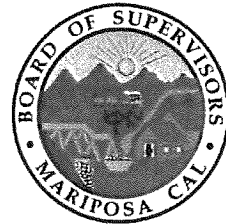




MARIPOSA COUNTY

Health • (209) 966-3689



RESOLUTION - ACTION REQUESTED 2018-396

MEETING: August 14, 2018

TO: The Board of Supervisors

FROM: Eric Sergienko, Health Officer

RE: Agreement with the Regents of University of California San Diego School of Medicine, Moores Cancer

RECOMMENDATION AND JUSTIFICATION:

Approve an Agreement with the Regents of the University of California on behalf of its San Diego School of Medicine, Moores Cancer Center for Consulting Services for the Mariposa County Health Department's Tobacco Cessation Program, in an Amount Not to Exceed \$22,400; and Authorize the Board of Supervisors Chair to Sign the Agreement.

BACKGROUND AND HISTORY OF BOARD ACTIONS:

The Mariposa County Tobacco Education Program (TEP) is funded by the California Tobacco Control Program (CTCP) at an annual amount of \$302,415 for FY2018 from Proposition 99 and Proposition 56 funds. Annual funding in the amount of \$300,000 will be allocated in FY2019 and FY2020.

Under this agreement, the University of California San Diego, Moores Cancer Center, will conduct an expanded California Student Tobacco Survey (CSTS) for Mariposa County. The CSTS is a large-scale, in-school survey of tobacco use among California middle school (grades 6-8) and high school (grades 9-12) students. The TEP, in collaboration with the Mariposa County Unified School District (MCUSD), will facilitate an expanded Mariposa County CSTS survey during the 2018-2019 school year, which will include six custom questions on smokeless tobacco use.

The data obtained from this survey will allow both the TEP and MCUSD to learn about awareness and use of different tobacco products, patterns of tobacco use among youth, susceptibility to future tobacco use, youth perceptions of tobacco use, and how these tobacco usage trends are changing over time. The TEP will use the survey data to examine youth awareness of tobacco advertising and determine potential policy change as it relates to tobacco purchasing protocols, flavored tobacco products, and participation in school tobacco prevention. All survey data will be shared with MCUSD, the Mariposa County Tobacco School Resource Officer, when hired, and interested stakeholders.

Resolution - Action Requested 2018-396

ALTERNATIVES AND CONSEQUENCES OF NEGATIVE ACTION:

Do not approve the Agreement and the Health Department's Tobacco Education Program will need to determine other means of completing the work as outlined in the required scope of work with CTCP.

FINANCIAL IMPACT:

This request will be included in the request budget for Fiscal Year 2018-2019. No financial impact.

ATTACHMENTS:

**Agreement Between The Regent of The University of California #2018-0386
(PDF)**

RESULT: ADOPTED BY CONSENT VOTE [UNANIMOUS]

MOVER: Merlin Jones, District II Supervisor

SECONDER: Marshall Long, District III Supervisor

AYES: Smallcombe, Jones, Long, Cann, Menetrey

AGREEMENT BETWEEN
THE REGENTS OF THE UNIVERSITY OF CALIFORNIA
AND
COUNTY OF MARIPOSA

THIS AGREEMENT is made by and between The Regents of the University of California on behalf of its San Diego School of Medicine, Moores Cancer Center ("UNIVERSITY") and County of Mariposa, a political subdivision of the State of California ("COUNTY") with reference to the following facts:

WHEREAS, COUNTY operates a department of health and has the need for smoking cessation program consultants, on behalf of COUNTY;

WHEREAS, UNIVERSITY employs staff with specialized training in providing smoking cessation and tobacco control program services ("CONSULTANTS") and is willing to assign its consultants to perform such services; and

WHEREAS, COUNTY desires to secure, and UNIVERSITY desires to provide, the non-exclusive services of consultants;

NOW, THEREFORE, it is agreed:

1. RESPONSIBILITIES OF UNIVERSITY

- 1.1 UNIVERSITY shall appoint CONSULTANTS for survey and data reporting in accordance with the Scope of Work attached hereto in Exhibit A
- 1.2 If CONSULTANTS shall become permanently unavailable, for any reason, UNIVERSITY may, in its sole discretion, appoint another CONSULTANTS or terminate this Agreement. If UNIVERSITY elects to appoint another CONSULTANTS, such an appointment shall be made with the prior written consent of COUNTY and such services shall be provided pursuant to the terms of this Agreement.

2. RESPONSIBILITIES OF CONSULTANTS

- 2.1 CONSULTANTS shall maintain in good standing any license or certifications and qualifications required hereunder or contemplated hereby.
- 2.2 Other Duties: CONSULTANTS shall
 - 2.2.1 abide by COUNTY'S staff bylaws, rules and regulations, corporate bylaws and other applicable policies and procedures; and
 - 2.2.2 comply with all applicable law, licensing requirements and guidelines of

The Joint Commission for accreditation and other regulatory agencies;

- 2.2.3 shall complete and assist in maintaining accurate records and reports that reflect the services provided by CONSULTANTS;
- 2.2.4 notify, except in emergency, COUNTY's director at least two (2) weeks in advance of any leave or vacation.
- 2.2.5 shall work with COUNTY to establish a mutually agreed upon work schedule, Monday through Friday during normal business hours.
- 2.2.6 shall advise COUNTY of needed repairs or replacement of equipment necessary for the proper performance of services under this Agreement either recognized by or brought to the attention of CONSULTANTS.

3. RESPONSIBILITIES OF COUNTY

- 3.1 Support Services. COUNTY shall furnish the services of its support departments, including but not limited to, scheduling, personnel, administration, accounting, purchasing and records departments as necessary for the proper and efficient provision of services pursuant to this Agreement.
- 3.2 Personnel. COUNTY shall be responsible for employing or otherwise engaging and supplying all non- consultant personnel necessary for the proper performance of services under this Agreement and as required by law and accreditation agencies. COUNTY will be responsible for all employers' payroll taxes, to which said personnel may be entitled. COUNTY shall be solely responsible for all employment-related decisions regarding such personnel, and shall indemnify and hold UNIVERSITY harmless from and against any and all liability, loss, expense or claims arising from such decisions.
- 3.3 Data Ownership. Data will be collected as part of the larger California Student Tobacco Survey (CSTS), which is funded by the California Department of Public Health (CDPH). Therefore, all data are owned by CDPH; they can be accessed with the approval of CDPH, subject to rules protecting the confidentiality of survey participants. UNNIVERSITY will help prepare the data for the COUNTY to use once CDPH has given the approval. UNNIVERSITY retains the right to analyze the data from all counties as part of the CSTS analytic work to understand the tobacco use pattern in California, and to publish the results in scientific journals.
- 3.4 Indirect Cost Assessments. COUNTY restricts the indirect cost or overhead rates it pays to UNIVERSITY to ten percent (10%) of the direct costs for performing the services hereunder.

4. COMPENSATION AND BILLING

4.1 As compensation for the services rendered by CONSULTANTS to COUNTY pursuant to Subsection 2.1 of this Agreement, COUNTY shall pay UNIVERSITY approximately Twenty-two Thousand Four Hundred dollars (\$22,400). Payment shall be made in two (2) installments: (i) COUNTY shall pay UNIVERSITY Eleven Thousand Two Hundred dollars (\$11,200) due within thirty (30) days of the completion of survey programming; (ii) a final payment of Eleven Thousand Two Hundred dollars (\$11,200) shall be due within thirty (30) days of the COUNTY's receipt of the county-specific report.

Invoices shall be sent to: Ginnie Day
Mariposa County Health Department
P.O. Box 5
Mariposa, CA 95338
Email: gday@mariposacounty.org

Checks will be made payable to: The Regents of the University of California

And sent to: UC San Diego Moores Cancer Center
9500 Gilman Dr. M.C. 0905
San Diego, CA 92093-0905
Attention: David Aspiras (daspiras@ucsd.edu)
UCSD Ref #2018-0386
Federal Tax ID# 95-6006144

4.2 Payment of CONSULTANTS'S salary and benefits shall be the sole responsibility of UNIVERSITY as the employer of CONSULTANTS.

4.3 COUNTY acknowledges that UNIVERSITY employees shall follow the ethical and legal standards established by the UNIVERSITY'S Compliance Program, as well as those of COUNTY's compliance program, if such program exists, and a copy has been provided to the UNIVERSITY'S employee.

4.4 The parties acknowledge that none of the benefits granted UNIVERSITY or UNIVERSITY CONSULTANTS employees is conditioned on any requirements that UNIVERSITY or CONSULTANTS make referrals to, be in a position to make or influence referrals to, or otherwise generate business for COUNTY. The parties further agree that services provided hereunder are non-exclusive and CONSULTANTS may establish privileges at, refer any service to, or otherwise generate any business for any other entity of CONSULTANTS's choosing.

5. REVIEW OF CONSULTANTS'S BILLING DOCUMENTS AND USE OF TAX IDENTIFICATION NUMBER

- 5.1 COUNTY shall allow UNIVERSITY the right to review documentation by CONSULTANTS to assure accuracy of the billing for services provided.
- 5.2 COUNTY shall use its own tax identification number and provide documentation of such tax identification number prior to submitting the first bill under this agreement.

6. COUNTY'S INSURANCE

COUNTY, at its sole cost and expense, shall insure COUNTY'S activities in connection with this Agreement by maintaining programs of self-insurance as follows:

- 6.1 Comprehensive or Commercial Form General Liability Insurance (contractual liability included) with a minimum limit of one million dollars (\$1,000,000) per occurrence.
- 6.2 Business Automobile Liability Insurance for owned, non-owned, or hired automobiles with a combined single limit of not less than one million dollars (\$1,000,000) per occurrence.

If the above insurance is written on a claims-made form, it shall continue for three (3) years following termination of this Agreement. The insurance shall have a retroactive date of placement prior to or coinciding with the effective date of this Agreement.

- 6.3 Workers' Compensation as required under California State law.
- 6.4 Such other insurance in such amounts which from time-to-time may be reasonably required by mutual consent of the UNIVERSITY and COUNTY against other insurable risks relating to performance.

Coverage required under Subsections 6.1, 6.2 and 6.3 shall not limit the liability of COUNTY.

The coverage referred to under Subsections 6.1 shall include UNIVERSITY as an additional insured. Such a provision, however, shall apply only in proportion to and to the extent of the negligent acts or omissions of COUNTY, its officers, employees, and agents. COUNTY upon the execution of this Agreement shall furnish UNIVERSITY with certificates of insurance evidencing compliance with all requirements. Certificates shall further provide for thirty (30) days (10 days for non-payment of premium) advance written notice to UNIVERSITY of any material modification, change or cancellation of any of the above insurance coverage.

7. UNIVERSITY'S INSURANCE

UNIVERSITY, at its sole cost and expense, shall insure its activities in connection with this Agreement by maintaining programs of self-insurance as follows:

- 7.1 General Liability Self-Insurance Program with a limit of one million dollars

(\$1,000,000) per occurrence.

- 7.2 Business Automobile Liability Insurance for owned, non-owned, or hired automobiles with a combined single limit of not less than one million dollars (\$1,000,000) per occurrence.
- 7.3 Workers' Compensation as required under California State law.
- 7.4 Such other insurance in such amounts, which from time to time may be reasonably required by mutual consent of the parties against other insurable risks relating to performance

Coverage required under this section 7.1, 7.2 and 7.3 shall not in any way limit the liability of UNIVERSITY.

The coverage referred to under Subsections 7.1 shall include COUNTY as an additional insured. Such a provision, however, shall apply only in proportion to and to the extent of the negligent acts or omissions of UNIVERSITY, its officers, employees, and agents. UNIVERSITY, upon request, shall furnish COUNTY with certificates of insurance evidencing compliance with all requirements.

8. INDEMNIFICATION

- 8.1 COUNTY's Indemnification. COUNTY shall defend, indemnify and hold UNIVERSITY, its officers, employees, and agents harmless from and against any and all liability, loss, expense (including reasonable attorneys' fees), or claims for injury or damages arising out of the performance of this Agreement but only in proportion to and to the extent such liability, loss, expense, attorneys' fees, or claims for injury or damages are caused by or result from the negligent or intentional acts or omissions of COUNTY, its officers, employees, or agents.
- 8.2 UNIVERSITY'S Indemnification. UNIVERSITY shall defend, indemnify and hold COUNTY, its officers, employees and agents harmless from and against any and all liability, loss, expense (including reasonable attorneys' fees), or claims for injury or damages arising out of the performance of this Agreement but only in proportion to and to the extent such liability, loss, expense, attorneys' fees, or claims for injury or damages are caused by or result from the negligent or intentional acts or omissions of UNIVERSITY, its officers, employees, or agents.

9. COOPERATION IN DISPOSITION OF CLAIMS

COUNTY and UNIVERSITY agree to cooperate with each other in the investigation and disposition of third-party liability claims arising out of any services provided under this Agreement. It is the intention of the parties to fully cooperate in the disposition of all such claims. Such cooperation may include joint investigation, defense and disposition of claims of third parties arising from services performed under this Agreement. COUNTY and UNIVERSITY agree to promptly inform one another whenever an

incident report, claim or complaint is filed or when an investigation is initiated concerning any professional service performed under this Agreement. To the extent allowed by law, COUNTY and UNIVERSITY shall have reasonable access to the records and charts of the other relating to any such claim or investigation; provided, however, that nothing in this section shall require either COUNTY or UNIVERSITY to disclose any peer review documents, incident reports, records or communications which are privileged under Section 1157 of the California Evidence Code, under the Attorney-Client Privilege or under the Attorney Work-Product Privilege.

10. TERM AND TERMINATION

10.1 Term of Agreement. The term of this Agreement shall begin on the April 1, 2018 and shall continue through June 30, 2019. This Agreement may be renewed upon the mutual written agreement of both parties.

10.2 Termination Without Cause. Notwithstanding any other provision to the contrary, this Agreement may be terminated without cause, for any reason, at any time by COUNTY or UNIVERSITY upon thirty (30) days' prior written notice to the other party. Termination without cause shall not include termination based upon the volume of revenue or referrals generated under this Agreement.

10.3 Termination For Material Breach. In the event of a material breach of this Agreement, the aggrieved party may terminate this Agreement by giving written notice of termination to the breaching party, which termination shall be effective immediately upon delivery or as otherwise specified in such notice; provided, however, that if the nature of the breach is such that it can be reasonably cured, said notice shall specify the nature of such breach, and shall further state that the breaching party shall have thirty (30) days from the effective date of such notice to cure such breach, at which time, if the breach is not cured, this Agreement shall be terminated.

10.4 Cause for Automatic Termination. This Agreement shall automatically terminate in the event of: (1) the loss of COUNTY's insurance coverage as described in Section 6 of this Agreement; (2) the insolvency or bankruptcy of COUNTY.

10.5 Effect of Expiration or Termination. Upon the expiration or earlier termination of this Agreement, as herein above provided, and except as specifically provided herein, no party shall have any further obligation hereunder except for obligations, debts or liabilities arising hereunder prior to the date of expiration or earlier termination.

11. INDEPENDENT CONTRACTOR

None of the provisions of this Agreement shall be construed to or shall create a relationship of agency, representation, joint venture, ownership, control or employment between the parties, and it is understood and agreed that UNIVERSITY is at all times acting and performing the services pursuant to this Agreement as an independent

contractor and not as an employee or agent of COUNTY. COUNTY shall not control or direct the manner or methods by which UNIVERSITY performs the contemplated services. However, UNIVERSITY shall be responsible for performing the services in a manner and at times so as to ensure that the contemplated services are performed and rendered in a competent, efficient and satisfactory manner.

12. MODIFICATIONS AND AMENDMENTS

This Agreement may be amended or modified at any time by mutual written consent of the authorized representatives of both parties. COUNTY and UNIVERSITY agree to amend this Agreement if such amendment is required by applicable regulatory authority and does not materially affect the relative economic benefits of the parties.

13. DISPUTE RESOLUTION

In the event of any dispute arising out of or relating to this Agreement, the parties shall attempt, in good faith, to promptly resolve the dispute mutually between themselves. If they are unable to do so, then the following procedures shall apply.

13.1 Mediation. Any dispute between the parties which cannot be resolved in accordance with Article 14 of this Agreement may be submitted to mediation. If the parties mutually agree that mediation is appropriate, within ten (10) business days of the delivery of a request for mediation, the parties shall agree upon a mediator. If the parties are unable to agree on a mediator, a mediator shall be appointed by JAMS/Endispute. In consultation with the mediator selected, the parties shall promptly designate a mutually convenient time and place for the mediation. At the mediation, each party shall be represented by persons with authority to negotiate a resolution of the dispute, and may be represented by counsel. The mediator shall determine the format for the meetings. The mediation session shall be private. The fees and expenses of the mediator shall be borne equally by the parties, each of whom shall be responsible for their own costs. The entire mediation process shall be confidential and the privileges and protection of Evidence Code Section 1152.5 shall apply. Prior to commencement of mediation, the parties and the mediator shall execute a written confidentiality agreement in accordance with the provisions of Evidence Code Section 1152.5. At any time, either party may withdraw from the mediation process and submit the matter to binding arbitration.

13.2 Arbitration. All disputes between the parties relating to this contract which cannot be resolved by mutual agreement or mediation shall be resolved exclusively by arbitration in accordance with the provisions of this Subparagraph. Either party may commence arbitration by sending a written demand for arbitration to the other party setting forth the nature of the controversy, the dollar amount involved, if any, and the remedies sought. There shall be one (1) arbitrator. If the parties fail to select a mutually acceptable arbitrator within ten (10) days after the demand for arbitration is mailed, then the parties stipulate to arbitration before a single arbitrator sitting on the San Diego JAMS/Endispute panel, who is a retired judge and is selected in the sole discretion of the JAMS/Endispute office

administrator. The parties shall share all interim costs of the arbitration until decision. The prevailing party shall be entitled to reimbursement by the other party of such party's attorneys' fees and costs and any arbitration fees and expenses incurred with the arbitration. The substantive law of the State of California shall be applied by the arbitrator. The parties shall have the rights of discovery as provided for in Part 4 of the California Code of Civil Procedure and as provided for in Section 1283.05 of said Code. The California Code of Evidence shall apply to testimony and documents submitted to the arbitrator. Arbitration shall take place in San Diego, California. As soon as reasonably practicable, a hearing with respect to the dispute or matter to be resolved shall be conducted by the arbitrator. As soon as reasonably practicable thereafter, the arbitrator shall arrive at a final decision, which shall be reduced to writing, signed by the arbitrator and mailed to each of the parties and their legal counsel. All decisions of the arbitrator shall be final, binding and conclusive on the parties and shall constitute the only method of resolving disputes or matters. A court of appropriate jurisdiction may issue a writ to enforce the arbitrator's decision. Judgment may be entered upon a decision in accordance with applicable law in any court having appropriate jurisdiction.

14. GOVERNING LAW

This Agreement shall be governed in all respects by the laws of the State of California.

15. ASSIGNMENT

Neither COUNTY nor UNIVERSITY shall assign their rights, duties, or obligations under this Agreement, either in whole or in part, without the prior written consent of the other.

16. SEVERABILITY

If any provision of this Agreement is held to be illegal, invalid, or unenforceable under present or future laws effective during the term hereof, such provision shall be fully severable. This Agreement shall be construed and enforced as if such illegal, invalid, or unenforceable provision had never comprised a part hereof, and the remaining provisions shall remain in full force and effect unaffected by such severance, provided that the invalid provisions are not material to the overall purpose and operation of this Agreement.

17. WAIVER

Waiver by either party of any breach of any provision of this Agreement or warranty of representation herein set forth shall not be construed as a waiver of any subsequent breach of the same or any other provision. The failure to exercise any right hereunder shall not operate as a waiver of such right. All rights and remedies provided for herein are cumulative.

18. ENTIRE AGREEMENT

This Agreement contains all the terms and conditions as agreed upon by the parties hereto regarding the subject matter of the Agreement and supersedes any prior agreements, oral

or written, and all other communications between the parties relating to such subject matter.

19. ATTORNEYS' FEES

In the event of any action, suit or proceeding between the parties hereto, the cost of such action, suit or proceeding, including reasonable attorneys' fees, shall be borne by the losing party or, in the case of an arbitration, as determined by the arbitrator.

20. INTERRUPTION OF SERVICES

Any of the parties shall be excused from any delay or failure in performance hereunder caused by reason of any occurrence or contingency beyond its reasonable control, including, but not limited to, acts of God, acts of war, fire, insurrection, labor disputes, riots, earthquakes, or other acts of nature. The obligations and rights of the parties so excused shall be extended on a day-to-day basis for the time period equal to the period of such excusable interruption. In the event the interruption of the excused party's obligations continues for a period in excess of thirty (30) days, the other party shall have the right to terminate this Agreement upon ten (10) days prior written notice to the excused party.

21. SUBJECT HEADINGS

The subject headings used in this Agreement are for convenience only and shall not be deemed to affect the meaning or construction of any of the terms, provisions, covenants or conditions of this Agreement.

22. METHOD OF NOTIFICATION

All notices required or permitted to be given hereunder which may be given by any party to the other, shall be deemed to have been fully given when made in writing and sent by facsimile to the number set forth below or sent by reputable overnight courier, or deposited in the United States mail, postage prepaid, certified mail, return receipt requested, and addressed as follows:

TO UNIVERSITY: Assistant Vice Chancellor
 UC San Diego Health Sciences
 9500 Gilman Drive, #0602
 La Jolla, CA 92093-0602
 Facsimile number: 858.534.6573

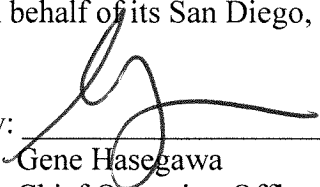
TO COUNTY: County of Mariposa Health Department
 Attention: Ginnie Day
 P.O. Box 5
 Mariposa, CA 95338
 Facsimile number: (209) 966-4929

23. COUNTERPARTS

This Agreement may be executed in separate counterparts, none of which need contain the signatures of all parties, each of which shall be deemed to be an original, and all of which taken together constitute one and the same instrument. Telecopied or scanned signatures will be deemed to have the same effect as an original.

The parties have executed this Agreement as set forth below.

THE REGENTS OF THE UNIVERSITY OF CALIFORNIA,
on behalf of its San Diego, School of Medicine, Moores Cancer Center

By: 
Gene Hasegawa
Chief Operating Officer
UC San Diego Health Sciences

7/12/18
Date

COUNTY OF MARIPOSA

By:  8/14/18
Date

Name: Rosemarie Smallcombe

Title: Board Chair

APPROVED AS TO FORM:

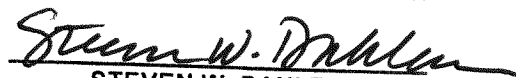

STEVEN W. DAHLEM
COUNTY COUNSEL

EXHIBIT A SCOPE OF WORK

Mariposa County specific report of data from the 2017-18 California Student Tobacco Survey (CSTS):

UNIVERSITY will program up to six county-specific questions to attach to CSTS for schools not already surveyed. Mariposa County will provide county-specific questions (up to six) to UNIVERSITY in a timely way. Questions must be ones deemed acceptable to the participants' review boards, the schools and to the parents/guardians. UNIVERSITY will conduct CSTS with students in 9th and 12th grades from one high school and 7th – 8th grades in four additional schools

- 1) Mariposa County is expected to assist the recruitment efforts by providing a letter to the schools about the importance of the project and collaborating with UNIVERSITY to set up a recruitment strategy.
- 2) UNIVERSITY will analyze data, including county specific information.
- 3) When CSTS data is approved by the California Department of Public Health (CDPH), UNIVERSITY will deliver a report that provides county-specific prevalence rates for cigarettes, emerging products, and marijuana and data exposure, susceptibility, attitudes and other questions included in CSTS.
- 4) UNIVERSITY will include in the report analysis of county specific questions.