

## **Consideration of Proposed Amendments to the Policy on Contracting and Services of Independent Consultants**

### **Background**

At the August 5, 2005 meeting, the ICOC approved, based on a recommendation from the July 29, 2005 Governance Subcommittee meeting, the Policy and Procedures for Contracting and the Policy for Approval of Contracts and Interagency Agreements.

As provided for in the Health and Safety Code Section 125290.30, for purpose of competitive bidding:

- (1) The institute shall, except as otherwise provided in this section, be governed by the competitive bidding requirements application to the University of California, as set forth in Article 1 (commencing with Section 10500) of Chapter 2.1 of Part 2 of Part 2 of Division 2 of the Public Contract Code.
- (2) For all institute contracts, the ICOC shall follow the procedures required of the Regents by Article 1 (commencing with Section 10500) of Chapter 2.1 of Part 2 of Part 2 of Division 2 of the Public Contract Code with respect to contracts let by the University of California.
- (3) The requirements of this section shall not be applicable to grants or loans approved by the ICOC.
- (4) Except as provided in Section 125290.30, the Public Contract Code shall not apply to contracts let by the institute.

The Policy and Procedures for Contracting, adopted at the August 2006 meeting, at times ambiguous and omitted a few of the required procedures as defined in the University of California Business and Finance Bulletin 34 on contracting.

### **Recommendation**

The President recommends to the Governance Subcommittee for approval and recommendation to the ICOC for approval of the Policy on Contracting and Services of Independent Consultants (see Attachment I).

### **Description**

The major changes reflected in the proposed policy are:

#### *I. Thresholds for Solicitations*

**FROM:** Contracts with Independent Contractors or Consultants are not required to be competitively bid. However, if services will

be needed for an extended period of time, bidding should be considered. If the services is generic (not unique), then the state's Master Services Agreement (MSA) program can be used to select Independent Contractors and Consultants.

- TO:** On page 10 of the proposed policy, if the total amount of the contract of the independent consultant agreement is or will be:
- i. less than \$15,000, the Responsible Administrative Official shall determine that the payment is reasonable\* for the services to be performed.
  - ii. more than \$15,000 but less than \$50,000, the Responsible Administrative Official shall assure that, if possible, proposals are solicited from three or more qualified independent consultants. Written bids are not required; verbal bids will be sufficient as long as the solicitation is based on a documented scope of work with three or more comparable price quotes and the Responsible Administrative Official shall determine the payment is reasonable\* for the services to be performed. The scope of the agreement shall not be artificially divided so as to avoid the solicitation of competitive proposals.
  - iii. \$50,000 or more, the Responsible Administrative Official shall assure that written proposals are solicited. When competitive proposals are not solicited, the reason for not seeking competition shall be documented and retained in the agreement file and the Responsible Administrative Official shall determine the payment is reasonable\* for the services to be performed. The scope of the agreement shall not be artificially divided so as to avoid the solicitation of competitive proposals.

\* Reasonable Payment - a payment that does not exceed that which would be incurred by a prudent person in the conduct of a competitive business. Reasonable payment can be established by market test, price or cost analysis, or the experience and judgment of the Responsible Administrative Official. Such judgment considers total value to the CIRM. There is value to the CIRM in agreements which meet the CIRM's needs, such as those involving qualifications, experience, resources, quality, and service. A reasonable payment need not be the lowest price available, but is one which offers the highest total value to the CIRM.

## *II. Approval Levels for Contracts and Independent Consulting Services*

**FROM:** Current Policy adopted on July 5, 2005

ICOC: Approval is required when the amount is expected to be more than \$250,000 or when an

amendment will cause the contract to exceed \$250,000.

President, CIRM: Approves all contracts that are not required to be approved by the Governance Subcommittee or the ICOC.

[from a memo dated 10/28/05 from Walter Barnes to CIRM staff: "If a contract is more than \$100,000 or when an amendment will cause the contract to exceed \$100,000: Approval of the Governance Committee is required]

Interagency Agreements – Initial and amendments or extensions: Delegate approval of interagency agreements to the President, CIRM.

**TO:** Proposed Amendments (see page 11 of the proposed policy)

ICOC: Approval is required when the amount is expected to be more than \$500,000 or when an amendment will cause the contract to exceed \$500,000.

Governance Subcommittee: Approval is required when the amount is expected to be more than \$250,000 or when an amendment will cause the contract to exceed \$250,000.

President: Approval by the President is required for any contract or amendment not required to be approved by the ICOC or the Governance Subcommittee.

Interagency Agreements – Initial and amendments or extensions: Approval of interagency agreements is delegated to the President, CIRM.

### *III. Reporting Requirements*

**FROM:** At each meeting of the Governance Subcommittee the President and the Chief Administrative Officer will provide a report on the status of all interagency agreements and contracts and provide information needed to support decisions requiring Governance Committee or ICOC approval.

**TO:** Page 11 of the proposed policy suggests that the Responsible Administrative Official shall submit quarterly reports to the Governance Subcommittee and an annual report to the ICOC. The report shall include a statement indicating compliance with the provisions of this Policy and a list of all agreements and amendments executed in the reporting period. The report shall

include, as a minimum, the following information for each executed agreement or amendment:

- 1) A listing of each agreement and amendment executed in the reporting period;
- 2) The name of the consultant;
- 3) The purpose of the consulting services;
- 4) The total dollar amount of the agreements and amendments executed during the reporting period
- 5) The expenditures made in the reporting period

*IV. Title Change*

**FROM:** Policy and Procedures for Contracting

**TO:** Policy on Contracting and Services of Independent Consultants

**DRAFT**  
**California Institute of Regenerative Medicine**  
**POLICY on CONTRACTING and SERVICES of INDEPENDENT**  
**CONSULTANTS**

**I. INTRODUCTION**

The contracting policies in this document are based upon the University of California Business and Finance Bulletin 34. These policies provide for appropriate implementation and the oversight required for contracting as defined in Proposition 71.

**II. DEFINITIONS**

Certain terms appear frequently throughout this and other CIRM purchasing policy issuances and have the following meanings:

A. Employee - any individual who is presently employed by the CIRM.

B. Employer-Employee Relationship –

- 1) Generally, under common law if an employer has the right to direct and control the work of an individual who performs the services, not only as to the results to be accomplished but also as to the methods and means by which the results are accomplished, an employer-employee relationship exists. In this respect, even if the employer does not exercise the right to direct or control the manner in which the worker performs the services, the fact that the employer retains the right to do so is sufficient.
- 2) On the other hand, if the individual is subject to the direction or control of another person only as to the end result, not as to the methods and means used to accomplish that result, the individual is not an employee. If the employer does not control either the manner of performance or the result of the service, an independent consultant relationship exists. Because there are no explicit statutory standards for determining a worker's status under the employment tax laws, the IRS has identified twenty classification factors, based on common law standards, which can be used to determine whether the employer has the right to direct and control the detail and means of a workers duty. The fact that more than half of the factors may point to one result does not necessarily mean that this is the correct determination; rather, all of the facts must be analyzed to determine whether certain factors may be more important than others under the particular circumstances. In addition, the fact that an individual's relationship with a business is temporary should be given little weight in making an employee/independent consultant determination. Although an independent consultant will typically have a temporary relationship with a business, so too will employees engaged on a seasonal, project, or an "as needed" basis. See Appendix 3, Independent Contractor Pre-Hire Worksheet, and Business and Finance Bulletin BUS 77 for information on the application of the twenty IRS factors and a more extensive discussion of employer/employee relationships.

C. Employee-Vendor Relationship - a relationship in which:

- 1) An employee, acting alone, proposes for a consideration to provide services to a CIRM department, or an employee owns or controls more than 10% interest in any business which proposes for a consideration to provide services to a CIRM department; or
- 2) A near relative of an employee, acting alone, proposes for a consideration to provide services to a CIRM department, or a near relative of an employee owns or controls more than 10% interest in any business which proposes for a consideration to provide services to a CIRM department, and the employee has, in any connection with his or her CIRM employment, any responsibility for, or will be involved in any manner in, the departmental decision to accomplish or approve the agreement.

D. Executing Officials - officials who are designated as Responsible Administrative Officials.

E. Independent Consultant - An independent consultant is an individual of proven professional or technical competence, who is not employed by the CIRM, who provides primarily professional or technical advice to the CIRM and for whom the CIRM does not control either the manner of performance or the result of the service. The CIRM document used to secure the services of an independent consultant is an Independent Consultant Agreement form. A purchase order or employment type document may not be used.

F. Independent Consultant Agreement - a contract for services which are of an advisory nature, provide a recommended course of action or personal expertise, have an end product which is basically a transmittal of information either written or verbal, and which is related to CIRM administration and management.

G. Independent Contractor - An independent contractor relationship exists when the CIRM has the right to control only the result of the service, not the manner of performance. Independent consultants are a special type of independent contractor and for CIRM purposes are treated somewhat differently than non-consultant independent contractors. As related to independent contractors, service is useful labor performed for another that may or may not produce a tangible commodity. Service includes, but is not limited to: use of security guards; transportation; computer programming; film processing; janitorial work; rubbish and waste removal; and service and repairs to office equipment. In general, such service is covered by the CIRM's standard purchase order form and terms and conditions of purchase in accordance with the procedures described in the University of California Business and Finance Bulletin BUS 43. The CIRM document used to execute this type of relationship is a purchase order form. Neither the Independent Consultant Agreement form nor an employment type form shall be used.

H. Near Relative - a spouse, child, parent, brother, sister, son-in-law, daughter-in-law, father-in-law, mother-in-law, brother-in-law, sister-in-law, and step-relatives in the same relationship.

I. Responsible Administrative Officials - the President, or CFAO, as designated by the ICOC, for the purpose of approving the purpose and content of an independent consultant agreement; this person is one of two executing officials.

J. Reasonable Payment - a payment that does not exceed that which would be incurred by a prudent person in the conduct of a competitive business. Reasonable payment can be established by market test, price or cost analysis, or the experience and judgment of the

Responsible Administrative Official. Such judgment considers total value to the CIRM. There is value to the CIRM in agreements which meet the CIRM's needs, such as those involving qualifications, experience, resources, quality, and service. A reasonable payment need not be the lowest price available, but is one which offers the highest total value to the CIRM.

### **III. RESPONSIBILITIES**

- A. The President or CFAO is responsible for assuring that the services of independent consultants are secured in accordance with the requirements of this Policy.
- B. In the absence of both the President and CFAO one of two may appoint, for a limited time, a Responsible Administrative Official to have administrative responsibility for implementing procedures necessary to fulfill the requirements of this Bulletin in securing the services of independent consultants. This appointment and its related delegation shall be in writing and specify the length of the appointment.
- C. The Responsible Administrative Official specifically shall assure that:
- 1) all requisite documents have been fully approved and received;
  - 2) sole source justification is documented if the agreement is \$15,000 or more and competitive proposals have not been solicited;
  - 3) he or she has signed all agreements, including amendments;
  - 4) adequate records are retained to document the transaction including, but not limited to:
    - (a) the Independent Consultant Agreement and all amendments;
    - (b) solicited proposals or sole source justification for all agreements in excess of \$15,000;
    - (c) documentation that the price to be paid is reasonable; and
    - (d) a completed and signed Independent Contractor Pre-Hire Worksheet (Appendix 3).
  - 5) the annual report and statement (see IX, below) are prepared and submitted to the ICOC.
- D. The Finance Officer shall insure that no payment to an independent consultant is made prior to the signing of an agreement, unless expressly approved in writing by the Responsible Administrative Official.

### **IV. SCOPE**

- A. The requirements and procedures set forth in this Policy apply to securing the services of independent consultants for CIRM activities for which administrative responsibility is vested in the President or CFAO.
- B. The requirements and procedures set forth in this Policy do not apply to:
- 1) ICOC or working group members who serve internally as consultants.
  - 2) Employer/employee relationships, as covered in the applicable personnel policies.

### **V. GENERAL REQUIREMENTS**

- A. Arrangements to secure the services of an independent consultant may be entered into only when a determination has been made that the services are so urgent, special, temporary, or highly technical that they cannot be performed economically or

satisfactorily by existing CIRM staff during the course of their normal CIRM responsibilities or duties.

B. Generally, services of a specific professional or technical nature to be performed by an independent consultant would encompass activities other than those services provided by independent contractors as defined in II, above.

C. The use of an independent consultant is expected to be infrequent and is primarily used to solve clearly-delineated problems.

D. An independent consultant shall not be used to direct or carry out a major portion of a program.

E. In general, the determination regarding employee versus independent consultant status is made by the Responsible Administrative Official. However, in cases where it is difficult to determine the correct status using the criteria provided in this Policy and the University of California Business and Finance Bulletin BUS 77, the Human Resources Department, in coordination with the General Counsel's Office and the CIRM's outside tax counsel, can provide assistance in determining whether an employer-employee relationship exists. Only upon determination that no employer/employee relationship would be established may the proposed agreement be executed.

F. If it is determined that an employer-employee relationship would be established, the CIRM location shall follow the normal employment process.

G. If it is determined that an employee-vendor relationship would be established, the requirements of this section G. shall be followed:

1) Basic Policies

a. Separation of Interests - It is the policy of the CIRM to separate an employee's CIRM and private interests, and to safeguard the CIRM and its employees against charges of favoritism in the acquisition of goods, materials, and services.

b. Conflict of interest - The California Political Reform Act prohibits an employee from making, participating in making, or attempting to base his or her influence to affect a decision if there exists a financial conflict of interest. Requirements governing such decision making are set forth in the CIRM's Conflict of Interest Code and shall be observed by the CIRM in contracting for consulting services.

c. Exceptions/Approvals - No contract for consulting services shall be made with any employee-vendor as defined above unless there has been a specific determination by the Responsible Administrative Official that the goods or services are not available either from commercial sources or from the CIRM's own facilities. The Responsible Administrative Official is delegated authority, within constraints imposed by the Political Reform Act, for approving an employee-vendor contract only in exceptional cases when there are unusual or extenuating circumstances.

d. The laws and regulations affecting the Public Employees' Retirement System (PERS) do not prohibit a retired member of PERS from providing services to the CIRM as an independent consultant except that a person who retired under the Voluntary Early Retirement Incentive Program (VERIP) is subject to specified limitations. The Responsible Administrative Official should determine a retiree's status and limitations, if any, prior to executing the Consulting Agreement.

## **VI. REQUESTS AND APPROVAL**

A. Prior to preparation of proposals, a requesting unit shall make a written presentation of its requirement for the services of an independent consultant and submit it to the Responsible Administrative Official. The request for consultant service shall be in a form which will clarify and define the problem for the benefit of the Responsible Administrative Official, and which will enable prospective independent consultants to prepare proposals. The Responsible Administrative Official shall approve the request to proceed with the preparation of proposals.

B. The request for consultant service shall include, but not necessarily be limited to, the following:

- 1) A description of the problem;
- 2) The objectives of the study or a general statement of what is expected to be accomplished;
- 3) An explanation of why the service cannot be performed by CIRM employees;
- 4) The scope of the work, including any desired approach to the problem, specific
- 5) limitations, questions requiring answers, format for the completed report, and the extent to which assistance, resources and cooperation from the CIRM will be available to the consultant;
- 6) A firm or estimated time schedule including dates for commencement of performance, submission of progress reports, and for completion of the service;
- 7) The terms under which progress payments will be allowed;
- 8) Account(s) and fund(s) and subaccount(s) to be charged; and
- 9) A completed Independent Contractor Pre-Hire Worksheet (Appendix 3).

C. Proposals from independent consultants shall be in writing and shall include, but not necessarily be limited to, the following:

- 1) A description of the consultant's qualifications, with a brief list of similar types of consulting contracts successfully concluded, a sample of such work when appropriate, and a description of the lead personnel and anticipated supporting personnel to be employed on the study;
- 2) An overall description of the techniques by which the consultant intends to approach the problem, consultant resources to be expended, the anticipated beginning and ending dates for the services, and, if subcontractors are contemplated, a description of these persons or firms and the portions and monetary percentages of the work to be done by them;
- 3) A description of the type of information, if any, to be collected about an individual, the method of collection, the physical type of the resulting record, i.e., typed or written notes, photograph, and the proposed ownership of such records. The consultant's attention shall be directed especially the Independent Consultant Agreement (see Appendix 1);
- 4) The total cost of the study and a breakdown of how this cost was computed, including any travel expenses, and desired method of payment;

- 5) The total dollar amount of consultant work contracted with the CIRM of California in the last 12 months;
- 6) The name and position of any officer, faculty member, or other employee of the CIRM who holds a position of director, officer, partner, trustee, manager or employee in the consultant organization, as well as the names of any near relatives who are employed by the CIRM; and
- 7) If the consultant is not a citizen of the United States, an explanation of the person's alien status in the United States.

D. Thresholds for solicitations: If the total amount of the contract of the independent consultant agreement is or will be:

- 1) If the amount is less than \$15,000, the Responsible Administrative Official shall determine that the payment is reasonable for the services to be performed. Reasonable payment is defined in II.J. above.
- 2) Is or will be more than \$15,000 but less than \$50,000, the Responsible Administrative Official shall assure that, if possible, proposals are solicited from three or more qualified independent consultants. Written bids are not required; verbal bids will be sufficient as long as the solicitation is based on a documented scope of work with three or more comparable price quotes, and the Responsible Administrative Official determines the payment is reasonable for the services to be performed. Reasonable payment is defined in II.J. above. The scope of the agreement shall not be artificially divided so as to avoid the solicitation of competitive proposals.
- 3) Is or will be \$50,000 or more, the Responsible Administrative Official shall assure that written proposals are solicited. When competitive proposals are not solicited, the reason for not seeking competition shall be documented and retained in the agreement file and the Responsible Administrative Official shall determine the payment is reasonable for the services to be performed. Reasonable payment is defined in II.J. above. The scope of the agreement shall not be artificially divided so as to avoid the solicitation of competitive proposals.

E. Selection of the independent consultant shall be made on the basis of qualifications, resources, experience, needs of the CIRM, and cost to the CIRM. In the selection process, any CIRM officer or employee participating in the decision must keep in mind the disqualification requirements for financial conflict of interest of the State of California Political Reform Act of 1974. Officers and employees shall not make or participate in the making of a CIRM decision if there exists a financial conflict of interest. Questions concerning conflicts of interest and the CIRM's disqualification requirements should be raised with the Chief Human Resources Officer

## **VII. AGREEMENT COVERING SERVICES**

A. The agreement between the CIRM and an independent consultant shall be executed on the standard CIRM Independent Consultant Agreement, Appendix 1 of this Policy. Any modification of the standard agreement form or material modification of the approved scope of services shall be reviewed and approved by the Responsible Administrative Official, who shall consult with the General Counsel as appropriate.

B. The insurance requirements to be provided as set forth in the Independent Consultant Agreement shall be those set by the University of California Business and Finance Bulletin BUS-63.

C. Delegation of Approvals Required

Approval of any agreement must be granted based on the following levels

- 1) ICOC: Approval is required when the amount is expected to be more than \$500,000 or when an amendment will cause the contract to exceed \$500,000.
- 2) Governance Subcommittee: Approval is required when the amount is expected to be more than \$250,000 or when an amendment will cause the contract to exceed \$250,000.
- 3) President: Approval by the President is required for any contract or amendment not required to be approved by the ICOC or the Governance Subcommittee.
- 4) Interagency Agreements – Initial and amendments or extensions: Approval of interagency agreements is delegated to the President, CIRM.

D. When approval has been granted, the agreement between the CIRM and an independent consultant shall be signed by the consultant and the Responsible Administrative Official prior to the beginning of any service. Exception after the fact may only be granted by written approval only by the President.

E. There shall be no extension of the termination date or expansion of the scope of the original agreement or payment thereof without prior written approval by the Responsible Administrative Official (see Appendix 2 for sample format for amendment). Amendments may not be issued for work unrelated to the scope of the original agreement.

## **VIII. PAYMENT FOR SERVICES OF INDEPENDENT CONSULTANT**

A. A consultant normally shall submit an invoice setting forth the appropriate charges and indicating the agreement number and taxpayer reporting number. An invoice need not be submitted if exempted by terms of the agreement.

B. Authorization for consultant payments shall be a copy of the properly executed standard agreement form.

C. Payment shall not be made for services rendered prior to the contract period, except as expressly approved by the Responsible Administrative Official, or shall payment be made for services rendered after expiration of the agreement.

D. Payment shall be made in accordance with the schedule set forth in Section III. of the agreement. In case of termination prior to completion of the work to be performed under the agreement, a determination shall be made of an equitable compensation to be paid for the work completed based on its value to the CIRM, provided that such compensation shall in no event exceed the total agreement price.

E. If a consultant is not a citizen of the United States, CIRM shall consult with the State Controller's Office for procedures regarding payments to aliens.

## **IX. REPORTING**

A. The Responsible Administrative Official shall submit quarterly reports to the Governance Subcommittee and an annual report to the ICOC. The report shall include a statement indicating compliance with the provisions of this Policy and a list of all

agreements and amendments executed in the reporting period. The report shall include, as a minimum, the following information for each executed agreement or amendment:

- 1) A listing of each agreement and amendment executed in the reporting period;
- 2) The name of the consultant;
- 3) The purpose of the consulting services;
- 4) The total dollar amount of the agreements and amendments executed during the reporting period; and
- 5) Expenditures made in the reporting period.

**Appendix 1**

Independent Consultant Agreement (Required Form)

**Appendix 2**

Amendment to Independent Consultant Agreement (Sample Form)

**Appendix 3**

Independent Contractor Pre-Hire Worksheet and IRS Classification Factors

**APPENDIX 1**

Agreement No. CIRM \_\_\_\_

**CALIFORNIA INSTITUTE FOR REGENERATIVE MEDICINE  
INDEPENDENT CONSULTANT AGREEMENT**

THIS AGREEMENT to furnish certain consultant services is made by and between the California Institute for Regenerative Medicine hereinafter called (the CIRM), and \_\_\_\_\_ [Name] hereinafter called (the Consultant).

**I. NATURE AND PLACE(S) OF SERVICE**

- A. The Consultant shall furnish to the CIRM the following described services including a time schedule by which the Consultant is to produce or provide specified materials or perform certain consulting services as well as reports on the progress of the services:
- B. In addition to the services described in subparagraph A. above, the Consultant’s proposal to the CIRM shall be incorporated herein by reference and made part of this Agreement.
- C. If the Consultant is an entity other than an individual, the CIRM requires that \_\_\_\_\_ be assigned to perform the work set forth herein. No reassignment of work to any other individual(s) other than those described in Attachment A shall be made without the written approval of the CIRM.
- D. Place(s) of performance of such services shall be:  
  

Consultant’s location:	CIRM’s location:
	210 King Street San Francisco, CA 94107
- E. The CIRM will provide working space, equipment, furniture, utilities, and services, as follows:

**II. TERM OF AGREEMENT**

- A. The term of this Agreement shall be from \_\_\_\_\_ through \_\_\_\_\_.
- B. The CIRM reserves the right to terminate this agreement subject to 30 days written notice to the contractor. Contractor may submit a written request to terminate this agreement only if the CIRM should substantially fail to perform its responsibilities as provided herein. In addition, this agreement may be terminated immediately for cause. The term “for cause” shall mean that the Contractor fails to meet the terms, conditions, and/or responsibilities of this agreement. In this instance, the termination shall be effective as of the date indicated on CIRM’s notification to the Contractor.

**III. COMPENSATION AND REIMBURSEMENT FOR EXPENSES**

- A. The CIRM shall pay the Consultant for services performed on the following basis:

1. Professional Fees::
2. Other Expenses

MAXIMUM TO BE PAID UNDER THIS AGREEMENT

\$ \_\_\_\_\_

\* Reimbursement for travel and per diem shall be in accordance with established CIRM rates and policies.

- B. Payments shall be made upon the Consultant's submission of invoices indicating the Agreement Number and setting forth charges in accordance with rates detailed in Article III-A. Each invoice shall include the Consultant's taxpayer identification number (Social Security or employer identification number). Invoices shall be submitted in triplicate not more frequently than monthly in arrears to:

California Institute for Regenerative Medicine  
Chief Finance & Administrative Officer  
210 King Street  
San Francisco, CA 94107

IV. REPORTING

In performing consulting services under this Agreement, the Consultant shall be accountable to the CIRM and shall provide progress reports to CIRM upon CIRM's request.

V. NOTIFICATION

Notices concerning this Agreement shall be addressed as follows:

CIRM: \_\_\_\_\_ TO  
CONSULTANT: \_\_\_\_\_

[Insert name and address]

VI. TAXES

The compensation stated in Article III includes all applicable taxes and will not be changed hereafter as the result of Consultant's failure to include any applicable tax or as the result of any change in the Consultant's tax liabilities. The Consultant acknowledges that compensation payable hereunder may be subject to withholding of state and federal income tax, including state income tax subject to withholding pursuant to California Revenue and Taxation Code Sections 18661-18677.

VII. INDEPENDENT CONSULTANT STATUS

- A. Both parties agree that in the performance of this Agreement the Independent Consultant shall not be an agent or employee of the CIRM, shall not be covered by the State of California Worker's Compensation Insurance or Unemployment Insurance, shall not be eligible to participate in the CIRM's retirement programs, and shall not be entitled to any other CIRM employee benefits.
- B. The Consultant shall be solely responsible for the conduct and control of the work to be performed by the Consultant under this Agreement, except that the Consultant is accountable to the CIRM for the results of such work. The Consultant's services for the

CIRM shall be performed in accordance with currently approved methods and ethical standards applicable to the Consultant's professional capacity.

California State Contract Code 10515 (a) states: No person, firm, or subsidiary thereof who has been awarded a consulting services contract may submit a bid for, nor be awarded a contract on or after July 1, 2003, for the provision of services, procurement of goods or supplies, or any other related action that is required, suggested, or otherwise deemed appropriate in the end product of the consulting services contract.

VIII. ASSIGNMENT OR SUBCONTRACTING

The Consultant may not assign or transfer this Agreement, or any interest or claim, or subcontract any portion of the work, without the prior written approval of the CIRM. The withholding or granting of such approval is totally discretionary with the CIRM. If the CIRM consents to such assignment or transfer, the terms and conditions of this Agreement shall be binding upon any assignee or transferee.

IX. PROPERTY RIGHTS, INCLUDING PATENTS AND COPYRIGHTS

All written and other tangible material ("Material") produced pursuant to this Agreement by the Consultant shall be considered a work-made-for-hire under the Copyright Act. To the extent said Material does not qualify as a work-made-for-hire, Consultant hereby assigns all right, title, and interest, including, but not limited to, copyright and all copyright rights in the Material to the CIRM and shall execute any and all documents necessary to effectuate such assignment. In the event Consultant uses any individual who is not a full-time employee of Consultant or uses any other entity to perform any of the work required by Consultant hereunder, Consultant shall require said individual or entity to sign an agreement before commencing work for consultant to sign an agreement that contains identical wording to the foregoing two sentences except that the word "Consultant" shall be replaced with the individual's or entity's name.

X. CONSULTANT'S LIABILITY AND INSURANCE REQUIREMENTS

A. The Consultant agrees to defend, at the CIRM's election, indemnify, and hold harmless the CIRM, its officers, agents, and employees from and against any and all claims, losses, expenses (including costs and reasonable attorney's fees), claims for injury, or damages that are caused by or result from the negligent or intentional acts or omissions of the Consultant, its officers, employees, or agents or Consultant's breach of this Agreement. In addition, Consultant agrees to defend, at the CIRM's election, indemnify, and hold harmless the CIRM, its officers, agents, and employees from and against any and all claims, losses, expenses (including costs and reasonable attorney's fees), claims for injury, or damages accruing or resulting to any and all contractors, subcontractors, suppliers, or any other person, firm or corporation furnishing services or supplying goods in connection with Consultant's performance of this Agreement

B. The Consultant shall furnish a Certificate of Insurance or statement of self-insurance (contractual liability included) showing minimum coverage as follows:

1. General Liability: Comprehensive or Commercial Form (Minimum Limits)

(i)	General Aggregate (BI, PD)*	\$1,000,000
(ii)	Products, Completed Operations Aggregate	\$1,000,000
(iii)	Personal and Advertising Injury	\$1,000,000
(iv)	Each Occurrence	\$300,000

\* (not applicable to comprehensive form)

However, if such insurance is written on a claims-made form following termination of this Agreement, coverage shall survive for a period no less than three years. Coverage shall also provide for a retroactive date of placement coinciding with the effective date of this Agreement.

2. Business Auto Liability: (Minimum Limits) for Owned, Scheduled, Non-Owned, or Hired Automobiles with a combined single limit of no less than \$1,000,000 per occurrence.
3. Workers' Compensation: as required under California State Law.
4. Professional Liability Insurance: (Minimum Limits)

(1) Each occurrence	\$1,000,000
(2) Project Aggregate	\$2,000,000

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

5. Other insurance in amounts as from time to time may reasonably be required by the mutual consent of the CIRM and the Consultant against such other insurable hazards relating to performance.

Certificate(s) shall name the CIRM as an additional insured under 1, 2 and 4 above, obligate the insurer to notify the CIRM at least thirty (30) days prior to cancellation of or changes in any of the required insurance and include a provision that the coverage will be primary and will not participate with nor be excess to any valid and collectible insurance program of self-insurance carried or maintained by the CIRM. Premiums on all insurance policies shall be paid directly by the Consultant.

## XI. RECORDS ABOUT INDIVIDUALS

- A. The Consultant acknowledges that the creation and maintenance of records pertaining to individuals is subject to certain requirements set forth by the California Information Practices Act (Civil Code 1798, et seq.) and by the CIRM policy. Such requirements include provisions governing the collection, maintenance, accuracy, dissemination, and disclosure of information about individuals, including the right of access by the subject individuals.
- B. If the Consultant creates confidential or personal records about an individual, as defined by the Information Practices Act, including notes or tape recordings, the information shall be collected to the greatest extent practicable directly from the individual who is the subject of the information. When collecting the information, the Consultant shall inform the individual that the record is being made and of the purpose of the record.
- C. Records containing confidential or personal information about individuals are the property of the CIRM and subject to the CIRM's policies and applicable federal and state laws. The Consultant agrees to deliver all such records, including originals and all copies and summaries, to the CIRM upon termination of this Agreement.
- D. The Consultant shall not use recording devices in discussions with the CIRM's employees without notifying all parties to the discussion that the discussion is being recorded.

## XII. EXAMINATION OF RECORDS

The Consultant agrees that the CIRM and its authorized agents shall have the right to review and copy any records and supporting documentation pertaining to the performance of this Agreement including, but not limited to, all documents, records and work papers whether obtained or copied from the CIRM or developed by the Consultant. Consultant agrees to maintain such records for a minimum of five (5) years after final payment, unless a longer period of records retention is stipulated. Consultant agrees to allow the CIRM and its authorized agent's access to such records during normal business hours. Further, Consultant agrees to include a similar right of access in any subcontract related to the performance of this Agreement.

In accordance with state law, the Consultant agrees that the CIRM, its authorized agents, the State Controller's Office, and the Bureau of State Audits (collectively, the "Auditors") shall have the right, in connection with an audit, to review and copy any records and supporting documentation pertaining to the performance of this Agreement including, but not limited to, all documents, records and work papers whether obtained or copied from the CIRM or developed by the Consultant. Consultant agrees to maintain such records for possible audit for a minimum of five (5) years after final payment, unless a longer period of records retention is stipulated. Consultant agrees to allow the Auditors access to such records during normal business hours and to allow interviews of any employees who might reasonably have information related to such records. Further, Consultant agrees to include a similar right of the Auditors to audit records and interview staff in any subcontract related to the performance of this Agreement.

## XIII. CONFLICT OF INTEREST

- A. The Consultant will not hire any officer or employee of the CIRM to perform any service covered by this Agreement. If the work is to be performed in connection with a federal or state contract or grant, the Consultant will not hire any employee of the government concerned to perform any service covered by this Agreement.
- B. The Consultant affirms that to the best of his/her knowledge there exists no actual or potential conflict between the Consultant's family, business or financial interest and the services provided under this Agreement, and in the event of change in either private interests or service under this Agreement, any question regarding possible conflict of interest which may arise as a result of such change will be raised with the CIRM.
- C. The Consultant shall not be in a reporting relationship to a CIRM employee who is a near relative, nor shall the near relative be in a decision-making position with respect to the Consultant.

## XIV. AFFIRMATIVE ACTION

The Consultant recognizes that as a state government contractor or subcontractor, the Consultant is obligated to comply with all state laws and regulations regarding equal opportunity and affirmative action in government contracts. When applicable, the Consultant agrees that all such laws and their implementing regulations are incorporated herein as though set forth in full. These laws include the nondiscrimination requirements of Government Code sections 12990 and 11135, and the nondiscrimination program and clause required by Title 2, Division 4, Chapter 5 of the California Code of Regulations.

## XV. CONFIDENTIALITY

The Consultant shall keep confidential any information provided by the CIRM or any information conveyed orally to the Consultant by the CIRM with oral notification of its confidentiality (the

“Confidential Information”), Consultant agrees to maintain the secrecy of CIRM's Confidential Information and agrees not to use it except in performing the Services under this Agreement and not to disclose it to anyone outside CIRM or anyone within CIRM's organization who does not have a need to know it to perform under this Agreement. This non-disclosure provision shall not apply to any of the following:

1. Information which the Consultant can demonstrate by written records was known to him or her prior to the effective date of this Agreement;
2. Is currently in, or in the future enters, the public domain other than through a breach of this Agreement or through other acts or omissions of the Consultant; or
3. Is obtained lawfully from a third party.

#### XVI. APPLICABLE LAW

The laws of the State of California shall govern this Agreement.

#### XVII. TERMS TO BE EXCLUSIVE

This Agreement constitutes the entire understanding between the parties regarding the subject matter hereof and supersedes any prior understanding between the parties, oral or written, regarding the same subject matter.

#### XVIII. WAIVER OR MODIFICATION OF TERMS

No waiver, amendment or other modifications of the terms of this Agreement shall be binding upon either party unless expressed in writing and signed by both parties hereto.

#### IXX. STANDARD FOR PERFORMANCE

The parties acknowledge that the CIRM, in selecting the Consultant to perform the services hereunder, is relying upon the Consultant's reputation for excellence in the performance of the services required hereunder. The Consultant shall perform the services in the manner of one who is a recognized specialist in the types of services to be performed. All deadlines set forth in the Agreement are binding and may be modified only by subsequent written agreement of the parties. The Consultant shall devote such time to performance of its, her, or his duties under this Agreement as is reasonably necessary for the satisfactory performance of such duties within the deadlines set forth herein. Nothing in the foregoing shall be construed to alter the requirement that time is of the essence in this Agreement.

XX. EXCLUSION. Independent Consultant warrants that it is not excluded from participation in any governmental sponsored program, including, without limitation, the Medicare, Medicaid, or Champus programs (<http://exclusions.oig.hhs.gov/search.html>) and the Federal Procurement and Nonprocurement Programs (<http://epls.arnet.gov/PrivacyActProvisionsEPLS.html>). This Agreement shall be subject to immediate termination in the event that the Independent Consultant is excluded from participation in any federal healthcare or procurement program.

#### XXI. RESOLUTION OF DISPUTES

If the Consultant disputes any action by the CIRM arising under or out of the performance of this contract, the Consultant shall notify the CIRM of the dispute in writing and request a claims decision. CIRM shall issue a decision within 30 days of the Consultant's notice. If the Consultant disagrees with the CIRM's claims decision, the Consultant shall submit a formal claim to the President of CIRM. The decision by the President of the CIRM shall be final and conclusive on the claim unless the decision is arbitrary, capricious or grossly erroneous or if any determination of fact is unsupported by substantial evidence. The decision may encompass facts, interpretation of the contract and determinations or applications of law. The decision shall be in writing

following an opportunity for the Consultant to present oral or documentary evidence and arguments in support of the claim. Consultant shall continue with the responsibilities under this Agreement during any dispute.

INDEPENDENT CONSULTANT

THE CALIFORNIA INSTITUTE FOR  
REGENERATIVE MEDICINE

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Signature \_\_\_\_\_ Date \_\_\_\_\_  
Date \_\_\_\_\_

Lorraine Hoffman

Name \_\_\_\_\_

Chief Finance & Administrative Officer

Title \_\_\_\_\_

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Social Security or Employer Identification Number\*

\*Pursuant to Federal Privacy Act of 1974, you are hereby notified that disclosure of your Social Security number is mandatory. Disclosure of the Social Security number is required pursuant to Sections 6011 and 6051 of Subtitle F of the Internal Revenue Code and Regulation 4, Section 404.1256, Code of Federal Regulations, under Section 218, Title II of the Social Security Act, as amended. The Social Security number is to verify your identity. The principal uses of the Social Security number shall be to report payments you have received to the Federal and State governments.

Item 6445-502-6047001/H&S Code 125291.20/Statutes 2004/FY 06/07  
Account/Fund to be charged





INDEPENDENT CONTRACTOR PRE-HIRE WORKSHEET

INFORMATION ABOUT INDIVIDUAL

Individual       Sole Proprietor       Corporation

Social Security Number \_\_\_\_\_  
 Federal ID Number \_\_\_\_\_

Name \_\_\_\_\_  
 Name of Company \_\_\_\_\_

MULTIPLE RELATIONSHIPS WITH THE CIRM

1. Is this individual on record as a current employee?  
 Yes       No
  
2. Was the individual a CIRM employee any time during the last year and did he or she provide the same or similar services while an employee?  
 Yes       No

IRS CLASSIFICATION FACTORS

Before a worker is hired as an independent contractor, the following checklist *must* be completed to help determine whether an employer/employee relationship exists.

IRS Classification Factors	Yes = Employee	No = Contractor
<u>Behavioral Control</u> : Right to direct and control details and means by which worker performs services.	<input type="checkbox"/>	<input type="checkbox"/>
1. <b>Instructions.</b> Will the CIRM have the right to give the worker instructions about when, where, and how he or she is to do the job?	<input type="checkbox"/>	<input type="checkbox"/>
2. <b>Training.</b> Will the worker receive training from the CIRM?	<input type="checkbox"/>	<input type="checkbox"/>
<u>Financial Control</u> : Right to direct and control economic aspects of the worker's activities.	<input type="checkbox"/>	<input type="checkbox"/>
3. <b>Significant Investment.</b> Has the worker failed to invest in facilities (such as an office) used to perform services?	<input type="checkbox"/>	<input type="checkbox"/>

- |   |                          |                          |
|---|--------------------------|--------------------------|
| 4. <b>Payment of Expenses.</b> Will the CIRM pay the worker's business or travel expenses?  | <input type="checkbox"/> | <input type="checkbox"/> |
| 5. <b>Services Available.</b> Does the worker <u>not</u> make his or her services available to other employers?                           | <input type="checkbox"/> | <input type="checkbox"/> |
| 6. <b>Payment by Hour, Week, Month.</b> Will the CIRM pay the worker by the hour, week, or month rather than by commission or by the job? | <input type="checkbox"/> | <input type="checkbox"/> |
| 7. <b>Realization of Profit or Loss.</b> Will the arrangement prevent the worker from realizing a profit or suffering a loss?             | <input type="checkbox"/> | <input type="checkbox"/> |
| <u>Relationship of Parties:</u> Intent of parties concerning status and control of workers.   |                          |                          |
| 8. <b>Written Contract.</b> Will a written contract <u>not</u> be executed describing the worker as an independent contractor?            | <input type="checkbox"/> | <input type="checkbox"/> |
| 9. <b>Employee Benefits.</b> Will the worker receive any employee benefits?   | <input type="checkbox"/> | <input type="checkbox"/> |
| 10. <b>Regular Business Activity.</b> Is the work to be performed part of the regular business of the CIRM?                               | <input type="checkbox"/> | <input type="checkbox"/> |

EVALUATION OF CLASSIFICATION FACTORS

Areas That Support Employee Status:

Areas That Support Contractor Status:

(Use separate sheet, if necessary.)

DETERMINATION

Hire worker as an employee

Hire worker as an independent contractor

\_\_\_\_\_  
Legal Department Authorization

Prepared By \_\_\_\_\_

\_\_\_\_\_  
Chief Finance and Administrative Officer Authorization

Date \_\_\_\_\_

See CIRM Contract Policy for more information.