

**OHIO DEPARTMENT OF HEALTH  
TOBACCO ENFORCEMENT SMOKE FREE INVESTIGATIONS PROVIDER AGREEMENT**

This Tobacco Enforcement Smoke Free Investigations Provider Agreement ("Agreement") is between:

Ohio Department of Health ("ODH")	AND	Galion City Health Department
Regulatory Enforcement Bureau, Smoke-Free Workplace Program		113 Harding Way East Galion, OH 44833-1902
Dave Holston, Assistant Bureau Chief ("ODH Agreement Manager")		Entity Contact Name ("Authorized Representative"): Andrea Barnes, Environmental Health Director
246 North High Street, Columbus, Ohio 43215		Contact Email Address: andrea.barnes@galionhealth.org
(614) 644-6220		Contact Phone Number: (419) 468-1075
Dave.holston@odh.ohio.gov		OAKS ID Number-Address Code: 0000104279 - 07

For the purpose of this Agreement, the terms "Party" or "Parties" may be used to refer to both ODH and/or Designee, individually or collectively. Two (2) hard copies of this Agreement should be signed by Designee and returned to Ohio Department of Health, Smoke-Free Workplace Program, 246 North High Street, Columbus, Ohio 43215, Attention: Dave Holston, within fourteen (14) days of receipt at the above address. One (1) hard copy of the fully executed Agreement will be returned to Designee.

In accordance with Ohio Revised Code ("O.R.C.") Chapter 3794 and Ohio Administrative Code ("O.A.C.") Chapter 3701-52, the Director of Health has designated this local health department as the agency for investigation of smoke-free workplace complaints for its geographical jurisdiction under Ohio law.

**1. AGREEMENT TERM.** Subject to §6 and other terms and conditions specified in this Agreement:

1.1. "Agreement Beginning Date" shall be defined as the date indicated here, or the date of Agreement execution by both Parties, whichever is later:

7/1/2021

1.1. "Agreement Ending Date" shall be defined as the date indicated here, the date of Agreement termination or the date to which the Agreement has been extended:

6/30/2023

1.1. "Agreement Period" shall be defined as the time between the "Agreement Beginning Date" and "Agreement Ending Date" unless prior to the expiration date, the Agreement is renewed, terminated, or cancelled in accordance with the Agreement Terms and Conditions. Any reference to the Agreement Period shall include the Renewal terms.

**2. AGREEMENT FUNDING.**

2.1. Agreement Funding Source:

State of Ohio, General Revenue Fund  
(GRF)

2.1. Grant Award Number:

N/A

2.1. CFDA Number:

N/A

2.1. Ohio Statute Authorizing Administration of the Program:

O.R.C. 3794.07 & 3794.09;  
O.A.C. Chapter 3701-52

1. ATTACHMENTS & ACKNOWLEDGMENTS. Attachments specified in this Agreement are made a part hereof and are incorporated as terms and conditions of this Agreement. PLEASE READ CAREFULLY AND INITIAL EACH PARAGRAPH BELOW:

- AB Designee affirms that they have read and understand and agree to be bound by the Scope of Work, Deliverables & Compensation terms in §5 below, and by the Agreement Terms and Conditions in §6 below;
- AB If Designee is not currently a registered vendor with the State of Ohio, Designee must register online using the OAKS Supplier Self-Registration module at [www.supplier.obm.ohio.gov](http://www.supplier.obm.ohio.gov);
- AB Designee certifies it is not debarred from consideration for any state or federal government contracts and it is not subject to any unresolved finding for recovery; and
- AB Designee must complete and submit with this Agreement an Affirmation and Disclosure Form attached and marked Attachment A;
- AB Effective March 28, 2019, if the Agreement Funding Source identified in §2.1. of this Agreement is one of the following listed funding sources, Designee must certify that it does not perform nontherapeutic abortions; promote nontherapeutic abortions; contract with any entity that performs or promotes nontherapeutic abortions; nor will Designee become nor is Designee currently affiliated with any entity that performs or promotes "nontherapeutic abortions," as defined in O.R.C. §9.04:
- Violence Against Women Act;
  - Breast and Cervical Cancer Mortality Prevention Act;
  - Infertility prevention project;
  - Minority HIV/AIDS initiative; or
  - State of Ohio funds, including infant mortality reduction or infant vitality initiatives.

2. DISCLAIMERS, EXCEPTIONS and/or MATERIAL BREACH. Attachments specified in this Agreement are made a part here of, and are incorporated as terms and conditions of this Agreement.

2.1. None.

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**IN WITNESS WHEREOF**, the Parties by signing below indicate their agreement to this Agreement.

**DESIGNEE****OHIO DEPARTMENT OF HEALTH**Andrea Barnes

[Signature, Blue Ink Please]

Stephanie McCloud by LDH

Stephanie McCloud, Director of Health

Andrea Barnes, RS Interim HC

[Print Name &amp; Title]

June 30, 2021

Date

June 29, 2021

Date

*Remainder of Page Left Intentionally Blank. Scope of Work, Deliverables & Compensation & General Terms and Conditions Immediately Follow this Page.*

### 3. SCOPE OF WORK, DELIVERABLES & COMPENSATION.

	<p align="center"><b>Scope of Work and/or Deliverables</b></p> <p align="center"><b>(Due Date and Compensation only noted if Applicable or Required)</b></p>
	During the Agreement Period, Designee and ODH agree that Designee shall complete the following and ODH shall compensate Designee as indicated for each Completed Investigation and attending pre-hearing and/or administrative reviews in person:
3.1.	As a designee of the Director of the Ohio Department of Health (ODH), Designee shall conduct investigations of smoking complaints according to the methods outlined below and shall use the funds transferred to it pursuant to this Agreement for activities related to R.C. Chapter 3794.
3.2.	Designee shall report to ODH's Agreement Manager as necessary or directed from time to time.
3.3.	<p>Designee shall complete all investigations opened by or assigned to its jurisdiction. A "Completed Investigation" includes the following:</p> <ul style="list-style-type: none"> <li>a. Designee creates a "Notice of Report" ("NOR") to the establishment against which the complaint was made within ten (10) business days of the investigation being opened. All letters and notices must be printed from the ODH Smoke Free Web Based Application;</li> <li>b. Designee documents its investigation in the ODH Smoke Free Web Based Application database by the following actions: <ul style="list-style-type: none"> <li>i. Specify the name of the investigator(s);</li> <li>ii. Enter actions that include the date(s) and time(s) of investigations;</li> <li>iii. Complete entries for telephone and on-site investigations which include observations and findings of investigations;</li> <li>iv. Issue enforcement letters and notices using the templates in the ODH Smoke Free Web Based Application database;</li> <li>v. Enter, in a timely manner, receipt of all delivery verification such as certified mail or hand carry and requests for administrative review;</li> <li>vi. Notify ODH Agreement Manager if it requires additional accounts for access to the web based application or if it is unable to access the system for longer than two (2) days.</li> <li>vii. Properly complete investigations as indicated below.</li> </ul> </li> </ul>
3.4.	<p>Designee shall document in the ODH Smoke Free Web Based Application database its reasonable attempts at enforcement in the investigational process including the following:</p> <ul style="list-style-type: none"> <li>a. Investigate during timeframes likely to observe violations. <ul style="list-style-type: none"> <li>i. For alleged violation times between 8 AM and midnight (12 AM), investigation should occur within four (4) hours of the time of day the report states that the alleged violation occurred; or</li> <li>ii. For alleged violation times between midnight (12 AM) and 8 AM, investigation should occur within six (6) hours of the time of day the report states the alleged violation occurred;</li> </ul> </li> <li>b. Consider at each on-site investigation the presence of signage, ashtrays and/or the act of smoking in a prohibited area, in order to have thorough information to defend administrative challenges, if recommended Case worksheet is not used, document information in investigative notes;</li> </ul>

	<p>c. Based upon preponderance of evidence standard during an investigation, determine if a violation is observed, including the presence of smoke, smoking material or presence of containers that are not traditionally defined as ashtrays being used or having been used for the deposit of cigarette or cigar ashes; and,</p> <p>d. Evaluate outdoor patio areas for compliance with rules.</p>
3.5.	Designee shall complete all investigation(s) with the issuance of a dismissal letter, notice of violation or a proposed civil fine letter within sixty (60) calendar days of the issuance of the NOR.
3.6.	Designee shall provide requested case documents to ODH, within ten (10) days after receipt of a request for administrative review. Administrative reviews will be conducted by ODH.
3.7.	Designee shall participate in pre-hearing and/or administrative reviews which may be held by audio, web, video or in-person at regional locations requiring not more than approximately one (1) hour drive time from Designee's address. When a Designee is required to attend a pre-hearing or administrative review in person, the Designee will be compensated a total of \$30.00 per pre-hearing or administrative review.
3.8.	Investigations completed outside of established Agreement guidelines will be denied payment. Designee may, after receipt of denial from ODH, submit a "Reconsideration for Payment" request. Requests for Reconsideration must be received during the ODH established review period. Requests for reconsideration must be submitted in writing (electronically ) and must include any supportive documentation. (e.g., explanation for reconsideration, the investigation number, the business name, and any other information deemed pertinent)
5.9	Designee is responsible to keep their investigation information updated in ODH Smoke Free Web Based Application. The Designee information in the ODH Smoke Free Web Based Application will be used to determine compensation to the Designee.

<b>TOTAL AGREEMENT AMOUNT</b>	<p><b>Payment for each completed investigation shall not exceed \$125.00.</b></p> <p><b>Payment for each pre-hearing and administrative review in person shall not exceed \$30.00.</b></p>
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Intentionally Blank. Terms & Conditions Immediately Follow this Page.*

6. AGREEMENT TERMS AND CONDITIONS.

- 6.1. Mutual Promises & Covenants. In consideration of the mutual promises expressed in this Agreement and intending to be legally bound, Designee agrees to perform, and ODH agrees to pay Designee, in accordance with the terms of this Agreement.
- 6.2. Scope of Work, Deliverables, and Compensation. Designee shall provide work, services, products and deliverables in the time and manner, and for the compensation, specified in §6 and any attachment incorporated into this Agreement.
- 6.2.1. Compensation. In consideration of the Scope of Work and Deliverables specified in §5, ODH agrees to pay the Compensation as set forth in §6 for a total not to exceed the Total Agreement Amount. ODH will compensate Designee upon the successful completion of each deliverable, in accordance with §6 of this Agreement.
- 6.2.2. Total Agreement Amount. The Total Agreement Amount, as indicated in §5, includes the cost for all services, travel, or any other expenses that Designee may incur as a result of Designee's performance of this Agreement.
- 6.2.2.1. In the event that §6 specifically allows ODH to reimburse Designee for travel and other related expenses, ODH will reimburse Designee for those expenses in accordance with this section. Travel and travel-related expenses must be pre-approved by Agreement Manager in advance of travel and may not exceed the amounts specified for the State Fiscal Year. Designee mayshall invoice ODH for reimbursement of travel and travel-related expenses no later than thirty days after the travel occurred. Designee must invoice travel expenses separate from invoices for services and work. Reimbursement for authorized travel and other related expenses shall be limited to actual and necessary expenses as specified in the O.R.C. 126.31 and O.R.C. 126.32 and the provisions of the Ohio Administrative Code ("O.A.C.") 126-1-02. Designee shall submit all claims/travel invoices to the Agreement Manager for approval prior to submitting a claim for reimbursement. ODH will not reimburse Designee for any other expenses except as specifically provided in this Agreement. For the purpose of determining allowable travel expenses, Designee's headquarters shall be Franklin County, Ohio.
- 6.2.2.2. Designee shall not submit claims for expenses that do not meet the requirements specified or directly related to work in §5.
- 6.2.3. Designee shall monitor the work under this Agreement and shall not accept an assignment under this Agreement if it will cause or is reasonably likely to cause the Compensation specified in §6 to exceed the Total Agreement Amount for the Agreement Period.
- 6.2.4. Designee waives the interest provisions of O.R.C. 126.30.
- 6.2.5. Subject to the provisions of O.R.C. 126.07 and O.R.C. 131.33, which shall at all times govern this Agreement, ODH represents that it intends to maintain this Agreement for the full Agreement Period set forth in this Agreement and has no reason to believe that it will not have sufficient funds to enable it to make all payments due. ODH further represents that it will use best efforts to obtain the appropriation of any necessary funds during the Agreement Period.
- 6.2.6. Funds Availability. Designee understands and agrees that this Agreement is contingent upon the availability of lawful appropriations by the Ohio General Assembly and/or if applicable another Agreement Funding Source. If the Ohio General Assembly or other Agreement Funding Source fails at any time to continue funding ODH for the Compensation specified in this Agreement, this Agreement is terminated as of the date funding expires without further obligation of ODH, State of Ohio, or any other Agreement Funding Source.
- 6.2.7. ODH will not compensate Designee for any work performed prior to receipt of written notification from the ODH Agreement Manager that the requirements of O.R.C. 126.07 and, if applicable, O.R.C. 127.16 have been met. ODH will not compensate Designee for any work performed after the Agreement Ending Date, as applicable.
- 6.2.8. Invoices. Designee shall invoice ODH for work or services Designee provides. An itemized statement listing the services provided, the dates services were provided, and the amount of payment due shall accompany the invoice. Invoices shall be sent to ODH, ATTN: Accounts Payable, P.O. Box 118,



Columbus, Ohio 43216-0118. ODH will reimburse Designee within thirty (30) days of receipt of a valid invoice for the amount of payment due. ODH shall return any invalid or incomplete invoice to Designee within fifteen (15) days after ODH receives the invoice. An explanation will accompany the invoice that states the reason for return and any information needed to correct the invoice. Final invoices for services provided under this Agreement shall be submitted by Designee no later than thirty (30) days after the end of the Agreement Period.

6.2.8.1. Electronic Commerce Program. The State of Ohio is an active participant in the E-Commerce to include Electronic Data Interchange (EDI). This program will benefit both the State and the Designee by reducing time delays in receiving invoices and making payments that are associated with the existing manual processes. The Designee is encouraged to move toward compliance with electronic commerce technologies, as this will be the preferred method of doing business with the State of Ohio. Information regarding E-Commerce is available on the Office of Budget and Management's website at [www.supplier.obm.ohio.gov](http://www.supplier.obm.ohio.gov).

6.2.9. Designee shall furnish its own support staff and services as necessary for the satisfactory performance of this Agreement. Unless otherwise specified in this Agreement, ODH will not provide any staff, services, or material to Designee for the purpose of assisting Designee's performance.

6.2.10. ODH may, from time to time as it deems appropriate, communicate specific instructions and requests to Designee concerning the performance of the work described in this Agreement. Upon such notice, and within ten (10) days after receipt of instructions, Designee shall comply with such instructions and fulfill such requests to the satisfaction of ODH. It is expressly understood by the Parties that these instructions and requests are for the sole purpose of ensuring satisfactory completion of the work described in this Agreement and are not intended to amend or alter this Agreement or any part thereof. The Agreement Manager will communicate all such instructions and requests to Designee.

6.2.11. Designee certifies that: 1) Designee does not perform nontherapeutic abortions, promote nontherapeutic abortions, or contract with any entity that performs or promotes nontherapeutic abortions; and 2) Designee is not now, and will not become during the term of this agreement, affiliated with any entity that performs or promotes nontherapeutic abortions, as defined in O.R.C. §9.04:

Any violation of this section shall be treated as a material breach of this Agreement.

### 6.3. Time of Performance & Amendments.

6.3.1. Agreement Period; Extension. Upon approval by ODH and, if required, the Controlling Board, this Agreement shall be effective on the Agreement Beginning Date and shall remain in effect until the Agreement Ending Date. Upon mutual consent of both parties, this Agreement may be renewed or extended past the Agreement Ending Date, subject to the same terms and conditions of this Agreement and to any federal and state directives, regulations, laws, Request for Quote or Request for Proposals relating to the subject matter of this Agreement. Any extensions or renewals are subject to section 6.3.3.

6.3.1.1. Biennium Year. In the event that the term of this Agreement Period spans the State of Ohio biennium ending on June 30<sup>th</sup> of an odd-numbered year, e.g. June 30, 2015, then this Agreement will terminate on the last day of that biennium. At that time, ODH may unilaterally extend the Agreement by giving Designee written notice. Until such notice is given, Designee is subject to §6.3.3

6.3.2. Amendments. This writing constitutes the entire agreement between the Parties with respect to all matters herein. This Agreement may be amended only by a writing signed by both Parties. However, it is agreed by the Parties that any amendments to laws or regulations cited herein will result in the correlative modification of this Agreement, without the necessity for executing written amendments. Any written amendments to this Agreement shall be prospective in nature. When a new or different term or condition is added, additional consideration is not necessary to bind the Parties.

6.3.3. Pursuant to O.R.C. 126.07, this Agreement is not valid or enforceable in any fiscal year unless the director of budget and management first certifies that there is a balance in the appropriation not already obligated to pay existing obligations. Designee shall not perform or charge ODH for any work performed by Designee in the time period prior to receiving written notification from ODH that the requirements of O.R.C. 126.07 and, if applicable, O.R.C. 127.16 have been met. Designee shall neither perform work nor submit an invoice for payment for any Agreement performance after the Agreement Ending Date.

6.4. Suspension and Termination. ODH may suspend or terminate this Agreement for any reason by providing thirty (30) days written notice to Designee. ODH may suspend or terminate this Agreement immediately after

delivery of written notice to Designee if ODH (i) discovers any illegal conduct on the part of Designee; (ii) discovers any violation of §6.7 regarding Conflict of Interest and Ethics Laws; (iii) discovers any violation of §6.13 regarding a Drug Free Workplace; (iv) discovers any violation of the funding restriction specified in §6.2.11; (v) is subject to a loss of funding as specified in §6.2.6; (vi) discovers that Designee or any of its sub-contractors has performed any services under this Agreement in violation of §6.12 regarding Prohibition of the Expenditure of Public Funds for Offshore Services; or (vii) discovers or is notified that a petition in bankruptcy or similar proceeding has been filed by or against Designee. If at any time during the contractual period a bankruptcy or similar proceeding has been filed by or against Designee, Designee shall immediately notify ODH of the filing.

- 6.4.1. Designee to Cease Work and Other Agreement Activities. Designee, upon effective date of suspension or termination, shall cease work on the suspended or terminated activities under this Agreement, suspend or terminate any subcontracts relating to such suspended or terminated activities, take all necessary or appropriate steps to limit disbursements and minimize costs, and furnish a report, as of the date of receipt of notice of suspension or termination describing the status of all work under this Agreement, including without limitation, results accomplished, conclusions resulting therefrom, and such other matters as ODH may require.
- 6.4.2. Determining Compensation after Agreement Suspension or Termination. With the exception of a material breach or default as specified in §6.5, in the event of suspension or termination under this Agreement, Designee shall be entitled to compensation, upon submission of a proper invoice, for the work performed prior to receipt of notice of termination or suspension, which shall be calculated by ODH based on the compensation rate set forth in §5 and §6.2, less any funds previously paid by or on behalf of ODH. In the case of services for which Designee's compensation is based upon a fixed fee per deliverable, compensation shall be based on a reasonable percentage of the total services performed, as determined by ODH, less any funds previously paid by or on behalf of ODH. ODH shall not be liable for any further claims, and the claims submitted by Designee shall not exceed the total amount of compensation allowed by this Agreement.
- 6.5. Breach or Default.
  - 6.5.1. Material Breach. Upon a Material Breach of the Agreement, as designated in §6.2.11 and §6.12, ODH may unilaterally terminate this Agreement without compensation to Designee as a material breach is understood by the Parties to be so significant that it has destroyed the value of the Agreement and, due to the nature of the services that ODH offers the State of Ohio, a Material Breach would undermine the sole purpose of the Agreement.
  - 6.5.2. Upon breach or default by Designee of any of the provisions, obligations or duties provided for in this Agreement, ODH may exercise all administrative, contractual, equitable or legal remedies available, without limitation. The waiver of any occurrence of breach or default is not a waiver of subsequent occurrences, and ODH retains the right to exercise all remedies provided for in this Agreement.
  - 6.5.3. If ODH or Designee fail to perform an obligation or obligations under this Agreement and thereafter such failure is waived by the other party; such waiver shall be limited to the particular failure so waived and shall not be deemed to waive other failures hereunder. Waiver by ODH shall not be effective unless it is in writing and signed by the Director of Health or his or her designee, except that Agreement Manager may agree in writing to non-substantial changes to §5, such as changes in form, format, deadlines, or other minimal changes that do not diminish the value of the specified work or deliverable.
  - 6.5.4. A breach or default based upon Designee's failure to comply with §6.12 is subject to that section with regard to Agreement termination, sanctions, and damages.
- 6.6. Independent Contractor. Designee acknowledges and agrees any individual providing personal services under this agreement is not an ODH public employee (for purposes of O.R.C. Chapter 145) solely on the basis of this Agreement. No agency, employment, joint venture or partnership has been or will be created between the Parties hereto pursuant to the terms and conditions of this Agreement. Inasmuch as ODH is interested in Designee's end product, ODH does not control the manner in which Designee performs this Agreement. ODH is not liable for the workers' compensation or unemployment compensation payments required by O.R.C. Chapters 4123 and 4141, respectively. In addition, Designee assumes responsibility for tax liabilities that result from compensation paid to Designee by ODH. ODH will report any payment made under this Agreement to the Internal Revenue Service on Form 1099. Additionally, no provision contained in this Agreement shall be construed as entitling Designee to participate in hospital plans, medical plans, sick leave benefits, vacation, and other benefits available to employees of ODH or to become a member of the Public Employees Retirement System (O.R.C. Chapter 145).



6.7. Conflict of Interest and Ethics Laws.

- 6.7.1. Neither Designee, nor any officer, member or employee of Designee, shall, prior to the completion of such work and payment for such work, acquire any interest, personal or otherwise, direct or indirect, which is incompatible or in conflict with or would compromise in any manner or degree with the discharge and fulfillment of his or her functions and responsibilities with respect to the carrying out of such work.
- 6.7.2. Designee hereby covenants that neither Designee, or any officer, member, or employee of Designee, have any interest, personal or otherwise, direct or indirect, which is incompatible or in conflict with or would compromise in any manner or degree with the discharge and fulfillment of his or her functions and responsibilities under this Agreement.
- 6.7.3. Designee shall not promise or give to any ODH employee anything of value that is of such a character as to manifest a substantial and improper influence upon the employee with respect to his or her duties. Designee shall not solicit an ODH employee to violate any ODH rule or policy relating to the conduct of contracting Parties or to violate O.R.C. 102.03 to 102.04 or O.R.C. 2921.42.
- 6.7.4. Designee hereby covenants that Designee and any officer, member or employee of Designee are in compliance with O.R.C. 102.04 and that if Designee is required to file a statement pursuant to O.R.C. 102.04(D)(2), such statement has been filed with the ODH General Counsel in addition to any other required filings.
- 6.7.5. Designee hereby certifies compliance with the executive agency lobbying requirements of O.R.C. 121.60 to 121.69.
- 6.7.6. Designee hereby certifies and affirms that, as applicable to Designee, no party listed in Division (I) or (J) of O.R.C. 3517.13 or spouse of such party has made, as an individual, within the two previous calendar years, one or more contributions in excess of \$1,000.00 (One Thousand Dollars) to the Governor or to his campaign committees. If it is determined that Designee's certification of this requirement is false or misleading, notwithstanding any criminal or civil liabilities imposed by law, Designee shall return to ODH all monies paid to Designee under this Agreement. The provisions of this section shall survive the expiration or termination of this Agreement.

6.8. Nondiscrimination and Equal Employment Opportunity.

- 6.8.1. In carrying out this Agreement, Designee will not discriminate against any employee or applicant for employment because of race, color, religion, gender, age, disability or military status as defined in section 4112.01 of the Revised Code, national origin or ancestry. Designee shall comply with all applicable State of Ohio and Federal laws relating to nondiscrimination and equal employment opportunity as those laws may be amended from time to time, including but not limited to the following:
  - 6.8.1.1. Title VI of the Civil Rights Act of 1964 (P.L. 88-352) which prohibits discrimination on the basis of race, color or national origin; Title VII of the Civil Rights Act of 1991 (P.L. 102-166) which prohibits discrimination on the basis of race, color or religion, national origin and sexual orientation in employment; and Executive Order 13166, Improving Access to Services for Persons with Limited English Proficiency ("LEP"), which requires reasonable steps to ensure that LEP persons have meaningful access to programs (see [www.lep.gov](http://www.lep.gov)), and Health and Human Services ("HHS") implementing regulations at 45 CFR part 80.
  - 6.8.1.2. Title IX of the Education Amendments of 1972, as amended (20 U.S.C. §§ 1681-1683, and 1685-1686), which prohibits discrimination on the basis of sex, and HHS implementing regulations at 45 CFR part 86.
  - 6.8.1.3. Section 504 of the Rehabilitation Act of 1973, as amended (29 U.S.C. § 794), which prohibits discrimination on the basis of handicaps in the provision of benefits or services as well as employment, and the HHS implementing regulations are codified at 45 CFR parts 84 and 85.
  - 6.8.1.4. The Age Discrimination Act of 1975, as amended (42 U.S.C. §§ 6101-6107), which prohibits discrimination on the basis of age and the HHS implementing regulations codified at 45 CFR part 91.
  - 6.8.1.5. Prohibitions against retaliation against individuals for taking action or participating in an action to secure rights provided in State and Federal laws relating to nondiscrimination.

- 6.9. "Sweatshop Free" Certification. Designee hereby certifies that all facilities used for the production of supplies or performance of services offered in this Agreement is in compliance with applicable domestic labor, employment,

health and safety, environmental and building laws. This certification applies to any and all suppliers and/or subcontractors used by Designee in furnishing the supplies or services pursuant to this Agreement. If it is determined that Designee's certification of this requirement is false or misleading, then Designee understands that it shall be grounds for the termination of this Agreement and may result in the loss of other contracts or grants with the State of Ohio.

- 6.10. Records, Documents and Information. All records, documents, writings or other information produced or used by Designee in the performance of this Agreement shall be treated according to the following terms:
  - 6.10.1. All ODH information which, under the laws of the State of Ohio, is classified as public or private will be treated as such by Designee. Where there is a question as to whether information is public or private, ODH shall make the final determination. Designee shall not use any information, systems, or records made available to it for any purpose other than to fulfill the contractual duties specified herein. Designee agrees to be bound by the same standards of confidentiality that apply to the employees of ODH and the State of Ohio. If at any time during the contract period a proceeding has been filed by or against Designee which would compel disclosure of private information under this Agreement, Designee shall immediately notify ODH of the filing. The terms of this section shall be included in any subcontracts executed by Designee for work under this Agreement.
  - 6.10.2. Pursuant to O.R.C. 149.43, all proprietary information of Designee shall be held to be strictly confidential by ODH. Proprietary information is information which, if made public, would put Designee at a disadvantage in the marketplace and trade of which Designee is a part. Designee is responsible for notifying ODH of the nature of the information prior to its release to ODH. ODH reserves the right to require reasonable evidence of Designee's assertion of the proprietary nature of any information to be provided.
  - 6.10.3. All records relating to costs, work performed and supporting documentation for invoices submitted to ODH by Designee shall be retained and made available by Designee for audit by the State of Ohio (including, but not limited to, ODH, the Auditor of the State of Ohio, the Ohio Inspector General or duly authorized law enforcement officials) and agencies of the United States government for a minimum of three years after payment for work performed under this Agreement. If an audit, litigation, or other action is initiated during this time period, Designee shall retain such records until the action is concluded and all issues resolved or the three years end, whichever is later.
- 6.11. Disclosure of Personal Health Information. Designee hereby agrees that the information provided or made available by ODH shall not be used or disclosed other than as permitted or required by this Agreement or as required by law. Designee will establish and maintain appropriate safeguards to prevent any use or disclosure of the information, other than as provided for by this Agreement. Designee shall comply with 45 C.F.R.164.504(e)(2)(ii). Designee shall immediately report to ODH any discovery of use or disclosure of information not provided for or allowed by the Agreement. Designee hereby agrees that anytime information is provided or made available to any subcontractor or agent, Designee must enter into a subcontract with the subcontractor or agent that contains the same terms, conditions, and restrictions on the use and disclosure of information as contained in this Agreement. Designee must obtain ODH approval prior to entering into such agreements. Further, Designee agrees to make available and provide right of access to an individual of their protected health information when that protected health information is obtained in the performance of Designee's obligations under this Agreement.
- 6.12. Prohibition of the Expenditure of Public Funds for Offshore Services. No State of Ohio Cabinet, Agency, Board or Commission will enter into any contract to purchase services provided outside the United States or that allows State of Ohio data to be sent, taken, accessed, tested, maintained, backed-up, stored, or made available remotely outside (located) of the United States. Notwithstanding any other terms of this Agreement, the ODH reserves the right to recover any funds paid for services the Designee performs outside of the United States for which it did not receive a waiver. The Designee must complete the Contractor/Subcontractor Affirmation and Disclosure Form affirming the Designee understands and will meet the requirements of the above prohibition. The Affirmation and Disclosure Form is attached hereto as Attachment A. During the performance of this Agreement, the Designee must not change the location(s) disclosed on the Affirmation and Disclosure Form, unless a duly signed waiver has been attained to perform the services outside the United States. Designee agrees to immediately notify ODH if Designee discovers any change or shift in the location(s) of services performed by Designee or its sub-contractors under this Agreement.
  - 6.12.1. Termination, Sanction, Damages. If Designee or any of its sub-contractors perform services under this Agreement outside of the United States or State of Ohio data is sent, taken, accessed, tested, maintained, backed-up, stored, or made available remotely outside the United States, the performance of such

- services shall be treated as a material breach of the Agreement. ODH is not obligated to pay and shall not pay for such services. If Designee or any of its sub-contractors perform any such services, Designee shall immediately return to ODH all funds paid for those services. ODH may also recover from Designee all costs associated with any corrective action ODH may undertake, including but not limited to an audit or a risk analysis, as a result of the material breach.
- 6.12.2. ODH may, at any time after the breach, terminate the Agreement, upon written notice to Designee. ODH may recover all accounting, administrative, legal and other expenses reasonably necessary for the preparation of the termination of the Agreement and costs associated with the acquisition of substitute services from a third party.
- 6.12.3. If ODH determines that actual and direct damages are uncertain or difficult to ascertain, ODH in its sole discretion may recover a payment of liquidated damages in the amount of 1% of the value of the Agreement.
- 6.12.4. ODH, in its sole discretion, may provide written notice to Designee of a breach and permit Designee to cure the breach. Such cure period shall be no longer than fourteen (14) calendar days. During the cure period, ODH may buy substitute services from a third party and recover from Designee any costs associated with acquiring those substitute services.
- 6.12.5. Notwithstanding ODH permitting a period of time to cure the breach or Designee's cure of the breach, ODH does not waive any of its rights and remedies provided ODH in this Agreement, including but not limited to recovery of funds paid for services Designee performed outside of the United States, costs associated with corrective action, or liquidated damages.
- 6.13. Drug Free Workplace. Designee shall comply with all applicable state and federal rules, regulations and statutes pertaining to a drug free workplace. Designee shall make a good faith effort to ensure that all employees of Designee do not purchase, transfer, use or possess illegal drugs or alcohol or abuse prescription drugs in any way while working on state, county, or municipal property.
- 6.14. Security & Safety Rules. When using or possessing ODH data or accessing State of Ohio networks and systems, Designee must comply with all applicable state rules, policies, and regulations regarding data security and integrity. When on any property owned or controlled by the State of Ohio, the Designee must comply with all security and safety rules, regulations, and policies applicable to people on those premises. Designee must immediately notify ODH of any violation of this section.
- 6.15. Trade.
- 6.15.1. Pursuant to Section 9.76(B) of the Ohio Revised Code, Designee warrants that Designee is not boycotting any jurisdiction with whom the State of Ohio can enjoy open trade, including Israel, and will not do so during the Agreement Period.
- 6.15.2. The State of Ohio does not acquire supplies or services that cannot be imported lawfully into the United States. The Designee certifies that it, its subcontractors, and any agent of the Designee or its subcontractors, acquire any supplies or services in accordance with all trade control laws, regulations or orders of the United States, including the prohibited source regulations set forth in subpart 25.7, Prohibited Sources, of the Federal Acquisition Regulation and any sanctions administered or enforced by the U.S. Department of Treasury's Office of Foreign Assets Control. A list of those sanctions by country can be found at <https://www.treasury.gov/resource-center/sanctions/Programs/Pages/Programs.aspx>. These sanctions generally preclude acquiring any supplies or services that originate from sources within, or that were located in or transported from or through Cuba, Iran, Libya, North Korea, Syria, or the Crimea region of Ukraine.
- 6.16. Compliance.
- 6.16.1. Designee affirmatively represents and warrants to ODH that it is not subject to a finding for recovery under O.R.C. 9.24 or that it has taken the appropriate remedial steps required under O.R.C. 9.24 or otherwise qualifies under that section. Designee further affirmatively represents and warrants to ODH that it is not debarred or suspended from entering into state of Ohio contracts pursuant to O.R.C. 125.25 and is not subject to exclusion, disqualification or ineligibility as defined in 2 C.F.R.180.110. Designee agrees that if this representation and warranty is deemed false, the Agreement will be void *ab initio* as between the Parties to this Agreement, and any funds paid by ODH hereunder shall be immediately



repaid to ODH, or an action for recovery may be immediately commenced by ODH for the recovery of said funds.

- 6.16.2. Designee certifies that Designee is not federally debarred from participating in government contracts funded by federal money as described in 2 C.F.R. 180.220. If at any time during the contractual period Designee is federally debarred from participating in government contracts funded by federal money, for whatever reason, Designee shall immediately notify ODH of the debarment.
- 6.16.3. Designee certifies that all approvals, licenses, registrations or other qualifications required by this Agreement, or by any local, state, or federal law, have been obtained. If at any time during the Agreement Period Designee fails to maintain such approvals, licenses, registrations or other qualifications, for whatever reason, Designee shall immediately notify ODH.
- 6.16.4. Designee certifies that it is in compliance and will remain in compliance throughout the duration of this Agreement, with all other applicable federal and state laws, regulations, rules and Executive Orders and will require the same certification from its subgrantees or subcontractors.
- 6.17. Trafficking Victims Act. In carrying out this Agreement, Designee, its employees, subcontractors and their employees shall comply with Section 106(g) of the Trafficking Victims Protection Act of 2000, as amended (22 USC 7104); and 2 CFR Part 175. Designee must include this provision in its contracts and subcontracts under this Agreement. Designee must inform ODH immediately of any information regarding violation of the foregoing. Designee understands that its failure to comply with this provision may subject ODH to loss of federal funds. Designee agrees to compensate ODH for any such funds lost due to its failure to comply with this condition, or the failure of its subcontractors to comply with this condition.
- 6.18. Limitation of Liability. Designee agrees to accept and be responsible for the actions or omissions of its agents, officers, and employees arising out of this Agreement, and nothing in this Agreement shall be interpreted or construed to place any responsibility for professional acts or omissions onto ODH; and ODH agrees to accept and be responsible for the actions or omissions of its agents, officers, and employees arising out of this Agreement, and nothing in this Agreement shall be interpreted or construed to place any such responsibility on the Designee. ODH's liability for damages, whether in contract or in tort, shall not exceed the Total Agreement Amount or the amount of direct damages incurred by Designee, whichever is less, and is the Designee's sole and exclusive remedy for ODH's failure to perform its obligations under this Agreement. In no event shall ODH be liable for any indirect or consequential damages, including loss of profit, even if ODH knew or should have known of the possibility of such damages. Neither party is responsible to the other party for nonperformance or delay in performance of the terms of this Agreement due to acts of God, wars, riots, strikes, or other causes beyond the control of the Parties.
- 6.19. Insurance. Designee will provide, at its own expense, Workers' Compensation insurance, as required by Ohio law or the laws of any other state where work under this Agreement will be performed. Designee shall show proof of insurance if asked to do so by ODH. Designee also will provide for its employees performing work under this Agreement employer's liability insurance, and personal injury, bodily injury, and property damage liability insurance, including automobile coverage with personal injury and bodily injury coverage in the amount of at least \$100,000.00 per person, \$300,000.00 per occurrence. In lieu of providing the policies of insurance in the amounts specified in this section, Designee instead may elect to self-insure such risk in accordance with the laws of this state, based upon a good-faith analysis of the potential liability as it relates to the work to be performed under this Agreement, provided that contractor is one of the following:
  - 6.19.1. A "state institution of higher education" as defined in O.R.C. 3345.12(A)(1), a community college established under O.R.C. Chapter 3354, a state community college established under O.R.C. Chapter 3358, a university branch established under O.R.C. Chapter 3355, or technical college established under O.R.C. Chapter 3357;
  - 6.19.2. A "state agency", which means a department, bureau, board, commission, office, agency, institution or other organized body or instrumentality established by the constitution and laws of the state of Ohio for the exercise of any function of state government; or
  - 6.19.3. A "political subdivision" of this state, which means a municipal corporation, township, county, school district, or other body corporate and politic responsible for governmental activities only in geographical areas smaller than that of the state.
- 6.20. Rights in Deliverables, Data and Copyrights. Any intellectual property or copyrightable materials produced specifically for and as a deliverable under the terms of this Agreement, including any documents, data, photographs and negatives, electronic reports, records, software, source code, or other media, shall become the property of ODH, which shall have an unrestricted right to reproduce, distribute, modify, maintain, and use the

Deliverables. This section does not apply to any preexisting materials owned by Designee. Designee shall not obtain copyright, patent, or other proprietary protection for the Work or Deliverables under this Agreement. ODH grants Designee an unlimited license to use work and materials produced by Designee under this Agreement, including the right to publish the results of any work performed under this Agreement. In the event that the Agreement Funding Source is federal funding, in whole or in part, such license is subject to the royalty-free, non-exclusive and irrevocable license to such material retained by the United States government. Further, the work must state: "This publication was made possible by Grant Number [insert grant number] from [insert federal funding agency]. Its contents are solely the responsibility of the authors and do not necessarily represent the official views of [insert federal funding agency]." Designee shall not include in any Deliverable or Work any copyrighted matter, unless the copyright owner gives prior written approval to use such copyrighted matter.

- 6.21. Assignment. Designee will not assign any of its rights or delegate any of its duties and responsibilities under this Agreement without prior written consent of ODH. Any assignment or delegation not consented to may be deemed void by the ODH.
- 6.22. Attachments. Attachments and documents referenced in this Agreement are made a part hereof and are incorporated as terms and conditions of this Agreement. In the event of a conflict of terms, the terms and conditions of this Agreement shall take precedence over any conflicting terms.
- 6.23. Governing Law. This Agreement is governed, construed and enforced in accordance with the laws of the State of Ohio. Further, the Ohio courts shall have jurisdiction over the subject matter and the Parties hereto in connection with disputes concerning validity and enforcement of this Agreement.
- 6.24. Severability. If any portion of this Agreement is found to be unenforceable by operation of statute or by administrative or judicial decision, the enforceability of the balance of this Agreement shall not be affected thereby, provided that the absence of the unenforceable provision does not render impossible the performance of the remainder of this Agreement.
- 6.25. Headings. The headings in this Agreement are for convenience only and will not affect the interpretation of any of the Agreement terms and conditions.
- 6.26. Survival. All sections herein relating to payment, confidentiality, license and ownership, liability, record retention, audit, publicity, warranties and limitations on damages shall survive the termination of this Agreement.
- 6.27. Notices.
  - 6.27.1. Form of Notice. All notices, requests, claims, demands and other communications between the Parties shall be in writing.
  - 6.27.2. Method of Notice. All notices shall be given: (i) by delivery in person, (ii) by a nationally recognized next day courier service, (iii) by first class, registered or certified mail, postage prepaid, or (iv) by electronic mail to the address of the Party specified in this Agreement as "ODH Agreement Manager" or "Designee's Authorized Representative," or such other address as either Party may specify in writing. The Parties acknowledge that change in authorized representatives and their addresses are not substantive and a change shall be recognized with proper Notice.
  - 6.27.3. Receipt of Notice. All notices shall be effective upon: (i) receipt by the party to which notice is given, or (ii) on the fifth (5th) day following mailing, whichever occurs first.

*Remainder of Page Left Intentionally Blank. Attachment(s) Immediately Follow.*



## ATTACHMENT A

## AFFIRMATION AND DISCLOSURE FORM

By the signature affixed hereto, the Contractor affirms and understands that if awarded a contract, both the Contractor and any of its subcontractors shall perform no services requested under this Contract outside of the United States, nor allow State data to be sent, taken, accessed, tested, maintained, backed-up, stored or made available remotely (located) outside of the United States.

The Contractor shall provide all the name(s) and location(s) where services under this Contract will be performed and where data is located in the spaces provided below or by attachment. Failure to provide this information may result in no award. If the Contractor will not be using subcontractors, indicate "Not Applicable" in the appropriate spaces.

## 1. Principal location of business of Contractor:

113 Harding Way East  
(Address)

Galion Ohio 44833  
(City, State, Zip)

Name/Principal location of business of subcontractor(s):

Galion City Health Department  
(Name)

113 HWE Galion OH 44833  
(Address, City, State, Zip)

\_\_\_\_\_  
(Name)

\_\_\_\_\_  
(Address, City, State, Zip)

## 2. Location where services will be performed by Contractor:

\_\_\_\_\_  
(Address)

Galion Ohio 44833  
(City, State, Zip)

Name/Location where services will be performed by subcontractor(s):

\_\_\_\_\_  
(Name)

\_\_\_\_\_  
(Address, City, State, Zip)

\_\_\_\_\_  
(Name)

\_\_\_\_\_  
(Address, City, State, Zip)

## 3. Location where state data will be located, by Contractor:

113 Harding Way East

(Address)

Galion OH 44833

(Address, City, State, Zip)

Name/Location(s) where state data will be located by subcontractor(s):

(Name)

(Address, City, State, Zip)

(Name)

(Address, City, State, Zip)

(Name)

(Address, City, State, Zip)

(Name)

(Address, City, State, Zip)

(Name)

(Address, City, State, Zip)

Contractor also affirms, understands and agrees that Contractor and its subcontractors are under a duty to disclose to the State any change or shift in location of services performed by Contractor or its subcontractors before, during and after execution of any Contract with the State. Contractor agrees it shall so notify the State immediately of any such change or shift in location of its services. The State has the right to immediately terminate the contract, unless a duly signed waiver from the State has been attained by the Contractor to perform the services outside the United States.

On behalf of the Contractor, I acknowledge that I am duly authorized to execute this Affirmation and Disclosure Form and have read and understand that this form is a part of any Contract that Contractor may enter into with the State and is incorporated therein.

By: Andrea Barnes  
Contractor

Print Name: Andrea Barnes

Title: RS EHD Interim HC

Date: 6/29/2021