

*Before the Board of Supervisors in and for the
County of Monterey, State of California*

Agreement No.: A-11606

Approve and authorize the Contracts/Purchasing Officer to)
execute the Renewal and Amendment No. 2 of Agreement)
no. A-11606 with The Lipman Company (TLC) for benefits)
administration services, extending the term of the)
Agreement to September 30, 2012.....)

Upon motion of Supervisor Salinas, seconded by Supervisor Parker, and carried by those members present, the Board hereby took the following actions:

Approved and authorized the Contracts/Purchasing Officer to execute the Renewal and Amendment No. 2 of Agreement No. A-11606 with The Lipman Company (TLC) for benefits administration services, extending the term of the Agreement to September 30, 2012.

PASSED AND ADOPTED on this 20th day of March 2012, by the following vote, to-wit:

AYES: Supervisors Armenta, Calcagno, Salinas, Parker, and Potter
NOES: None
ABSENT: None

I, Gail T. Borkowski, Clerk of the Board of Supervisors of the County of Monterey, State of California, hereby certify that the foregoing is a true copy of an original order of said Board of Supervisors duly made and entered in the minutes thereof of Minute Book 76 for the meeting on March 20, 2012.

Dated: March 21, 2012

Gail T. Borkowski, Clerk of the Board of Supervisors
County of Monterey, State of California

By Denise Hancock
Deputy

**RENEWAL AND AMENDMENT NO. 2 OF AGREEMENT #A-11606
BETWEEN THE COUNTY OF MONTEREY &
THE LIPMAN COMPANY**

WHEREAS, The Lipman Company (TLC), hereinafter "CONTRACTOR", and the County of Monterey, a political subdivision of the State of California, hereinafter referred to as "COUNTY" previously entered into an agreement dated December 15, 2009, for the Administration of the County of Monterey Section 125 Plan ("AGREEMENT"); and

WHEREAS, COUNTY and CONTRACTOR amended the AGREEMENT previously on April 21, 2011 via AMENDMENT NO. 1; and

WHEREAS, the AGREEMENT expired pursuant to its terms on December 6, 2011; and

WHEREAS, COUNTY and CONTRACTOR wish to renew the AGREEMENT retroactive to December 6, 2011; and

WHEREAS, COUNTY and CONTRACTOR wish to extend the term of the renewed AGREEMENT on a month to month basis through and including September 30, 2012; NOW THEREFORE,

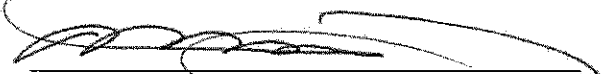
For valuable consideration, the sufficiency of which is hereby acknowledged, COUNTY and CONTRACTOR agree as follows:

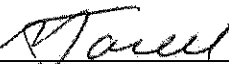
1. The AGREEMENT is renewed retroactive to December 6, 2011, and all of its provisions shall be deemed to have been in effect continuously since that time.
2. Section 3, "TERM OF AGREEMENT" shall be amended by removing "The term of this Agreement is from December 7, 2009 to December 6, 2011", and replacing it with: "The term of this Agreement is from signing of Agreement and shall continue on a month to month basis as needed through and including September 30, 2012 while the County publicly solicits for a new contract. County shall notify CONTRACTOR when a tentative selection has been made for the new contract and shall provide a minimum of thirty (30) days advance notice if and when County deems CONTRACTOR'S services are no longer needed.";
3. Except as provided herein, all remaining terms, conditions and provisions of the AGREEMENT are unchanged and unaffected by this RENEWAL AND AMENDMENT NO. 2 TO AGREEMENT #A-11606, and shall continue in full force and effect as set forth in the AGREEMENT;
4. A copy of this RENEWAL AND AMENDMENT NO. 2 shall be attached to the original AGREEMENT dated December 15, 2009.

IN WITNESS WHEREOF, the County and CONTRACTOR execute this RENEWAL AND AMENDMENT NO. 2 as follows:

COUNTY OF MONTEREY

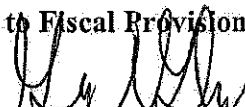
CONTRACTOR


Contracts/Purchasing Officer

By: 
Signature of Chair, President, or Vice-President

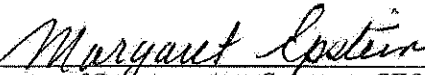
Dated: 3-27-12

MARY TARELL
Printed Name and Title

Approved as to Fiscal Provisions:

Deputy Auditor/Controller

Dated: 1/9/2012

Dated: 1-30-12

By: 
(Signature of Secretary, Asst. Secretary, CFO, Treasurer or Asst. Treasurer)*


Approved as to Liability Provisions:

MARGARET EPSTEIN Corp. Sec'y
Printed Name and Title

Risk Management

Dated: 1/13/2012

Dated:

Approved as to Form:

Deputy County Counsel

Dated: 1-26-12

*INSTRUCTIONS: IF CONTRACTOR is a corporation, including limited liability and non-profit corporations, the full legal name of the corporation shall be set forth above together with the signatures of two specified officers. If CONTRACTOR is a partnership, the name of the partnership shall be set forth above together with the signature of a partner who has authority to execute this Agreement on behalf of the partnership. If CONTRACTOR is contracting in an individual capacity, the individual shall set forth the name of the business, if any, and shall personally sign the Amendment.

MAR 27 2012

Before the Board of Supervisors in and for the
County of Monterey, State of California

Agreement No. A-11606

Approve Amendment No. 1 to Agreement No. A-11606)
with The Lipman Company extending the expiration date)
from December 6, 2010 to December 6, 2011.....)

Upon motion of Supervisor Potter, seconded by Supervisor Salinas, and carried by those members present, the Board hereby;

Approved Amendment No. 1 to Agreement No. A-11606 with The Lipman Company extending the expiration date from December 6, 2010 to December 6, 2011.

PASSED AND ADOPTED on this 17th day of May, 2011, by the following vote, to wit:

AYES: Supervisors Armenta, Calcagno, Salinas, Parker, and Potter

NOES: None

ABSENT: None

I, Gail T. Borkowski, Clerk of the Board of Supervisors of the County of Monterey, State of California, hereby certify that the foregoing is a true copy of an original order of said Board of Supervisors duly made and entered in the minutes thereof of Minute Book 75 for the meeting on May 17, 2011.

Dated: May 17, 2011

Gail T. Borkowski, Clerk of the Board of Supervisors
County of Monterey, State of California

By Clint A. Mel
Deputy

RECEIVED
MAR 31 2011
RISK MANAGEMENT

Attachment A

AMENDMENT NO. 1 TO AGREEMENT #11606
By and Between
COUNTY OF MONTEREY and The Lipman Company

Professional Services Agreement #11606 was made and entered into the 7th day of December 2009 by and between the County of Monterey (COUNTY), a political subdivision of the State of California, and The Lipman Company (CONTRACTOR) for the administration of the County of Monterey Section 125 Plan.

WHEREAS, the COUNTY and CONTRACTOR wish to amend the Agreement to extend the term of the agreement.

NOW THEREFORE, the COUNTY and CONTRACTOR hereby agree to amend the Agreement in the following manner:

1. Section 3. "TERM OF AGREEMENT" shall be amended by extending the termination date from December 6, 2010 to December 6, 2011.
2. Except as provided herein, all other terms and conditions of the amended Agreement shall continue in full force and effect.

IN WITNESS WHEREOF, COUNTY and CONTRACTOR have executed this Agreement as of the day and year written below.

COUNTY OF MONTEREY

CONTRACTOR

By: [Signature]
Contracts/Purchasing Manager

The Lipman Company
Contractor's Business Name

Dated 4-21-11

By: [Signature]
Signature of Chair, President, or Vice President)

By: _____
Keith Honda, Asst. CAO

MARY TAREU / VP
Name and Title

Dated _____

Date: 12/3/10

APPROVED AS TO FORM:

By: _____
Signature of Secretary, Asst. Secretary, CFO
or Asst. Treasurer

[Signature]
Assistant County Counsel Deputy

Dated 4-12-11

Name and Title

Reviewed as to fiscal provisions

[Signature]
Auditor-Controller
County of Monterey

4-12-11

COUNTY OF MONTEREY AGREEMENT FOR PROFESSIONAL SERVICES
(MORE THAN \$100,000)*

This Professional Services Agreement ("Agreement") is made by and between the County of Monterey, a political subdivision of the State of California (hereinafter "County") and:
The Lipman Company
(hereinafter "CONTRACTOR").

In consideration of the mutual covenants and conditions set forth in this Agreement, the parties agree as follows:

1. **SERVICES TO BE PROVIDED.** The County hereby engages CONTRACTOR to perform, and CONTRACTOR hereby agrees to perform, the services described in **Exhibit A** in conformity with the terms of this Agreement. The services are generally described as follows:
Provide professional services in the administration of the County of Monterey 125 Plan and optional benefits program and other services identified in the attached Scope of Services

2. **PAYMENTS BY COUNTY.** County shall pay the CONTRACTOR in accordance with the payment provisions set forth in **Exhibit A**, subject to the limitations set forth in this Agreement. The total amount payable by County to CONTRACTOR under this Agreement shall not exceed the sum of \$ 125,000.00.

3. **TERM OF AGREEMENT.** The term of this Agreement is from December 7, 2009 to December 6, 2009 ~~2010~~ *unless sooner terminated pursuant to the terms of this Agreement.* This Agreement is of no force or effect until signed by both CONTRACTOR and County and with County signing last, and CONTRACTOR may not commence work before County signs this Agreement.

4. **ADDITIONAL PROVISIONS/EXHIBITS.** The following attached exhibits are incorporated herein by reference and constitute a part of this Agreement:

- Exhibit A Scope of Services/Payment Provisions
- Exhibit B Business Associate Agreement

5. **PERFORMANCE STANDARDS.**

5.01. CONTRACTOR warrants that CONTRACTOR and CONTRACTOR's agents, employees, and subcontractors performing services under this Agreement are specially trained, experienced, competent, and appropriately licensed to perform the work and deliver the services required under this Agreement and are not employees of the County, or immediate family of an employee of the County.

5.02. CONTRACTOR, its agents, employees, and subcontractors shall perform all work in a safe and skillful manner and in compliance with all applicable laws and regulations. All work performed under this Agreement that is required by law to be performed or supervised by licensed personnel shall be performed in accordance with such licensing requirements.

*Approved by County Board of Supervisors on _____.

5.03. CONTRACTOR shall furnish, at its own expense, all materials, equipment, and personnel necessary to carry out the terms of this Agreement, except as otherwise specified in this Agreement. CONTRACTOR shall not use County premises, property (including equipment, instruments, or supplies) or personnel for any purpose other than in the performance of its obligations under this Agreement.

6. PAYMENT CONDITIONS.

6.01. CONTRACTOR shall submit to the Contract Administrator an invoice on a form acceptable to County. If not otherwise specified, the CONTRACTOR may submit such invoice periodically or at the completion of services, but in any event, not later than 30 days after completion of services. The invoice shall set forth the amounts claimed by CONTRACTOR for the previous period; together with an itemized basis for the amounts claimed, and such other information pertinent to the invoice as the County may require. The Contract Administrator or his or her designee shall certify the invoice; either in the requested amount or in such other amount as the County approves in conformity with this Agreement, and shall promptly submit such invoice to the County Auditor-Controller for payment. The County Auditor-Controller shall pay the amount certified within 30 days of receiving the certified invoice.

6.02. CONTRACTOR shall not receive reimbursement for travel expenses unless set forth in this Agreement.

7. TERMINATION.

7.01. During the term of this Agreement, the County may terminate the Agreement for any reason by giving written notice of termination to the CONTRACTOR at least thirty (30) days prior to the effective date of termination. Such notice shall set forth the effective date of termination. In the event of such termination, the amount payable under this Agreement shall be reduced in proportion to the services provided prior to the date of termination.

7.02. The County may cancel and terminate this Agreement for good cause effective immediately upon written notice to CONTRACTOR. "Good cause" includes the failure of CONTRACTOR to perform the required services at the time and in the manner provided under this Agreement. If County terminates this Agreement for good cause, the County may be relieved of the payment of any consideration to CONTRACTOR, and the County may proceed with the work in any manner, which County deems proper. The cost to the County shall be deducted from any sum due the CONTRACTOR under this Agreement.

8. **INDEMNIFICATION.** CONTRACTOR shall indemnify, defend, and hold harmless the County, its officers, agents, and employees, from and against any and all claims, liabilities, and losses whatsoever (including damages to property and injuries to or death of persons, court costs, and reasonable attorneys' fees) occurring or resulting to any and all persons, firms or corporations furnishing or supplying work, services, materials, or supplies in connection with the performance of this Agreement, and from any and all claims, liabilities, and losses occurring or resulting to any person, firm, or corporation for damage, injury, or death arising out of or connected with the CONTRACTOR's performance of this Agreement, unless such claims, liabilities, or losses arise out of the sole negligence or willful misconduct of the County. "CONTRACTOR's performance" includes CONTRACTOR's action or inaction and the action or inaction of CONTRACTOR's officers, employees, agents and subcontractors.

9.0 INSURANCE.

9.01 Evidence of Coverage:

Prior to commencement of this Agreement, the Contractor shall provide a "Certificate of Insurance" certifying that coverage as required herein has been obtained. Individual endorsements executed by the insurance carrier shall accompany the certificate. In addition the Contractor upon request shall provide a certified copy of the policy or policies.

This verification of coverage shall be sent to the County's, Contracts/Purchasing Department, unless otherwise directed. The Contractor shall not receive a "Notice to Proceed" with the work under this Agreement until it has obtained all insurance required and such, insurance has been approved by the County. This approval of insurance shall neither relieve nor decrease the liability of the Contractor.

9.02 Qualifying Insurers:

All coverage's, except surety, shall be issued by companies which hold a current policy holder's alphabetic and financial size category rating of not less than A- VII, according to the current Best's Key Rating Guide or a company of equal financial stability that is approved by the County's Purchasing Manager.

9.03 Insurance Coverage Requirements:

Without limiting CONTRACTOR's duty to indemnify, CONTRACTOR shall maintain in effect throughout the term of this Agreement a policy or policies of insurance with the following minimum limits of liability:

Commercial general liability insurance, including but not limited to premises and operations, including coverage for Bodily Injury and Property Damage, Personal Injury, Contractual Liability, Broadform Property Damage, Independent Contractors, Products and Completed Operations, with a combined single limit for Bodily Injury and Property Damage of not less than \$1,000,000 per occurrence.

Exemption/Modification (Justification attached; subject to approval).

Business automobile liability insurance, covering all motor vehicles, including owned, leased, non-owned, and hired vehicles, used in providing services under this Agreement, with a combined single limit for Bodily Injury and Property Damage of not less than \$1,000,000 per occurrence.

Exemption/Modification (Justification attached; subject to approval).

Workers' Compensation Insurance, if CONTRACTOR employs others in the performance of this Agreement, in accordance with California Labor Code section 3700 and with Employer's Liability limits not less than \$1,000,000 each person, \$1,000,000 each accident and \$1,000,000 each disease.

Exemption/Modification (Justification attached; subject to approval).

Professional liability insurance, if required for the professional services being provided, (e.g., those persons authorized by a license to engage in a business or profession regulated by the California Business and Professions Code), in the amount of not less than \$1,000,000 per claim and \$2,000,000 in the aggregate, to cover liability for malpractice or errors or omissions made in the course of rendering professional services. If professional liability insurance is written on a "claims-made" basis rather than an occurrence basis, the CONTRACTOR shall, upon the expiration or earlier termination of this Agreement, obtain extended reporting coverage ("tail coverage") with the same liability limits. Any such tail coverage shall continue for at least three years following the expiration or earlier termination of this Agreement.

Exemption/Modification (Justification attached; subject to approval).

9.04 Other Insurance Requirements.

All insurance required by this Agreement shall be with a company acceptable to the County and issued and executed by an admitted insurer authorized to transact Insurance business in the State of California. Unless otherwise specified by this Agreement, all such insurance shall be written on an occurrence basis, or, if the policy is not written on an occurrence basis, such policy with the coverage required herein shall continue in effect for a period of three years following the date CONTRACTOR completes its performance of services under this Agreement.

Each liability policy shall provide that the County shall be given notice in writing at least thirty days in advance of any endorsed reduction in coverage or limit, cancellation, or intended non-renewal thereof. Each policy shall provide coverage for Contractor and additional insureds with respect to claims arising from each subcontractor, if any, performing work under this Agreement, or be accompanied by a certificate of insurance from each subcontractor showing each subcontractor has identical insurance coverage to the above requirements.

Commercial general liability and automobile liability policies shall provide an endorsement naming the County of Monterey, its officers, agents, and employees as Additional Insureds with respect to liability arising out of the CONTRACTOR'S work, including ongoing and completed operations, and shall further provide that such insurance is primary insurance to any insurance or self-insurance maintained by the County and that the insurance of the Additional Insureds shall not be called upon to contribute to a loss covered by the CONTRACTOR'S insurance. The required endorsement form for Commercial General Liability Additional Insured is ISO Form CG 20 10 11-85 or CG 20 10 10 01 in tandem with CG 20 37 10 01 (2000). The required endorsement form for Automobile Additional Insured endorsement is ISO Form CA 20 48 02 99.

Prior to the execution of this Agreement by the County, CONTRACTOR shall file certificates of insurance with the County's contract administrator and County's Contracts/Purchasing Division, showing that the CONTRACTOR has in effect the insurance required by this Agreement. The CONTRACTOR shall file a new or amended certificate of insurance within five calendar days after any change is made in any insurance policy, which would alter the information on the certificate then on file. Acceptance or approval of insurance shall in no way modify or change the indemnification clause in this Agreement, which shall continue in full force and effect.

CONTRACTOR shall at all times during the term of this Agreement maintain in force the insurance coverage required under this Agreement and shall send, without demand by County, annual certificates to County's Contract Administrator and County's Contracts/Purchasing Division. If the certificate is not received by the expiration date, County shall notify CONTRACTOR and CONTRACTOR shall have five calendar days to send in the certificate, evidencing no lapse in coverage during the interim. Failure by CONTRACTOR to maintain such insurance is a default of this Agreement, which entitles County, at its sole discretion, to terminate this Agreement immediately.

10. RECORDS AND CONFIDENTIALITY.

- 10.01 Confidentiality. CONTRACTOR and its officers, employees, agents, and subcontractors shall comply with any and all federal, state, and local laws, which provide for the confidentiality of records and other information. CONTRACTOR shall not disclose any confidential records or other confidential information received from the County or prepared in connection with the performance of this Agreement, unless County specifically permits CONTRACTOR to disclose such records or information. CONTRACTOR shall promptly transmit to County any and all requests for disclosure of any such confidential records or information. CONTRACTOR shall not use any confidential information gained by CONTRACTOR in the performance of this Agreement except for the sole purpose of carrying out CONTRACTOR's obligations under this Agreement.
- 10.02 County Records. When this Agreement expires or terminates, CONTRACTOR shall return to County any County records which CONTRACTOR used or received from County to perform services under this Agreement.
- 10.03 Maintenance of Records. CONTRACTOR shall prepare, maintain, and preserve all reports and records that may be required by federal, state, and County rules and regulations related to services performed under this Agreement. CONTRACTOR shall maintain such records for a period of at least three years after receipt of final payment under this Agreement. If any litigation, claim, negotiation, audit exception, or other action relating to this Agreement is pending at the end of the three year period, then CONTRACTOR shall retain said records until such action is resolved.
- 10.04 Access to and Audit of Records. The County shall have the right to examine, monitor and audit all records, documents, conditions, and activities of the CONTRACTOR and its subcontractors related to services provided under this Agreement. Pursuant to Government Code section 8546.7, if this Agreement involves the expenditure of public funds in excess of \$10,000, the parties to this Agreement may be subject, at the request of the County or as part of any audit of the County, to the examination and audit of the State Auditor pertaining to matters connected with the performance of this Agreement for a period of three years after final payment under the Agreement.
- 10.05 Royalties and Inventions. County shall have a royalty-free, exclusive and irrevocable license to reproduce, publish, and use, and authorize others to do so, all original computer programs, writings, sound recordings, pictorial reproductions, drawings, and other works of similar nature produced in the course of or under this Agreement. CONTRACTOR shall not publish any such material without the prior written approval of County.

11. **NON-DISCRIMINATION.** During the performance of this Agreement, CONTRACTOR, and its subcontractors, shall not unlawfully discriminate against any person because of race, religious creed, color, sex, national origin, ancestry, physical disability, mental disability, medical condition, marital status, age (over 40), or sexual orientation, either in CONTRACTOR's employment practices or in the furnishing of services to recipients. CONTRACTOR shall ensure that the evaluation and treatment of its employees and applicants for employment and all persons receiving and requesting services are free of such discrimination. CONTRACTOR and any subcontractor shall, in the performance of this Agreement, fully comply with all federal, state, and local laws and regulations, which prohibit discrimination. The provision of services primarily or exclusively to such target population as may be designated in this Agreement shall not be deemed to be prohibited discrimination.
12. **COMPLIANCE WITH TERMS OF STATE OR FEDERAL GRANT.** If this Agreement has been or will be funded with monies received by the County pursuant to a contract with the state or federal government in which the County is the grantee, CONTRACTOR will comply with all the provisions of said contract, to the extent applicable to CONTRACTOR as a subgrantee under said contract, and said provisions shall be deemed a part of this Agreement, as though fully set forth herein. Upon request, County will deliver a copy of said contract to CONTRACTOR, at no cost to CONTRACTOR.
13. **INDEPENDENT CONTRACTOR.** In the performance of work, duties, and obligations under this Agreement, CONTRACTOR is at all times acting and performing as an independent contractor and not as an employee of the County. No offer or obligation of permanent employment with the County or particular County department or agency is intended in any manner, and CONTRACTOR shall not become entitled by virtue of this Agreement to receive from County any form of employee benefits including but not limited to sick leave, vacation, retirement benefits, workers' compensation coverage, insurance or disability benefits. CONTRACTOR shall be solely liable for and obligated to pay directly all applicable taxes, including federal and state income taxes and social security, arising out of CONTRACTOR's performance of this Agreement. In connection therewith, CONTRACTOR shall defend, indemnify, and hold County harmless from any and all liability, which County may incur because of CONTRACTOR's failure to pay such taxes.
14. **NOTICES.** Notices required under this Agreement shall be delivered personally or by first-class, postage pre-paid mail to the County and CONTRACTOR'S contract administrators at the addresses listed below:

FOR COUNTY:	FOR CONTRACTOR:
Keith Honda, Assistant CAO/HR	Mary Tarell
Name and Title	Name and Title
County of Monterey 168 W Alisal Street, 3rd Fl, Gov't Center Bldg Salinas, CA 93901	Lipman Ins Administrators Inc The Lipman Company 39420 Liberty Street, Suite 260 Fremont, CA 94538-0000
Address	Address
831 755-5295	800 533-0113
Phone	Phone

15. MISCELLANEOUS PROVISIONS.

- 15.01 Conflict of Interest. CONTRACTOR represents that it presently has no interest and agrees not to acquire any interest during the term of this Agreement, which would directly or indirectly conflict in any manner or to any degree with the full and complete performance of the professional services required to be rendered under this Agreement.
- 15.02 Amendment. This Agreement may be amended or modified only by an instrument in writing signed by the County and the CONTRACTOR.
- 15.03 Waiver. Any waiver of any terms and conditions of this Agreement must be in writing and signed by the County and the CONTRACTOR. A waiver of any of the terms and conditions of this Agreement shall not be construed as a waiver of any other terms or conditions in this Agreement.
- 15.04 Contractor. The term "CONTRACTOR" as used in this Agreement includes CONTRACTOR's officers, agents, and employees acting on CONTRACTOR's behalf in the performance of this Agreement.
- 15.05 Disputes. CONTRACTOR shall continue to perform under this Agreement during any dispute.
- 15.06 Assignment and Subcontracting. The CONTRACTOR shall not assign, sell, or otherwise transfer its interest or obligations in this Agreement without the prior written consent of the County. None of the services covered by this Agreement shall be subcontracted without the prior written approval of the County. Notwithstanding any such subcontract, CONTRACTOR shall continue to be liable for the performance of all requirements of this Agreement.
- 15.07 Successors and Assigns. This Agreement and the rights, privileges, duties, and obligations of the County and CONTRACTOR under this Agreement, to the extent assignable or delegable, shall be binding upon and inure to the benefit of the parties and their respective successors, permitted assigns, and heirs.
- 15.08 Compliance with Applicable Law. The parties shall comply with all applicable federal, state, and local laws and regulations in performing this Agreement.
- 15.09 Headings. The headings are for convenience only and shall not be used to interpret the terms of this Agreement.
- 15.10 Time is of the Essence. Time is of the essence in each and all of the provisions of this Agreement.
- 15.11 Governing Law. This Agreement shall be governed by and interpreted under the laws of the State of California.
- 15.12 Non-exclusive Agreement. This Agreement is non-exclusive and both County and CONTRACTOR expressly reserve the right to contract with other entities for the same or similar services.

- 15.13 Construction of Agreement. The County and CONTRACTOR agree that each party has fully participated in the review and revision of this Agreement and that any rule of construction to the effect that ambiguities are to be resolved against the drafting party shall not apply in the interpretation of this Agreement or any amendment to this Agreement.
- 15.14 Counterparts. This Agreement may be executed in two or more counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same Agreement.
- 15.15 Authority. Any individual executing this Agreement on behalf of the County or the CONTRACTOR represents and warrants hereby that he or she has the requisite authority to enter into this Agreement on behalf of such party and bind the party to the terms and conditions of this Agreement.
- 15.16 Integration. This Agreement, including the exhibits, represent the entire Agreement between the County and the CONTRACTOR with respect to the subject matter of this Agreement and shall supersede all prior negotiations, representations, or agreements, either written or oral, between the County and the CONTRACTOR as of the effective date of this Agreement, which is the date that the County signs the Agreement.
- 15.17 Interpretation of Conflicting Provisions. In the event of any conflict or inconsistency between the provisions of this Agreement and the Provisions of any exhibit or other attachment to this Agreement, the provisions of this Agreement shall prevail and control.

This space left blank intentionally

IN WITNESS WHEREOF, County and CONTRACTOR have executed this Agreement as of the day and year written below.

COUNTY OF MONTEREY

CONTRACTOR

By: _____
Purchasing Officer

Date: _____

By: [Signature]
Department Head (if applicable)

Date: _____

By: _____
Board of Supervisors (if applicable)

Date: _____

Approved as to Form¹

By: [Signature]
County Counsel

Date: 12/3/09

Approved as to Fiscal Provisions²

By: [Signature]
Auditor/Controller

Date: 12-3-09

Approved as to Liability Provisions³

By: _____
Risk Management

Date: _____

THE LIPMAN COMPANY
Contractor's Business Name*

By: [Signature]
(Signature of Chair, President, or Vice-President)*

MARY TARELL, VP MARKETING
Name and Title

Date: 12/2/09

By: _____
(Signature of Secretary, Asst. Secretary, CFO, Treasurer or Asst. Treasurer)*

Date: _____
Name and Title

County Board of Supervisors' Agreement Number: _____

*INSTRUCTIONS: If CONTRACTOR is a corporation, including limited liability and non-profit corporations, the full legal name of the corporation shall be set forth above together with the signatures of two specified officers. If CONTRACTOR is a partnership, the name of the partnership shall be set forth above together with the signature of a partner who has authority to execute this Agreement on behalf of the partnership. If CONTRACTOR is contracting in an individual capacity, the individual shall set forth the name of the business, if any, and shall personally sign the Agreement.

¹Approval by County Counsel is required

²Approval by Auditor-Controller is required

³Approval by Risk Management is necessary only if changes are made in paragraph 8 or 9

EXHIBIT A

ADMINISTRATION SERVICES

PROVIDE PROFESSIONAL AND TECHNICAL SERVICES FOR BENEFITS ADMINISTRATION AS OUTLINED IN EXHIBIT A SCOPE OF SERVICES

RECONCILIATION PERS HEALTH BILL

On a monthly basis TLC shall provide bill reconciliation of the PERS Health statement as follows:

- For all active and retired employees. Relative to retired employees TLC shall verify the accuracy of retiree enrollment as such enrollment has an economic impact to the County of Monterey for erroneous enrollment in the Health plan.
- For accuracy of monthly premium collection.
- To ensure that new and/or modified enrollments are appropriately reflected on Health bill through review of appropriate county documents such as leave of absence and enrollments forms. Notify county of inaccurate enrollments and discrepancies in PERS Health billing.
- To become an approved CALPERS partner in providing deduction services for employees and retirees. This requirement shall become effective upon the implementation of the new CALPERS "My CALPERT" system.

SECTION 125 ADMINISTRATIONS

Provide accurate and timely advice to County of Monterey regarding benefit compliance issues relative to Section 125 administration issues impacting ABO and DECAP claims under Section 129 of the IRS Code; changes in requirements including sound and compliant advice regarding any benefit or Plan compliance matters.

- Reviewing and monitoring enrollment and communication materials for applicable Plans including health, dental, vision, ABO and DECAP.
- Provide ABO and DECAP account balance and claim access in a variety of methods including online and telephonic; provide services as County transition to FSA or other HRA program(s) provide necessary reporting to county on per-pay-period provide a variety of methods including direct deposit of reimbursements provide all necessary discrimination testing of plan components; provide employee notification of potential and actual forfeitures; return forfeitures to county.

- Provide updates of Section 125 Plan Document and Summary Plan Descriptions for all programs upon implementation of new county IRS compliant 125 Plan.

ADMINISTRATION OF OPTIONAL INDIVIDUAL INSURANCE PLANS

Provide administration of grandfathered "Optional Individual Insurance Plans, including:

- Administration of monthly premium collections; coordination of any required cancellations forms; notification of individual conversion options; monitoring monthly premium payments for benefit continuation; notify employees of cancellation of benefits due to non-payment of premiums; notify county of periods of waived premiums by carriers in order for county to interrupt payroll deductions; collect and remit premiums directly to carriers; assist employees with claims questions and processing.

ALTERNATIVE BENEFIT OPTION

Provide administration of the ABO program consistent with the county's 125 Plan and applicable IRS provisions, Including:

- Provide administration of county contributions and/or employee salary reduction to be reimbursed to employee by reviewing enrollment and claim forms and paying amount of reimbursement available from employees individual account; coordination of any required election or enrollment forms; provide a variety of reimbursement payment options including direct deposit; provide Customer Service for inquires; provide a variety of effective option(s) for employee account status.

DEPENDENT CARE ASSISTANCE PROGRAM

Provide administration of the DECAP program consistent with the county's 125 Plan and applicable IRS provisions, Including:

- Provide administration of county contributions and/or employee salary reduction to be reimbursed to employee by reviewing enrollment and claim forms and paying amount of reimbursement available from employees individual account; coordination of any required election or enrollment forms; provide a variety of reimbursement payment options including direct deposit; provide Customer Service for inquires; provide a variety of effective option(s) for employee account status.

CONFIDENTIALITY

For purposes of Section 10.01 of the County of Monterey Agreement for Professional Services, all plan, participant, spouse, dependent, County and other data, information and materials provided to Contractor shall be treated as confidential.

BUSINESS ASSOCIATE AGREEMENT

Contractor shall be bound by the terms and conditions of a HIPAA business associate agreement entered into by and between Contractor and County. In cases of conflict between the terms of the Agreement between the parties, including this Scope of Services, and the business associate agreement, the business associate agreement shall control unless the Agreement requires additional or greater protections of protected health information.

TRANSITION SERVICES

Contractor agrees to fully cooperate with County and any successor vendor upon termination of the Agreement. Contractor shall, without charge to County, provide County and the new vendor, upon County's direction, all data and information in Contractor's possession that is necessary or helpful to accomplish a successful transition to the successor vendor. Contractor shall provide consulting and additional transition services, upon County's request, at Contractholder's then prevailing standard hourly rates.

FEE STRUCTURE

FEE FOR INITIAL SET UP - \$20,000.00, ADDITIONAL FEES MAY BE BILLED AT A LATER DATE IF REQUIRED.

INCLUDES ALL CUSTOM PROGRAMMING, CUSTOM REPORT BUILDING, IMPORT AND EXPORTS, BUILDING PLAN DESIGNS ETC.

DEBIT CARD FEES-CHARGED BY MASTER CHARGE

\$3.00 PER CARD ISSUED

\$1.50 MONTHLY PER CARD ISSUED

\$5.00 FOR REPLACEMENT OF LOST OR STOLEN CARD

SECTION 125 PLAN

\$950.00 INITIAL SET UP FEE

\$5.00 PER PARTICIPATE MONTHLY

\$250 MONTHLY MINIMUM FEE

ALTERNATE BENEFIT OPTION

\$500.00 INITIAL SET UP FEE

\$6.50 PER PARTICIPANT MONTHLY CLAIMS ADMINISTRATION FEE

\$350 MONTHLY MINIMUM FEE

ADMINISTRATION OF OPTIONAL INDIVIDUAL INSURANCE PLANS.

\$750 INITIAL SET UP FEE-500 EE WITH 6 CARRIERS

\$1.50 PER PREMIUM PROCESSED PER MONTH

RECONCILLATION OF CALPERS

THE COMPLEXITY OF THE CALPERS PREMIUM PLAN IS LABOR INTENSIVE AND REQUIRES SEVERAL HOURS TO AUDIT, ADJUST AND MAINTAIN THE ACCURACY OF THE DEDUCTIONS.

\$ 3500 FLAT FEE PER MONTH

BUSINESS ASSOCIATE AGREEMENT

This agreement ("Agreement") is effective upon execution by and between [insert name of business associate] ("Business Associate") and the County of Monterey ("County"). The Agreement defines the parties' respective obligations to ensure compliance with applicable privacy laws.

I. Definitions

Terms used, but not otherwise defined, in this Agreement shall have the same meaning as those terms in the Privacy Rule. Other terms shall be defined as follows:

- (a) *Business Associate*. "Business Associate" shall mean [Insert Name of Business Associate].
- (b) *Covered Electronic Transactions*. "Covered Electronic Transactions" shall have the meaning given the term "transaction" in 45 C.F.R. § 160.103.
- (c) *Covered Entity*. "Covered Entity" and "County" shall mean the County of Monterey.
- (d) *Individual*. "Individual" shall have the same meaning as the term "individual" in 45 C.F.R. § 160.103 and shall include a person who qualifies as a personal representative in accordance with applicable law.
- (e) *Electronic Protected Health Information*. "Electronic Protected Health Information" shall have the same meaning as the term "electronic protected health information" in 45 C.F.R. § 160.103.
- (f) *Privacy Rule*. "Privacy Rule" shall mean the Standards for Privacy of Individually Identifiable Health Information at 45 CFR Part 160 and Part 164, subparts A and E.
- (g) *Protected Health Information*. "Protected Health Information" shall have the same meaning as the term "protected health information" in 45 C.F.R. § 160.103, limited to the information created or received by Business Associate from or on behalf of Covered Entity.
- (h) *Required By Law*. "Required By Law" shall have the same meaning as the term "required by law" in 45 CFR § 164.103.
- (i) *Security Incident*. "Security Incident" shall have the same meaning as the term "security incident" in 45 C.F.R. § 164.304.
- (j) *Security Rule*. "Security Rule" shall mean the Security Standards and Implementation Specifications at 45 CFR Part 160 and Part 164, subpart C.
- (k) *Secretary*. "Secretary" shall mean the Secretary of the Department of Health and Human Services or his or her designee.
- (l) *Standard*. "Standard," shall have the meaning set out in 45 C.F.R. § 160.103.
- (m) *Standards for Electronic Transactions Rule*. "Standards for Electronic Transactions Rule" means the final regulations issued by HHS concerning standard transactions and code sets under the Administration Simplification provisions of HIPAA, 45 CFR Part 160 and Part 162.
- (n) *Standard Transaction*. "Standard Transaction" shall have meaning set out in 45 C.F.R. § 160.103.
- (o) *Transaction*. "Transaction," shall have the meaning set out in 45 C.F.R. § 160.103.

II. Obligations and Activities of Business Associate

(a) Business Associate agrees to not use or disclose Protected Health Information other than as permitted or required by this Agreement or as Required By Law. Business Associate will use, disclose, and request of Covered Entity, only the minimum amount of County's Protected Health Information reasonably necessary to accomplish the intended purpose of the use, disclosure or request.

(b) Business Associate agrees to use appropriate safeguards to prevent use or disclosure of the Protected Health Information other than as provided for by this Agreement. Business Associate will develop, implement, maintain, and use any and all appropriate administrative, technical, and physical safeguards (including written policies and procedures) that prevent use or disclosure of the County's Protected Health Information, in compliance with 45 C.F.R. § 164.530(c), the Security Rule, and any other implementing regulation issued by DHHS, and in compliance with any other applicable law and agency guidance. The safeguards will be designed to preserve the availability, integrity and confidentiality of, and to prevent intentional or unintentional non-permitted use or disclosure of, County's Protected Health Information. Business Associate will ensure that access to electronic Protected Health Information is limited to those workforce members who require such access because of their role or function, and implement safeguards to prevent unauthorized workforce members from obtaining access.

(c) Business Associate agrees to mitigate, to the extent practicable, any harmful effect that is known to Business Associate of a use or disclosure of Protected Health Information, or a lapse in security regarding electronic Protected Health Information, by Business Associate in violation of the requirements of this Agreement or applicable law.

(d) Business Associate will timely report in writing to County any use or disclosure of County's Protected Health Information not permitted by this Agreement, any breach of unsecured Protected Health Information and/or any Security Incident of which it becomes aware. Business Associate will make the written report to County's HIPAA privacy officer not more than ten (10) calendar days after Business Associate learns or should have learned by exercising reasonable diligence of such non-permitted use or disclosure, breach and/or Security Incident. Business Associate's report will at a minimum:

(i) Identify the nature of the non-permitted use or disclosure, breach and/or Security Incident and the identity of each individual whose Protected Health Information has been used, disclosed, breached or affected;

(ii) Identify County's Protected Health Information used or disclosed;

(iii) Identify who made the non-permitted use or disclosure and who received the non-permitted disclosure, and/or who caused the Security Incident;

(iv) Identify what corrective action Business Associate took or will take to prevent further non-permitted uses or disclosures and/or Security Incidents;

(v) Identify what Business Associate did or will do to mitigate any deleterious effect of the non-permitted use or disclosure and/or Security Incident; and

(vi) Provide such other information as County may reasonably request.

Upon County's written request, Business Associate shall notify each affected individual as required by law, without charge or cost to County, and shall post breach-related information on any Plan related web site to the extent directed by County. In addition, Business Associate shall maintain a record of every non-permitted use or disclosure, breach and/or Security Incident that will enable Business Associate and County to satisfy all of their respective legal obligations. For purposes of this Agreement, any non-permitted use or disclosure, breach and/or Security Incident of a subcontractor, agent or other third-party retained by Business Associate shall be treated as a non-permitted use or disclosure, breach and/or Security Incident by Business Associate.

Business Associate also will report the aggregate number of unsuccessful, unauthorized attempts to access, use, disclose, modify, or destroy Electronic Protected Health Information or to interfere with system operations in an information system containing Electronic Protected Health Information, including pings. Such reports will be provided for each calendar quarter within twenty days of the close of the calendar quarter. Business Associate will report to Covered Entity any successful unauthorized access, use, disclosure, modification, or destruction of

Electronic Protected Health Information or any successful interference with system operations in an information system containing Electronic Protected Health information, in writing, as soon as feasible.

(e) Business Associate will require all of its subcontractors, agents, and other retained third parties to which Business Associate is permitted by this Agreement to disclose County's Protected Health Information, to provide assurance, evidenced by written contract, that such subcontractor or agent or other third party will comply with the same privacy and security obligations with respect to County's Protected Health Information that are applicable to Business Associate under this Agreement. Moreover, Business Associate will ensure that any such subcontractor or agent or third party agrees to implement reasonable and appropriate safeguards to protect County's Protected Health Information and will be responsible under this Agreement for the actions of such subcontractors and agents and third parties as if they were Business Associate's own actions. In all cases, Business Associate shall obtain County's prior written consent before retaining subcontractors, agents or other third parties.

(f) Business Associate will, within twenty (20) days following County's request, make available to County or, at County's direction, to an individual (or the individual's personal representative) for inspection and obtaining copies County's Protected Health Information about the individual that is in Business Associate's custody or control, so that County may meet its access obligations under 45 C.F.R. § 164.524.

(g) Business Associate will, upon receipt of written notice from County, promptly amend or permit County access to amend any portion of County's Protected Health Information, so that County may meet its amendment obligations under 45 C.F.R. § 164.526.

(h) Business Associate agrees to make internal practices, books, and records, including policies and procedures and Protected Health Information relating to the use and disclosure of Protected Health Information received from, or created or received by Business Associate on behalf of, Covered Entity available to the County or to the Secretary, in a time and manner reasonably directed by the County or designated by the Secretary, for purposes of the Secretary determining Covered Entity's compliance with the Privacy Rule.

(i) Business Associate agrees to document and promptly provide upon County request such disclosures of Protected Health Information and information related to such disclosures as would be required for County to respond to a request by an Individual for an accounting of disclosures of Protected Health Information in accordance with 45 C.F.R. § 164.528. The disclosure information that Business Associate must record is (i) the disclosure date, (ii) the name and (if known) address of the entity to which Business Associate made the disclosure, (iii) a brief description of County's Protected Health Information disclosed, (iv) a brief statement of the purpose of the disclosure that reasonably informs that individual of the basis for the disclosure, and (v) any other information required by 45 C.F.R. § 164.528. Business Associate will maintain the information for at least seven (7) years following the date of the accountable disclosure to which the information relates.

(j) In the event that Business Associate transmits or receives any Covered Electronic Transaction on behalf of the Covered Entity, it shall comply with all applicable provisions of the Standards for Electronic Transactions Rule to the extent required by law, and shall ensure that any agents that assist Business Associate in conducting Covered Electronic Transactions on behalf of the Covered Entity agree in writing to comply with the Standards for Electronic Transactions Rule to the extent required by law.

(k) Business Associate will comply with any agreement that County makes that either (i) restricts use or disclosure of County's Protected Health Information pursuant to 45 C.F.R. § 164.522(a), or (ii) requires confidential communication about County's Protected Health Information pursuant to 45 C.F.R. § 164.522(b), provided that County notifies Business Associate in writing of the restriction or confidential communication obligations that Business Associate must follow and furnishes Business Associate a copy of such agreement. County will promptly notify Business Associate in writing of the termination of any such restriction agreement or confidential communication requirement and, with respect to termination of any such restriction agreement, instruct Business Associate whether any of County's Protected Health Information will remain subject to the terms of the restriction agreement.

(l) If Business Associate conducts in whole or part electronic Transactions on behalf of County for which DHHS has established Standards, Business Associate will comply, and will require any subcontractor or agent or other retained third party it involves with the conduct of such Transactions to comply, as confirmed in writing, with each

applicable requirement of 45 C.F.R. Part 162. Business Associate will not enter into, or permit its subcontractors or agents or other retained third parties to enter into, any trading partner agreement in connection with the conduct of Standard Transactions on behalf of County that (i) changes the definition, data condition, or use of a data element or segment in a Standard Transaction; (ii) adds any data element or segment to the maximum defined data set; (iii) uses any code or data element that is marked "not used" in the Standard Transaction's implementation specification or is not in the Standard Transaction's implementation specification; or (iv) Changes the meaning or intent of the Standard Transaction's implementation specification.

(m) Business Associate will conduct its operations in accordance with law applicable to it and with law as would apply to it if it were the County.

(n) Business Associate will make its internal practices, books, and records relating to its use and disclosure of County's Protected Health Information available to County and to DHHS to determine County's compliance with 45 C.F.R. Part 164, Subpart E "Privacy of Individually Identifiable Health Information."

III. Permitted Uses and Disclosures by Business Associate

[Business Associate to insert provisions that specifically apply to this business arrangement.]

IV. Term and Termination

(a) This Agreement shall continue in effect for as long as any other agreement remains in place between the parties or as otherwise provided in this Section.

(b) County may terminate this Agreement and any other agreement between the parties if it determines, in its sole discretion, that Business Associate either: (i) has breached any provision of this Agreement and upon written notice to Business Associate of the breach, Business Associate fails to cure the breach within twenty (20) days after receipt of the notice, or (ii) has breached a material term of this Agreement and cure is not possible. County may exercise this right to terminate by providing Business Associate written notice of termination, stating the breach of the Agreement and/or stating the failure to cure the breach of the Agreement that provides the basis for the termination. Any such termination will be effective immediately or at such other date specified in County's notice of termination.

(c) The parties may mutually agree in writing to terminate this agreement at any time.

(d) This Agreement will terminate upon termination or other conclusion of all other agreements between the parties.

(e) Upon termination or other conclusion of all agreements between the parties, Business Associate will, if feasible, return to County or destroy all of County's associated Protected Health Information in whatever form or medium, including all copies thereof and all data, compilations, and other works derived therefrom that allow identification of any individual who is a subject of County's Protected Health Information. Business Associate will require any subcontractor or agent or other retained third party, to which Business Associate has disclosed County's Protected Health Information, to if feasible return to Business Associate (so that Business Associate may return it to County) or destroy all of County's Protected Health Information in whatever form or medium received from Business Associate, including all copies thereof and all data, compilations, and other works derived therefrom that allow identification of any individual who is a subject of County's Protected Health Information, and certify on oath to Business Associate that all such information has been returned or destroyed. Business Associate will complete these obligations as promptly as possible, but not later than 30 days following the effective date of the termination or other conclusion of such other agreement.

(f) Business Associate will identify any of County's Protected Health Information, including any that Business Associate has disclosed to subcontractors or agents or other retained third parties, that cannot feasibly be returned to County or destroyed and explain why return or destruction is infeasible. Business Associate will limit its further use or disclosure of such information to those purposes that make return or destruction of such information infeasible.

County hereby appoints Business Associate as its custodian for the safe-keeping of any of County's Protected Health Information for which return or destruction is not feasible. Business Associate will, by its written contract with any subcontractor or agent or other retained third party, require such subcontractor or agent or other retained third party to limit its further use or disclosure of County's Protected Health Information that such subcontractor or agent or other retained third party cannot feasibly return or destroy to those purposes that make the return or destruction of such information infeasible. Business Associate will complete these obligations as promptly as possible, but not later than 30 days following the effective date of the termination or other conclusion of all agreements between the parties.

(g) Business Associate's obligation to protect the privacy of County's Protected Health Information as specified in this Agreement will be continuous and survive termination or other conclusion of this and all other agreements between the parties.

(h) Business Associate's other obligations and rights and County's obligations and rights upon termination or other conclusion of other agreements will be as set forth in such other agreements

V. Indemnity

(a) Business Associate will indemnify and hold harmless County and any County affiliate, officer, director, employee or agent from and against any claim, cause of action, liability, damage, cost or expense, including attorneys' fees and court or proceeding costs, arising out of or in connection with any non-permitted use or disclosure of County's Protected Health Information or other breach of this Agreement or applicable law by Business Associate or any subcontractor, agent or other third party retained by Business Associate.

(b) If County is named a party in any judicial, administrative or other proceeding arising out of or in connection with any non-permitted use or disclosure of County's Protected Health Information or other breach of this Agreement by Business Associate or any subcontractor or agent or third party retained by Business Associate, County will have the option at any time either (i) to tender its defense to Business Associate, in which case Business Associate will provide qualified attorneys, consultants, and other appropriate professionals to represent County's interests at Business Associate's expense, or (ii) undertake its own defense, choosing the attorneys, consultants, and other appropriate professionals to represent its interests, in which case Business Associate will be responsible for and pay the reasonable fees and expenses of such attorneys, consultants, and other professionals.

(c) County will have the sole right and discretion to settle, compromise or otherwise resolve any and all claims, causes of actions, liabilities or damages against it, notwithstanding that County may have tendered its defense to Business Associate. Any such resolution will not relieve Business Associate of its obligation to indemnify County under this Section.

VI. Miscellaneous

(a) *Regulatory References.* A reference in this Agreement to a section in the Privacy Rule or other applicable law means the section as in effect or as amended.

(b) *Amendment.* Upon the compliance date of any final regulation or amendment to final regulation promulgated by DHHS or statutory or other legal change that affects Business Associate's use or disclosure of County's Protected Health Information or Standard Transactions, this Agreement will automatically be deemed amended such that the obligations imposed on Business Associate remain in compliance with law.

(c) *Interpretation.* Any ambiguity in this Agreement shall be resolved to permit Covered Entity to comply with the applicable law.

(d) *No Third Party Beneficiaries.* Nothing express or implied in this Agreement is intended to confer, nor shall anything in this Agreement confer, upon any person or entity other than the parties and their respective successors or assigns any rights, remedies, obligations, or liabilities whatsoever.

(e) *Conflicts*. The terms and conditions of this Agreement will override and control any conflicting term or condition of all other agreements between the parties. All nonconflicting terms and conditions of all such other agreements remain in full force and effect.

IN WITNESS WHEREOF, County and Business Associate execute this Agreement in multiple originals to be effective on the last date written below.

The Lipman Company

The County of Monterey

By: Mary Tarell 

By: _____

Its: VP Marketing and Operations _____

Its: _____

Date: November 12, 2009 _____

Date: _____