



Contract Number

19-845

SAP Number

## Human Resources

<b>Department Contract Representative</b>	Human Resources Benefits Chief
<b>Telephone Number</b>	(909) 387-5787
<b>Contractor</b>	Kaiser Foundation Health Plan, Inc.
<b>Contractor Representative</b>	Nivalda Pinguet, Senior Account Manager
<b>Telephone Number</b>	(818) 525-2209
<b>Contract Term</b>	01/01/2020 – 12/31/2022
<b>Original Contract Amount</b>	N/A
<b>Amendment Amount</b>	N/A
<b>Total Contract Amount</b>	N/A
<b>Cost Center</b>	

### IT IS HEREBY AGREED AS FOLLOWS:

This Contract is entered into as of January 1, 2020 between the County of San Bernardino, a political subdivision of the State of California, (hereinafter referred to as County) and Kaiser Foundation Health Plan, Inc. (hereinafter referred to as Contractor).

**WHEREAS**, the County desires to designate a contractor to provide group health care benefits to all retirees and their eligible dependents (Attachment C: Contract 1, Version 21); and

**WHEREAS**, the County conducted a competitive process to find a Contractor to provide these Services, and

**WHEREAS**, Contractor has been evaluated by the County Human Resources Department and has been determined to have the necessary skills to provide Services under the terms and conditions provided herein; and

**WHEREAS**, the County desires that such Services be provided by Contractor and Contractor agrees to perform these Services as set forth below;

**NOW, THEREFORE**, the County and Contractor mutually agree to the following terms and conditions:

The following are attached hereto and incorporated by reference:

**A. TERM OF CONTRACT**

The term of this Contract, to include Attachments A-C is for the period of January 1, 2020 through December 31, 2022; plus one (1) two-year term option to extend the Contract at the County's discretion upon satisfactory performance, unless terminated earlier as provided in this section. Premiums will be negotiated on an annual basis. Once effective, the Contract will terminate according to their own termination provisions.

**A.1** The County may terminate this Contract with cause after written notice of material breach is sent to Contractor and the breach is not cured within fifteen (15) business days of receipt of such notice. For the purpose of the Contract, the term "material breach" shall be defined to mean the failure of Contractor to perform any of its obligations under the Contract.

If the nature of the breach is such that it cannot be cured within a fifteen (15) day period, Contractor may submit a written proposal within that period which sets forth a specific means to resolve the default. If the County consents to that proposal in writing, which consent shall not be unreasonably withheld, the defaulting party shall immediately embark on its plan to cure. If the default is not cured within the time agreement, the non-defaulting party may terminate upon written notice specifying the date of termination.

**A.2** The County may cancel this Contract at any time, without cause, by written notice delivered or mailed to Contractor, effective on receipt or on such later date as specified in the notice.

**A.3** Upon such termination, payment will be made to Contractor for Services rendered and expenses incurred prior to the effective date of termination within thirty (30) working days of the County's receipt of an invoice.

**A.4** Upon receipt of termination notice Contractor shall promptly discontinue Services unless the notice directs otherwise. Contractor shall deliver promptly to County and transfer title (if necessary) all completed work, and work in progress, including drafts, documents, plans, forms, data, products, graphics, computer programs and reports in a manner usable by the County at no charge.

In the event of such termination, the County may proceed with the work in any manner deemed proper by the County.

**A.5** This contract may be terminated by Contractor under the following conditions, provided the County has been notified of such and, except for number 2 below, at least 90 days have elapsed since such notification:

**A.5.1** Termination Due to Nonacceptance of Amendments, only as it relates to amendments related to government approval, amendments due to Medicare changes and amendments due to tax or other charges.

**A.5.2** Termination for Nonpayment in accordance with the terms of the Group Agreement and as set forth in the Fiscal Provisions section of this Contract.

**A.5.3** Termination for Fraud or Intentionally Furnishing Incorrect or Incomplete Material Information.

**A.5.4** Termination for Violation of Contribution or Participation Requirements, subject to Attachment A in this Contract.

The Director of the Human Resources Department or their designee shall have the right to exercise the County's authority under this Contract including the right to give notice of termination on behalf of the County at his/her sole discretion.

**B. GENERAL CONTRACT REQUIREMENTS**

**B.1 Recitals**

The recitals set forth above are true and correct and incorporated herein by this reference.

**B.2 Contract Amendments**

Except for amendments required by law or subject to government approval, Medicare charges and tax or other charges, Contractor agrees any alterations, variations, modifications, or waivers of the provisions of the Contract, shall be valid only when reduced to writing, executed and attached to the original Contract and approved by the person(s) authorized to do so on behalf of Contractor and County.

**B.3 Contract Assignability**

Without the prior written consent of the County, the Contract is not assignable by Contractor either in whole or in part.

**B.4 Attorney's Fees and Costs**

If any legal action is instituted to enforce any party's rights hereunder, each party shall bear its own costs and attorney fees, regardless of who is the prevailing party. Except as provided in paragraph G.1 of this agreement.

**B.5 Background Checks for Contractor Personnel**

Contractor shall ensure that its personnel (a) are authorized to work in the jurisdiction in which they are assigned to perform Services; (d) do not use legal or illegal substances in any manner which will impact their ability to provide Services to the County; and (c) are not otherwise disqualified from performing the Services under applicable law. If requested by the County and not in violation of applicable law, Contractor shall conduct a background check, at Contractor's sole expense, on all its personnel providing Services. If requested by the County, Contractor shall provide the results of the background check of each individual to the County. Such background check shall be in the form generally used by Contractor in its initial hiring of employees or contracting for contractors or, as applicable, during the employment-screening process but must, at a minimum, have been performed within the preceding 12-month period. Contractor personnel who do not meet the County's hiring criteria, in County's sole discretion, shall not be assigned to work on County property or Services, and County shall have the right, at its sole option, to refuse access to any Contractor personnel to any County facility.

**B.6 Change of Address**

Contractor shall notify the County in writing, of any change in mailing address within ten (10) business days of the change.

**B.7 Choice of Law**

This Contract shall be governed by and construed according to the laws of the State of California.

**B.8 Compliance with County Policy**

In performing the Services or at any County facilities, Contractor personnel (including subcontractors) shall (a) conduct themselves in a businesslike manner; (b) comply with the policies, procedures, and rules of the County regarding health and safety, and personal, professional and ethical conduct; (c) comply with the finance, accounting, banking, Internet, security, and/or other applicable standards, policies, practices, processes, procedures, and controls of the County; and (d) abide by all laws applicable to the County facilities and the provision of the Services, and all amendments and modifications to each of the documents listed in subsections (b), (c), and (d) (collectively, "County Policies"). County Policies, and additions or modifications thereto, may be communicated orally or in writing to Contractor or Contractor

personnel or may be made available to Contractor or Contractor personnel by conspicuous posting at a County facility, electronic posting, or other means generally used by County to disseminate such information to its employees or contractors. Contractor shall be responsible for the promulgation and distribution of County Policies to Contractor personnel to the extent necessary and appropriate.

County shall have the right to require Contractor's employees, agents, representatives and subcontractors to exhibit identification credentials issued by County in order to exercise any right of access to County facilities under this Contract.

**B. 9 Confidentiality**

***For general contracts where confidential information may be exchanged use:***

Contractor shall protect from unauthorized use or disclosure names and other identifying information concerning persons receiving Services pursuant to this Contract, except for statistical information not identifying any participant. Contractor shall not use or disclose any identifying information for any other purpose other than carrying out the Contractor's obligations under this Contract, except as may be otherwise allowed by law as disclosed in Contractor's HIPAA Notice of Privacy Practices. This provision will remain in force even after the termination of the Contract.

**B.10 Primary Point of Contact**

Contractor will designate an individual to serve as the primary point of contact for the Contract and to respond to County inquiries within two (2) business days. Contractor agrees to not appoint a different primary contact without County's written acknowledgement. Contractor will also designate a back-up point of contact in the event the primary contact is not available.

**B.11 Notification Regarding Performance**

In the event of a problem or potential problem that could impact the quality or quantity of work, Services, or the level of performance under the Contract, the Contractor shall notify the County within one (1) working day, in writing and by telephone.

**B.12 County Representative**

The Director of Human Resources or his/her designee shall represent the County in all matters pertaining to the Services to be rendered under this Contract, including termination and assignment of this Contract, and shall be the final authority in all matters pertaining to the Services/Scope of Work by Contractor. If this Contract was initially approved by the San Bernardino County Board of Supervisors, then the Board of Supervisors must approve all amendments to this Contract.

**B.13 Damage to County Property**

Contractor shall repair, or cause to be repaired, at its own cost, all damages to County vehicles, facilities, buildings or grounds caused by the willful or negligent acts of Contractor or its employees or agents. Such repairs shall be made immediately after Contractor becomes aware of such damage, but in no event later than thirty (30) days after the occurrence.

If the Contractor fails to make timely repairs, the County may make any necessary repairs. The Contractor, as determined by the County, shall repay all costs incurred by the County for such repairs, by cash payment upon demand, or County may deduct such costs from any amounts due to the Contractor from the County, as determined at the County's sole discretion.

**B.14 Debarment and Suspension**

Contractor certifies that neither it nor its principals or subcontracts is presently disbarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from participation in this transaction by any federal department or agency. (See the following United States General Services Administration's System for Award Management website <https://www.sam.gov>). Contractor further certifies that if it or any of its subcontractors are business entities that must be

registered with the California Secretary of State, they are registered and in good standing with the Secretary of State.

**B.15 Drug and Alcohol Free Workplace**

In recognition of individual rights to work in a safe, healthful and productive work place, as a material condition of this Contract, the Contractor agrees that the Contractor and the Contractor's employees, while performing service for the County, on County property, or while using County equipment:

- B.15.1** Shall not be in any way impaired because of being under the influence of alcohol or an illegal or controlled substance.
- B.15.2** Shall not possess an open container of alcohol or consume alcohol or possess or be under the influence of an illegal or controlled substance.
- B.15.3** Shall not sell, offer, or provide alcohol or an illegal or controlled substance to another person, except where Contractor or Contractor's employee who, as part of the performance of normal job duties and responsibilities, prescribes or administers medically prescribed drugs.

The Contractor shall inform all employees that are performing service for the County on County property, or using County equipment, of the County's objective of a safe, healthful and productive work place and the prohibition of drug or alcohol use or impairment from same while performing such service for the County.

The County may terminate for default or breach of this Contract and any other Contract the Contractor has with the County, if the Contractor or Contractor's employees are determined by the County not to be in compliance with above.

**B.16 Duration of Terms**

This Contract, and all of its terms and conditions, shall be binding upon and shall inure to the benefit of the heirs, executors, administrators, successors, and assigns of the respective parties, provided no such assignment is in violation of the provisions of this Contract.

**B.17 Employment Discrimination**

During the term of the Contract, Contractor shall not discriminate against any employee or applicant for employment because of race, religious creed, color, national origin, ancestry, physical disability, mental disability, medical condition, genetic information, marital status, sex, gender, gender identity, gender expression, sexual orientation, age, or military and veteran status. Contractor shall comply with Executive Orders 11246, 11375, 11625, 12138, 12432, 12250, 13672, Title VI and Title VII of the Civil Rights Act of 1964, the California Fair Employment and Housing Act and other applicable Federal, State and County laws and regulations and policies relating to equal employment and contracting opportunities, including laws and regulations hereafter enacted.

**B.18 Environmental Requirements**

*NOTE: Kaiser and the County understand and agree that the following provision is not applicable to and non-enforceable in whole or in part by either party at any time during the term of this Contract but is required as a standard provision in all County Contracts.*

In accordance with County Policy 11-08, the County prefers to acquire and use products with higher levels of post-consumer recycled content. Environmentally preferable goods and materials must perform satisfactorily and be available at a reasonable price. The County requires Contractor to use recycled paper for any printed or photocopied material created as a result of this Contract. Contractor is also required to use both sides of paper sheets for reports submitted to the County whenever practicable.

To assist the County in meeting the reporting requirements of the California Integrated Waste Management Act of 1989 (AB 939), Contractor must be able to annually report the County's environmentally preferable purchases. Contractor must also be able to report on environmentally preferable goods and materials used in the provision of their service to the County, utilizing a County approved form.

**B.19 Improper Influence**

Contractor shall make all reasonable efforts to ensure that no County officer or employee, whose position in the County enables him/her to influence any award of the Contract or any competing offer, shall have any direct or indirect financial interest resulting from the award of the Contract or shall have any relationship to the Contractor or officer or employee of the Contractor.

**B.20 Improper Consideration**

Contractor shall not offer (either directly or through an intermediary) any improper consideration such as, but not limited to cash, discounts, service, the provision of travel or entertainment, or any items of value to any officer, employee or agent of the County in an attempt to secure favorable treatment regarding this Contract.

The County, by written notice, may immediately terminate this Contract if it determines that any improper consideration as described in the preceding paragraph was offered to any officer, employee or agent of the County with respect to the proposal and award process. This prohibition shall apply to any amendment, extension or evaluation process once a contract has been awarded.

Contractor shall immediately report any attempt by a County officer, employee or agent to solicit (either directly or through an intermediary) improper consideration from Contractor. The report shall be made to the supervisor or manager charged with supervision of the employee or the County Administrative Office. In the event of a termination under this provision, the County is entitled to pursue any available legal remedies.

**B.21 Informal Dispute Resolution**

In the event the County determines that service is unsatisfactory, or in the event of any other dispute, claim, question or disagreement arising from or relating to this Contract or breach thereof and as between the parties, the parties hereto shall use their best efforts to settle the dispute, claim, question or disagreement. To this effect, they shall consult and negotiate with each other in good faith and, recognizing their mutual interests, attempt to reach a just and equitable solution satisfactory to both parties.

**B.22 Legality and Severability**

The parties' actions under the Contract shall comply with all applicable laws, rules, regulations, court orders and governmental agency orders. The provisions of this Contract are specifically made severable. If a provision of the Contract is terminated or held to be invalid, illegal or unenforceable, the validity, legality and enforceability of the remaining provisions shall remain in full effect.

**B.23 Licenses, Permits and/or Certifications**

Contractor shall ensure that it has all necessary licenses, permits and/or certifications required by the laws of Federal, State, County, and municipal laws, ordinances, rules and regulations. The Contractor shall maintain these licenses, permits and/or certifications in effect for the duration of this Contract. Contractor will notify County immediately of loss or suspension of any such licenses, permits and/or certifications. Failure to maintain a required license, permit and/or certification may result in immediate termination of this Contract.

**B.24 Mutual Covenants**

The parties to this Contract mutually covenant to perform all of their obligations hereunder, to exercise all discretion and rights granted hereunder, and to give all consents in a reasonable manner consistent with the standards of “good faith” and “fair dealing”.

**B.25 Nondisclosure**

Contractor shall hold as confidential and use reasonable care to prevent unauthorized access, storage, disclosure, publication, dissemination to and/or use by third parties of, County’s confidential information that is either: (1) provided by the County to Contractor or an agent of Contractor or otherwise made available to Contractor or Contractor’s agent in connection with this Contract; or, (2) acquired, obtained, or learned by Contractor or an agent of Contractor in the performance of this Contract. For purposes of this provision, confidential information means any data, files, software, information or materials in oral, electronic, tangible or intangible form and however stored, compiled or memorialized that is not otherwise publically available and is specifically marked as “confidential”, and includes, but is not limited to, technology infrastructure, architecture, financial data, trade secrets, equipment specifications, user lists, passwords, research data, and technology data.

**B.26 Notice of Delays**

Except as otherwise provided herein, when either party has knowledge that any actual or potential situation is delaying or threatens to delay the timely performance of this Contract, that party shall, within twenty-four (24) hours, give notice thereof, including all relevant information with respect thereto, to the other party.

**B.27 Air, Water Pollution Control, Safety and Health**

Contractor shall comply with all air pollution control, water pollution, safety and health ordinances and statutes, which apply to the work performed pursuant to this Contract.

**B.28 Records**

Contractor shall maintain all records and books pertaining to the delivery of Services under this Contract and demonstrate accountability for contract performance. All records shall be complete and current and comply with all Contract requirements. Failure to maintain acceptable records shall be considered grounds for withholding of payments for invoices submitted and/or termination of the Contract.

All records relating to the Contractor’s personnel, consultants, subcontractors, Services/Scope of Work and expenses pertaining to this Contract shall be kept in a generally acceptable accounting format. Records should include primary source documents. Fiscal records shall be kept in accordance with Generally Accepted Accounting Principles and must account for all funds, tangible assets, revenue and expenditures. Fiscal records must comply with the appropriate Office of Management and Budget (OMB) Circulars, which state the administrative requirements, cost principles and other standards for accountancy.

**B.29 Relationship of the Parties**

Nothing contained in this Contract shall be construed as creating a joint venture, partnership, or employment arrangement between the Parties hereto, nor shall either Party have the right, power or authority to create an obligation or duty, expressed or implied, on behalf of the other Party hereto.

**B.30 Release of Information**

No news releases, advertisements, public announcements or photographs arising out of the Contract or Contractor’s relationship with County may be made or used without prior written approval of the County.

**B.31 Representation of the County**

In the performance of this Contract, Contractor, its agents and employees, shall act in an independent capacity and not as officers, employees, or agents of the County of San Bernardino.

**B.32 Strict Performance**

Failure by a party to insist upon the strict performance of any of the provisions of this Contract by the other party, or the failure by a party to exercise its rights upon the default of the other party, shall not constitute a waiver of such party's right to insist and demand strict compliance by the other party with the terms of this Contract thereafter.

**B.33 Subcontracting**

For any subcontractor, Contractor shall:

- B.33.1** Be responsible for subcontractor compliance with the Contract and the subcontract terms and conditions; and
- B.33.2** Ensure that the subcontractor follows County's reporting formats and procedures as specified by County, limited to County membership.
- B.33.3** Contracts between the Contractor and its facilities or providers for the purpose of delivering, or arranging to deliver, over health care services are excluded from these requirement.

**B. 34 Subpoena**

In the event that a subpoena or other legal process commenced by a third party in any way concerning the deliverables or Services provided under this Contract is served upon Contractor or County, such party agrees to notify the other party in the most expeditious fashion possible following receipt of such subpoena or other legal process. Contractor and County further agree to cooperate with the other party in any lawful effort by such other party to contest the legal validity of such subpoena or other legal process commenced by a third party as may be reasonably required and at the expense of the party to whom the legal process is directed, except as otherwise provided herein in connection with defense obligations by Contractor for County.

**B.35 Time of the Essence**

Time is of the essence in performance of this Contract and of each of its provisions.

**B.36 Venue**

The parties acknowledge and agree that this Contract was entered into and intended to be performed in San Bernardino County, California. The parties agree that the venue of any action or claim brought by any party to this Contract will be the Superior Court of California, County of San Bernardino, San Bernardino District. Each party hereby waives any law or rule of the court, which would allow them to request or demand a change of venue. If any action or claim concerning this Contract is brought by any third party and filed in another venue, the parties hereto agree to use their best efforts to obtain a change of venue to the Superior Court of California, County of San Bernardino, San Bernardino District.

**B.37 Conflict of Interest**

Contractor shall make all reasonable efforts to ensure that no conflict of interest exists between its officers, employees, or subcontractors and the County. Contractor shall make a reasonable effort to prevent employees, Contractor, or members of governing bodies of Contractor from using their positions for purposes that are, or give the appearance of being motivated by a desire for private gain for themselves or others such as those with whom they have family business, or other ties. Officers, employees, and agents of cities, counties, districts, and other local agencies are subject to applicable conflict of interest codes and state law. In the event the County determines a conflict of interest situation exists, any increase in costs, associated with the conflict of interest situation, may be disallowed by the County and such conflict may constitute grounds for termination of the Contract. This provision shall not be construed to prohibit employment of persons with whom Contractor's officers, employees, or agents have family, business, or other ties so long as the employment of such persons does not result in increased costs over those associated with the employment of any other equally qualified applicant.



**B.38 Former County Administrative Officials**

Contractor agrees to provide, or has already provided information on former County of San Bernardino administrative officials (as defined below) who are employed by or represent Contractor. The information provided includes a list of former County administrative officials who terminated County employment within the last five years and who are now officers, principals, partners, associates or members of the business. The information also includes the employment with or representation of Contractor. For purposes of this provision, "County administrative official" is defined as a member of the Board of Supervisors or such officer's staff, County Executive Officer or member of such officer's staff, County department or group head, assistant department or group head, or any employee in the Exempt Group, Management Unit or Safety Management Unit.

**B.39 Disclosure of Criminal and Civil Procedures**

The County reserves the right to request the information described herein from the Contractor. Failure to provide the information may result in a termination of the Contract. The County also reserves the right to obtain the requested information by way of a background check performed by an investigative firm. The Contractor also may be requested to provide information to clarify initial responses. Negative information discovered may result in Contract termination.

Contractor is required to disclose whether the firm, or any of its partners, principals, members, associates or key employees (as that term is defined herein), within the last ten years, has been indicted on or had charges brought against it or them (if still pending) or convicted of any crime or offense arising directly or indirectly from the conduct of the firm's business, or whether the firm, or any of its partners, principals, members, associates or key employees, has within the last ten years, been indicted on or had charges brought against it or them (if still pending) or convicted of any crime or offense involving financial misconduct or fraud. If the response is affirmative, the Contractor will be asked to describe any such indictments or charges (and the status thereof), convictions and the surrounding circumstances in detail.

In addition, the Contractor is required to disclose whether the firm, or any of its partners, principals, members, associates or key employees, within the last ten years, has been the subject of legal proceedings as defined herein arising directly from the provision of Services by the firm or those individuals. "Legal proceedings" means any civil actions filed in a court of competent jurisdiction, or any matters filed by an administrative or regulatory body with jurisdiction over the firm or the individuals. If the response is affirmative, the Contractor will be asked to describe any such legal proceedings (and the status and disposition thereof) and the surrounding circumstances in detail.

For purposes of this provision "key employees" includes any individuals providing direct service to the County. "Key employees" do not include clerical personnel providing service at the firm's offices or locations.

**B.40 Copyright**

As of the Effective Date, the parties do not contemplate the creation of any work product under this Contract. The parties agree that any work product will be described and specifically agreed upon in writing, including applicable provisions related to use. County shall have a royalty-free, non-exclusive and irrevocable license to publish, disclose, copy, translate, and otherwise use, copyright or patent, now and hereafter, all reports, studies, information, data, statistics, forms, designs, plans, procedures, systems, and any other materials or properties exclusively for this Contract including those covered by copyright, (collectively, "work product"), and reserves the right to authorize others to use or reproduce such work product. All such work product developed under the terms of this Contract shall acknowledge the County of San Bernardino as the funding agency and Contractor as the creator of the publication. No such work product, or properties produced in whole or in part under this Contract shall be subject to private use, copyright or patent right by Contractor in the United States or in any other country without the express written consent of County. Copies of all educational and training materials, curricula, audio/visual aids, printer

material, and periodicals, that have been customized for the County and assembled pursuant to this Contract are not work product but must be provided to with the County prior to publication.

**B.41 Iran Contracting Act**

IRAN CONTRACTING ACT OF 2010, Public Contract Code sections 2200 et seq. (Applicable for all Contracts of one million dollars (\$1,000,000) or more). In accordance with Public Contract Code section 2204(a), the Contractor certifies that at the time the Contract is signed, the Contractor signing the Contract is not identified on a list created pursuant to subdivision (b) of Public Contract Code section 2203 as a person (as defined in Public Contract Code section 2202(e)) engaging in investment activities in Iran described in subdivision (a) of Public Contract Code section 2202.5, or as a person described in subdivision (b) of Public Contract Code section 2202.5, as applicable.

Contractors are cautioned that making a false certification may subject the Contractor to civil penalties, termination of existing contract, and ineligibility to bid on a contract for a period of three (3) years in accordance with Public Contract Code section 2205.

**C. CONTRACTOR RESPONSIBILITIES**

- C.1** Contractor will provide group health care benefits to Retirees as specified in Attachment C: Kaiser Contract 1, Version 21, as modified by Attachment A: Addendum to Kaiser Contract.
- C.2** Contractor will provide a final contract for the retiree medical HMO plans to the County by October 1 of each year, subject to any changes to be implemented by the County.
- C.3** Contractor will provide final renewal rates for the Retiree medical plan(s) to the County or designee no later than one-hundred twenty days before the beginning of the contract plan year, subject to any changes to be implemented by the County.
- C.4** Contractor will assist in the design, implementation and administration of modifications to the medical benefits.
- C.5** Contractor to provide assistance, technically and creatively, in the on-going development and preparation of various employee communication materials.
- C.6** As a licensed health care service plan in California, Contractor ensures that it complies with the requirements of the Knox-Keene Health Care Service Plan Act of 1975, as amended (California Health and Safety Code §1340 et. seq.) regarding the maintenance of a readily available and accessible health care delivery network.
- C.7** Make prompt payments for claims for medical care benefits.
- C.8** Contractor records and reporting:
  - 1. Contractor will maintain complete and accurate records with respect to all matters and Services provided to the County.
  - 2. Contractor will not charge for history and take over data/reports to any subsequent Contractor for retiree plans.
  - 3. Contractor will provide complete and accurate electronic records of County medical, hospital, and prescription drug claims paid to any succeeding Contractor in the manner and format necessary to continue employee medical, hospital, and prescription drug coverage.
  - 4. Contractor will conduct discrepancy reporting, timely and accurately, to ensure that enrollment is validated and/or corrected within mutually agreed upon time frames.

5. Contractor will provide semi-annual and annual utilization reports broken down by plan of benefits, members, spouses and dependents, and type of service. Such reports should also include details on the type of illnesses or injuries being treated for employee, spouse and dependent.
  6. Provide, at a minimum, monthly invoices and claims reports showing the number and amount of capitation paid for the HMO.
- C.9** Contractor will accept County enrollment processes, including enrollment forms and electronic enrollments.
1. Contractor agrees to accept County enrollment processes, including paper and/or electronic enrollment forms.
  2. Contractor agrees to accept enrollment forms via a secure electronic data interchange system.
  3. Urgent enrollments will be prioritized and expedited through Kaiser Permanente's eligibility system. Enrollments that fall under this category are those enrollments that fall under urgent medical necessity. All enrollment that are not of an urgent medical necessity will be processed as per Kaiser Permanente's enrollment guidelines.
- C.10** Contractor claims handling:
1. Contractor will make prompt payment for claims for medical care benefits.
  2. Contractor will provide claims processing for claims incurred during the contract, including claims submitted after the termination date of the contract. Such continuance must continue for a minimum of 12 months after the termination of the contract with the County.
- C.11** Contractor will partner with the County's Wellness and Cost Containment Strategy (WCCS):
1. Contractor will provide cost and disease prevalence data, technical, creative, financial, clinical and wellness resources and program and performance metrics in support of the implementation of the County's WCCS.
  2. Contractor will complete and submit on a semi-annual basis, an Executive Analysis, Dashboard, and Action Plan for use in evaluating the effectiveness of County's WCCS. Satisfaction of this requirement will be subject to performance guarantee.
  3. Establish an account management and servicing relationship with the County that emphasizes proactive regular contact and timely responses to administrative issues and a commitment to innovative approaches to implementing the County's WCCS.
- C.12** Contractor representative(s) will:
1. Attend and provide resources to help support all County open enrollment meetings and health fairs for retired County employees as scheduled by the County.
  2. Agree to have appropriate staff regularly attend the County's WCCS meetings.

## **D. ENROLLMENT**

- D.1** In accordance with applicable state and federal law, if any, Contractor agrees to a sixty (60) calendar day eligibility period for enrollment resulting from qualifying events as established by the County.

In accordance with applicable state and federal law, if any, Enrollment of an eligible retiree, spouse, domestic partner and any dependent children is subject to cancellation provisions provided under this Contract.

- D.2** The County shall compile and furnish to Contractor a monthly eligibility file of all primary subscribers and, if applicable all eligible spouses, domestic partners and dependent children. Contractor shall be obligated to provide benefits only to primary subscriber and the primary subscriber's eligible spouse, domestic partner and their dependent children who are enrolled and are reported on the monthly file submitted by the County and for whom the appropriate premiums are paid.

- D.3** Contractor shall report discrepancies in eligibility information to the County on a monthly basis. The County will review and reconcile any discrepancies within thirty (30) calendar days of notification.

**E. ELIGIBILITY**

Retirees, their spouses or domestic partners and their dependent children that meet the eligibility requirements established by the County may enroll in the plans described herein.

1. Newborns are covered on the date of their birth for the first thirty one (31) days during which the subscriber must enroll the newborn for participation in the plan within sixty (60) days.
2. Medicare eligibility shall not affect eligibility for coverage under this plan.

**F. FISCAL PROVISIONS**

- F.1** Contractor shall accept self-billed invoicing for medical insurance premiums on a monthly basis.

- F.2** Contractor agrees to accept a monthly premium remittance structure for Retiree enrollees.

- F.3** Contractor shall accept all payments from County via electronic funds transfer (EFT) directly deposited into the Contractor's designated checking or other bank account. Contractor shall promptly comply with directions and accurately complete forms provided by County required to process EFT payments.

- F.4** County is exempt from Federal excise taxes and no payment shall be made for any personal property taxes levied on Contractor or on any taxes levied on employee wages. The County shall only pay for any State or local sales or use taxes on the Services rendered or equipment and/or parts supplied to the County pursuant to the Contract. If mandated by the ACA, the County will be responsible for paying the Excise (Cadillac) tax as part of federal requirements.

- F.5** Costs for Services under the terms of this Contract shall be incurred during the contract period except as approved by County. Contractor shall not use current year funds to pay prior or future year obligations.

- F.6** Funds made available under this Contract shall not supplant any federal, state or any governmental funds intended for Services of the same nature as this Contract. Contractor shall not claim reimbursement or payment from County for, or apply sums received from County with respect to that portion of its obligations that have been paid by another source of revenue. Contractor agrees that it will not use funds received pursuant to this Contract, either directly or indirectly, as a contribution or compensation for purposes of obtaining funds from another revenue source without prior written approval of the County.

- F.7** Contractor shall adhere to the County's Travel Management Policy (8-02 and 08-02SP1) when travel is pursuant to this Contract and for which reimbursement is sought from the County. In addition, Contractor is encouraged to utilize local transportation services, including but not limited to, the Ontario International Airport.

**G. INDEMNIFICATION AND INSURANCE REQUIREMENTS**

**G.1 Indemnification**

The Contractor agrees to indemnify, defend (with counsel reasonably approved by County) and hold harmless the County and its authorized officers, employees, agents and volunteers from all claims, actions, losses, damages and/or liability arising out of this Contract including the acts, errors or omissions of any person and for costs or expenses incurred by the County on account of claims except where such indemnification is prohibited by law. The Contractor indemnification obligation does not apply to the County's "sole negligence or "willful misconduct" within the meaning of Civil Code section 2782.

**G.2 Additional Insured**

The County to be named as an additional insured under the general liability insurance policy and the auto liability insurance policy.

**G.3 Waiver of Subrogation Rights**

Except for Worker's Compensation, Contractor shall require the carriers of required coverages to waive all rights of subrogation against the County, its officers, employees, agents, volunteers, contractors and subcontractors.

**G.4 Policies Primary and Non-Contributory**

All insurance policies required under this Contract herein are to be primary and non-contributory with any insurance or self-insurance programs carried or administered by the County.

**G.5 Proof of Coverage**

The Contractor shall furnish Certificates of Insurance to the County Department administering the Contract evidencing the insurance coverage including, endorsements, prior to the commencement of performance of Services hereunder, Insurance shall not be terminated or expire without thirty (30) days written notice to the Department, unless replaced with similar coverage, and Contractor shall maintain such insurance from the time Contractor commences performance of Services hereunder until the completion of such Services.

**G.6 Insurance Review**

Contractor acknowledges that the County may undertake periodic review of insurance requirement. Any resulting reduction, waiver or increase in types of insurance coverage or limits for the entire term of the Contract must be made by amendment to this contract. Contractor agrees to review requested changes and, if it is an agreement, execute any such amendment within thirty (30) days of receipt.

**G.7 Insurance Specification**

The Contractor agrees to provide insurance set forth in accordance with the requirements herein. If the Contractor uses existing coverage to comply with these requirements and that coverage does not meet the specified requirements, the Contractor agrees to amend, supplement or endorse the existing coverage to do so.

Without in any way affecting the indemnity herein provided and in addition thereto, the Contractor shall secure and maintain throughout the contract term the following types of insurance with limits as shown:

- G.7.1** Workers' Compensation/Employer's Liability – A program of Workers' Compensation insurance or a state-approved, self-insurance program in an amount and form to meet

If Contractor has no employees, it may certify or warrant to the County that it does not currently have any employees or individuals who are defined as “employees” under the Labor Code and the requirement for Workers’ Compensation coverage will be waived by the County’s Director of Risk Management.

**G.7.2** Commercial/General Liability Insurance – The Contractor shall carry General Liability Insurance covering all operations performed by or on behalf of the Contractor providing coverage for bodily injury and property damage with a combined single limit of not less than one million dollars (\$1,000,000), per occurrence. The policy coverage shall include:

- G.7.3** Automobile Liability Insurance – Coverage to include bodily injury or death, property damage and automobile liability for all owned, hired and non-owned automobiles used by the Contractor. The policy shall have a combined single limit of not less than one million dollars (\$1,000,000) for bodily injury and property damage.

**or**

**G.7.5 Cyber Liability Insurance** – Contractor shall maintain Privacy, Liability, Networking Security and Multi-media Insurance with limits of no less than \$1,000,000 for each occurrence or event with an annual aggregate of \$2,000,000.

**H.1** Contractor agrees that County and its duly authorized representatives, at its own expense, shall have the right upon reasonable notice, to conduct audits of Contractor's books and records pertaining to its relationship with County under the Contract. The right to audit does not extend to any records or information relating to any of the Contractor's other customers, or to any of Contractor's subcontractors. Any audit conducted under this provision does not include the right to access any of Contractor's books and records that would include protected health information about any of County's participants. However, Contractor can provide County with those books and records, to the extent personally identifiable information has been eliminated. This restriction does not apply to enrollment or disenrollment information maintained by Contractor for County's participants.

## Page 14 of 16

- I.2** In the event of a non-cured material breach, County may, at its sole discretion and in addition to any other remedies available at law, in equity, or otherwise specified in this Contract:
- a. Afford Contractor thereafter a time period within which to cure the material breach, which period shall be established as agreed upon between the parties; and/or
  - b. Terminate this Contract immediately. In the event of immediate termination, all outstanding monies owed for Services up through the date of termination are owed and shall be paid by County to Contractor.

## **J. NOTICES**

All written notices provided for in this Contract or which either party desires to give to the other shall be deemed fully given, when made in writing and either served personally, or by facsimile, or deposited in the United States mail, postage prepaid, and addressed to the other party as follows:

County of San Bernardino  
Human Resources Director  
Human Resources Department  
Employee Benefits and Services Division  
157 W. Fifth Street, First Floor  
San Bernardino, CA 92415-0440  
(909) 387-5570; Facsimile (909) 387-5566

Kaiser Foundation Health Plan, Inc.  
Nivalda Pinguet, Executive Account Manager  
3100 Thornton Avenue, Third Floor  
Burbank, CA 91504  
(818) 557-3689; Facsimile (818) 557-3696

Notice shall be deemed communicated two (2) County working days from the time of mailing if mailed as provided in this paragraph.

## **K. ENTIRE AGREEMENT**

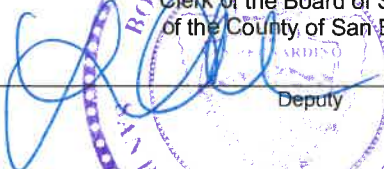
This Contract, including all Exhibits and other attachments, which are attached hereto and incorporated by reference, and other documents incorporated herein, represents the final, complete and exclusive agreement between the parties hereto. Any prior agreement, promises, negotiations or representations relating to the subject matter of this Contract not expressly set forth herein are of no force or effect. This Contract is executed without reliance upon any promise, warranty or representation by any party or any representative of any party other than those expressly contained herein. Each party has carefully read this Contract and signs the same of its own free will.


**IN WITNESS WHEREOF**, the County of San Bernardino and the Contractor have each caused this Contract to be subscribed by its respective duly authorized officers, on its behalf.

COUNTY OF SAN BERNARDINO

►   
Curt Hagman, Chairman, Board of Supervisors

Dated: DEC 17 2019  
SIGNED AND CERTIFIED THAT A COPY OF THIS  
DOCUMENT HAS BEEN DELIVERED TO THE  
CHAIRMAN OF THE BOARD.

By   
Lynna Monell  
Clerk of the Board of Supervisors  
of the County of San Bernardino  
Deputy



Kaiser Foundation Health Plan, Inc.  
(Print or type name of corporation, company, contractor, etc.)

By ►   
(Authorized signature - sign in blue ink)

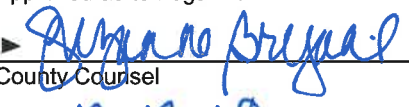
Name Cynthia C. Striegel  
(Print or type name of person signing contract)

Title Vice President, Strategic Accounts  
(Print or Type)

Dated: 12/3/2019

Address 3100 Thornton Avenue, 3rd Floor,  
Burbank, CA 91504

**FOR COUNTY USE ONLY**

Approved as to Legal Form  
►   
County Counsel  
Date 12-13-19

Reviewed for Contract Compliance  
►   
Mark DeBoer  
Date 12/13/19

Reviewed/Approved by Department  
  
Diane Rundles  
Date 12/13/19