient monitoring described in paragraphs (d) and (e) of this section, which may include consideration of such factors as:
 - (1) The subrecipient's prior experience with the same or similar subawards;
 - (2) The results of previous audits including whether or not the subrecipient receives a Single Audit in accordance with subpart F, and the extent to which the same or similar subaward has been audited as a major program;
 - (3) Whether the subrecipient has new personnel or new or substantially changed systems; and
 - (4) The extent and results of HHS awarding agency monitoring (e.g., if the subrecipient also receives Federal awards directly from a HHS awarding agency).
- (c) Consider imposing specific subaward conditions upon a subrecipient if appropriate as described in §75.207.
- (d) Monitor the activities of the subrecipient as necessary to ensure that the subaward is used for authorized purposes, in compliance with Federal statutes, regulations, and the terms and conditions of the subaward; and that subaward performance goals are achieved. Pass-through entity monitoring of the subrecipient must include:
 - (1) Reviewing financial and performance reports required by the pass-through entity.
 - (2) Following-up and ensuring that the subrecipient takes timely and appropriate action on all deficiencies pertaining to the Federal award provided to the subrecipient from the pass-through entity detected through audits, on-site reviews, and other means.
 - (3) Issuing a management decision for audit findings pertaining to the Federal award provided to the subrecipient from the pass-through entity as required by §75.521.
- (e) Depending upon the pass-through entity's assessment of risk posed by the subrecipient (as described in paragraph (b) of this section), the following

monitoring tools may be useful for the pass-through entity to ensure proper accountability and compliance with program requirements and achievement of performance goals:

- (1) Providing subrecipients with training and technical assistance on program-related matters; and
 - (2) Performing on-site reviews of the subrecipient's program operations;
 - (3) Arranging for agreed-upon-procedures engagements as described in §75.425.
- (f) Verify that every subrecipient is audited as required by subpart F of this part when it is expected that the subrecipient's Federal awards expended during the respective fiscal year equaled or exceeded the threshold set forth in §75.501.
- (g) Consider whether the results of the subrecipient's audits, on-site reviews, or other monitoring indicate conditions that necessitate adjustments to the pass-through entity's own records.
- (h) Consider taking enforcement action against noncompliant subrecipients as described in §75.371 and in program regulations.

45 CFR §75.361 Retention requirements for records.

Financial records, supporting documents, statistical records, and all other non-Federal entity records pertinent to a Federal award must be retained for a period of three years from the date of submission of the final expenditure report or, for Federal awards that are renewed quarterly or annually, from the date of the submission of the quarterly or annual financial report, respectively, as reported to the HHS awarding agency or pass-through entity in the case of a subrecipient. HHS awarding agencies and pass-through entities must not impose any other record retention requirements upon non-Federal entities. The only exceptions are the following:

- (a) If any litigation, claim, or audit is started before the expiration of the 3-year period, the records must be retained until all litigation, claims, or audit findings involving the records have been resolved and final action taken.
- (b) When the non-Federal entity is notified in writing by the HHS awarding agency, cognizant agency for audit, oversight agency for audit, cognizant agency for indirect costs, or pass-through entity to extend the retention period.

- (c) Records for real property and equipment acquired with Federal funds must be retained for 3 years after final disposition.
- (d) When records are transferred to or maintained by the HHS awarding agency or pass-through entity, the 3-year retention requirement is not applicable to the non-Federal entity.
- (e) Records for program income transactions after the period of performance. In some cases, recipients must report program income after the period of performance. Where there is such a requirement, the retention period for the records pertaining to the earning of the program income starts from the end of the non-Federal entity's fiscal year in which the program income is earned.
- (f) Indirect cost rate proposals and cost allocations plans. This paragraph applies to the following types of documents and their supporting records: Indirect cost rate computations or proposals, cost allocation plans, and any similar accounting computations of the rate at which a particular group of costs is chargeable (such as computer usage chargeback rates or composite fringe benefit rates).
 - (1) If submitted for negotiation. If the proposal, plan, or other computation is required to be submitted to the Federal Government (or to the pass-through entity) to form the basis for negotiation of the rate, then the 3-year retention period for its supporting records starts from the date of such submission.
 - (2) If not submitted for negotiation. If the proposal, plan, or other computation is not required to be submitted to the Federal Government (or to the pass-through entity) for negotiation purposes, then the 3-year retention period for the proposal, plan, or computation and its supporting records starts from the end of the fiscal year (or other accounting period) covered by the proposal, plan, or other computation.

45 CFR §75.364 Access to records.

- (a) Records of non-Federal entities. The HHS awarding agency, Inspectors General, the Comptroller General of the United States, and the pass-through entity, or any of their authorized representatives, must have the right of access to any documents, papers, or other records of the non-Federal entity which are pertinent to the Federal award, in order to make audits, examinations, excerpts, and transcripts. The right also includes timely and reasonable access to the non-Federal entity's personnel for the purpose of interview and discussion related to such documents.

- (b) Only under extraordinary and rare circumstances would such access include review of the true name of victims of a crime. Routine monitoring cannot be considered extraordinary and rare circumstances that would necessitate access to this information. When access to the true name of victims of a crime is necessary, appropriate steps to protect this sensitive information must be taken by both the non-Federal entity and the HHS awarding agency. Any such access, other than under a court order or subpoena pursuant to a bona fide confidential investigation, must be approved by the head of the HHS awarding agency or delegate.

- (c) Expiration of right of access. The rights of access in this section are not limited to the required retention period but last as long as the records are retained. HHS awarding agencies and pass-through entities must not impose any other access requirements upon non-Federal entities

45 CFR §75.365 Restrictions on public access to records.

No HHS awarding agency may place restrictions on the non-Federal entity that limit public access to the records of the non-Federal entity pertinent to a Federal award, except for protected personally identifiable information (PII) or when the HHS awarding agency can demonstrate that such records will be kept confidential and would have been exempted from disclosure pursuant to the Freedom of Information Act (5 U.S.C. 552) or controlled unclassified information pursuant to Executive Order 13556 if the records had belonged to the HHS awarding agency. The Freedom of Information Act (5 U.S.C. 552) (FOIA) does not apply to those records that remain under a non-Federal entity's control except as required under §75.322. Unless required by Federal, state, local, or tribal statute, non-Federal entities are not required to permit public access to their records. The non-Federal entity's records provided to a Federal agency generally will be subject to FOIA and applicable exemptions.

45 CFR §75.371 Remedies for noncompliance.

If a non-Federal entity fails to comply with Federal statutes, regulations, or the terms and conditions of a Federal award, the HHS awarding agency or pass-through entity may impose additional conditions, as described in §75.207. If the HHS awarding agency or pass-through entity determines that noncompliance cannot be remedied by imposing additional conditions, the HHS awarding agency or pass-through entity may take one or more of the following actions, as appropriate in the circumstances:

- (a) Temporarily withhold cash payments pending correction of the deficiency by the non-Federal entity or more severe enforcement action by the HHS awarding agency or pass-through entity.

- (b) Disallow (that is, deny both use of funds and any applicable matching credit for) all or part of the cost of the activity or action not in compliance.
- (c) Wholly or partly suspend (suspension of award activities) or terminate the Federal award.
- (d) Initiate suspension or debarment proceedings as authorized under 2 CFR part 180 and HHS awarding agency regulations at 2 CFR part 376 (or in the case of a pass-through entity, recommend such a proceeding be initiated by a HHS awarding agency).
- (e) Withhold further Federal awards for the project or program.
- (f) Take other remedies that may be legally available.

45 CFR §75.372 Termination

- (a) The Federal award may be terminated in whole or in part as follows:
 - (1) By the HHS awarding agency or pass-through entity, if a non-Federal entity fails to comply with terms and conditions of a Federal award;
 - (2) By the HHS awarding agency or pass-through entity for cause;
 - (3) By the HHS awarding agency or pass-through entity with the consent of the non-Federal entity, in which case the two parties must agree upon the termination conditions, including the effective date and, in the case of partial termination, the portion to be terminated; or
 - (4) By the non-Federal entity upon sending to the HHS awarding agency or pass-through entity written notification setting forth the reasons for such termination, the effective date, and, in the case of partial termination, the portion to be terminated. However, if the HHS awarding agency or pass-through entity determines in the case of partial termination that the reduced or modified portion of the Federal award or subaward will not accomplish the purposes for which the Federal award was made, the HHS awarding agency or pass-through entity may terminate the Federal award in its entirety.
- (b) When a Federal award is terminated or partially terminated, both the HHS awarding agency or pass-through entity and the non-Federal entity remain responsible for compliance with the requirements in §§75.381 and 75.386.

45 CFR §75.373 Notification of termination requirement.

- (a) The HHS awarding agency or pass-through entity must provide to the non-Federal entity a notice of termination.
- (b) If the Federal award is terminated for the non-Federal entity's failure to comply with the Federal statutes, regulations, or terms and conditions of the Federal award, the notification must state that the termination decision may be considered in evaluating future applications received from the non-Federal entity.
- (c) Upon termination of a Federal award, the HHS awarding agency must provide the information required under FFATA to the Federal Web site established to fulfill the requirements of FFATA, and update or notify any other relevant government-wide systems or entities of any indications of poor performance as required by 41 U.S.C. 417b and 31 U.S.C. 3321 and implementing guidance at 2 CFR part 77 (forthcoming at time of publication). See also the requirements for Suspension and Debarment at 2 CFR part 180.

45 CFR §75.374 Opportunities to object, hearings and appeals.

- (a) Upon taking any remedy for non-compliance, the HHS awarding agency must provide the non-Federal entity an opportunity to object and provide information and documentation challenging the suspension or termination action, in accordance with written processes and procedures published by the HHS awarding agency. The HHS awarding agency or pass-through entity must comply with any requirements for hearings, appeals or other administrative proceedings to which the non-Federal entity is entitled under any statute or regulation applicable to the action involved.
- (b) See also:
 - (1) 42 CFR part 50, subpart D for the Public Health Service Appeals Procedures,
 - (2) 45 CFR part 16 for the Procedures of the Departmental Appeals Board, and
 - (3) 45 CFR part 95, subpart A for the time limits for states to file claims.
 - (4) 45 CFR part 95, subpart E for the State cost allocation plan disapprovals.

45 CFR §75.375 Effects of suspension and termination.

Costs to the non-Federal entity resulting from obligations incurred by the non-Federal entity during a suspension or after termination of a Federal award or subaward are not allowable unless the HHS awarding agency or pass-through entity expressly authorizes them in the notice of suspension or termination or subsequently. However, costs during suspension or after termination are allowable if:

- (a) The costs result from obligations which were properly incurred by the non-Federal entity before the effective date of suspension or termination, are not in anticipation of it; and
- (b) The costs would be allowable if the Federal award was not suspended or expired normally at the end of the period of performance in which the termination takes effect.

45 CFR §75.381 Closeout.

The HHS awarding agency or pass-through entity will close-out the Federal award when it determines that all applicable administrative actions and all required work of the Federal award have been completed by the non-Federal entity. This section specifies the actions the non-Federal entity and HHS awarding agency or pass-through entity must take to complete this process at the end of the period of performance.

- (a) The non-Federal entity must submit, no later than 90 calendar days after the end date of the period of performance, all financial, performance, and other reports as required by the terms and conditions of the Federal award. The HHS awarding agency or pass-through entity may approve extensions when requested by the non-Federal entity.
- (b) Unless the HHS awarding agency or pass-through entity authorizes an extension, a non-Federal entity must liquidate all obligations incurred under the Federal award not later than 90 calendar days after the end date of the period of performance as specified in the terms and conditions of the Federal award.
- (c) The HHS awarding agency or pass-through entity must make prompt payments to the non-Federal entity for allowable reimbursable costs under the Federal award being closed out.
- (d) The non-Federal entity must promptly refund any balances of unobligated cash that the HHS awarding agency or pass-through entity paid in advance or paid and that

are not authorized to be retained by the non-Federal entity for use in other projects. See OMB Circular A-129 and see §75.391 for requirements regarding unreturned amounts that become delinquent debts.

- (e) Consistent with the terms and conditions of the Federal award, the HHS awarding agency or pass-through entity must make a settlement for any upward or downward adjustments to the Federal share of costs after closeout reports are received.
- (f) The non-Federal entity must account for any real and personal property acquired with Federal funds or received from the Federal Government in accordance with §§75.317 through 75.323 and 75.343.
- (g) The HHS awarding agency or pass-through entity should complete all closeout actions for Federal awards no later than 180 calendar days after receipt and acceptance of all required final reports.

45 CFR §75.386 Post-closeout adjustments and continuing responsibilities.

- (a) The closeout of a Federal award does not affect any of the following:
 - (1) The right of the HHS awarding agency or pass-through entity to disallow costs and recover funds on the basis of a later audit or other review. The HHS awarding agency or pass-through entity must make any cost disallowance determination and notify the non-Federal entity within the record retention period.
 - (2) The obligation of the non-Federal entity to return any funds due as a result of later refunds, corrections, or other transactions including final indirect cost rate adjustments.
 - (3) Audit requirements in subpart F of this part.
 - (4) Property management and disposition requirements in §§75.317 through 75.323.
 - (5) Records retention as required in §§75.361 through 75.365.
- (b) After closeout of the Federal award, a relationship created under the Federal award may be modified or ended in whole or in part with the consent of the HHS awarding agency or pass-through entity and the non-Federal entity, provided the

responsibilities of the non-Federal entity referred to in paragraph (a) of this section, including those for property management as applicable, are considered and provisions made for continuing responsibilities of the non-Federal entity, as appropriate

45 CFR §75.391 Collection of amounts due.

- (a) Any funds paid to the non-Federal entity in excess of the amount to which the non-Federal entity is finally determined to be entitled under the terms of the Federal award constitute a debt to the Federal Government. If not paid within 90 calendar days after demand, the HHS awarding agency may reduce the debt by:
 - (1) Making an administrative offset against other requests for reimbursements;
 - (2) Withholding advance payments otherwise due to the non-Federal entity; or
 - (3) Other action permitted by Federal statute.

- (b) Except where otherwise provided by statutes or regulations, the HHS awarding agency will charge interest on an overdue debt in accordance with the Federal Claims Collection Standards (31 CFR parts 900 through 999). The date from which interest is computed is not extended by litigation or the filing of any form of appeal (See also HHS Claims Collection regulations at 45 CFR part 30.)