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A Commitment to Service

# County of Napa Request for Proposals (RFPs)

For an  
**ENVIRONMENTAL IMPACT REPORT**  
for the  
**COUNTY JAIL &  
ANCILLARY FACILITIES PROJECT**  
**NAPA, CALIFORNIA**

**March 9, 2012**

**Deadline for Submission:  
Monday, April 9, 2012  
4:45 p.m.**

Late Proposals WILL NOT Be Accepted

*Prepared by:*

*NAPA COUNTY  
CONSERVATION DEVELOPMENT & PLANNING DEPT  
1195 Third Street, Room 210  
Napa, California 94559  
707/253-4417*

**COUNTY OF NAPA**  
**REQUEST FOR PROPOSALS**  
**for an**  
**ENVIRONMENTAL IMPACT REPORT**  
**for the**  
**COUNTY JAIL &**  
**ANCILLARY FACILITIES PROJECT**

**1. INTRODUCTION**

The Napa County Conservation, Development, and Planning Department (CDPD) requests proposals from qualified respondents for preparation of an Environmental Impact Report (EIR) to support the redevelopment of the County Jail and Ancillary Facilities (the Jail). It is anticipated that one firm, or a team of qualified firms, would be selected to perform all tasks related to the EIR, including preparing necessary technical studies, conducting public outreach, producing text and illustrations, preparing the EIR, attending public meetings, and coordinating review by the public agencies and interested members of the public.

The EIR will require technical knowledge in a number of areas that are beyond the expertise of County staff, including, but not limited to, circulation/traffic, air quality and greenhouse gas emissions, and public utilities and community services. The selected firm will be expected to supplement staff efforts and to take the lead on technical analyses and preparation of the EIR. Staff from the Conservation, Development & Planning Department, Department of Corrections, Public Works and County Counsel will be involved in the effort, along with a jail planning or architectural team selected through a separate Request for Proposal process.

**2. ABOUT THE COUNTY JAIL & ANCILLARY FACILITIES PROJECT**

The project involves the redevelopment of Jail facilities in Napa County, and the EIR will analyze two sites at an equal level of detail. The first site includes the existing Hall of Justice (HOJ) in downtown Napa. The second site will be identified within the next several months, and would involve relocating the Jail to an alternative site within unincorporated Napa County.

Initial planning work calls for demolition and redevelopment of the Jail located at the HOJ, 1125 3<sup>rd</sup> Street in downtown Napa. The existing building is located on 1.03 acres, consisting of approximately 36,000 square feet, built in 1976, and a 1989 annex comprising a total 124,000 square feet, of which the Jail occupies 82,700 square feet. The existing Jail is approximately 53 feet tall, and includes 277 beds, 13 of which are reserved for transfer holding bunks and non-rated beds assigned to disciplinary isolations and medical and mental health services.

The HOJ currently houses the Jail, which employs 87 full-time employees (FTE) from the Napa County Department of Corrections, and office space with approximately 48 FTE from the Napa County Probation Department, approximately 12 FTE from the Conservation, Development and Planning Staff, and approximately 3 FTE from the District Attorney's Office. Additionally, the HOJ houses meeting space, classrooms, and offices for Community Corrections Service Center and the County's contractor, BI, Inc.

#### **A. Downtown Site**

The Downtown site is bounded by mixed use commercial/residential on Main Street to the east, commercial uses and a County/City parking garage on 5<sup>th</sup> Street to the south, commercial uses, parking, residential on Coombs Street to the west, and the existing County Administrative Building, Courthouse, and downtown to the north.

The Downtown site is nominally classified as Public Quasi (PQ) in the City of Napa General Plan. The County is not bound by the City's zoning code and does not generally require approval from the City for construction of County facilities. However, the County will consult with the City as a part of the site design and EIR process, allowing for input from the City and the public.

If a new Jail is constructed on the existing site, the existing HOJ would be replaced by a new building, approximately 64-68 feet tall, with approximately 209,000 square feet. When fully operational, the Jail would employ approximately 119 FTE Custody staff, with three 8 hour shifts, and 43 FTE administrative and support staff. The Jail would include 526 beds with ancillary facilities, including but not limited to an energy plant, warehouse, maintenance unit, food services, laundry, medical and mental health units, and inmate intake and release.

The Downtown site would also provide space for commercial development opportunities on the west side of Main Street in an area that is currently used for law enforcement and County staff parking. Commercial development could include development of a multilevel building providing a combination of retail, office and/or residential uses, and could screen the new Jail from viewers on Main Street. The building footprint would be approximately 36,200 square feet.

## **B. Alternative Site**

While an alternative site has not been selected yet, it is expected to be located within approximately 5 miles from the current site in the City of Napa, and within unincorporated County jurisdiction.

A replacement Jail on the alternative site would consist of a low-rise structure measuring approximately 24 feet in height, including 526 beds with ancillary facilities, including but not limited to energy plant, warehouse, maintenance unit, food services, laundry, medical and mental health units, and inmate intake and release, comprising 213,000 square feet. It is anticipated the Jail will require 195 parking spaces. When fully operational, the new Jail is anticipated to employ 126 FTE Custody staff in three 8 hour shifts, and 43 full time administrative and support staff.

Additionally, the Jail would also provide a properly secured 100 bed residential facility for lower level offenders. Future build out may include other correlated uses such as a detoxification/treatment facility, and a day program facility.

If the Jail is developed at an alternative site, the HOJ in downtown Napa would remain in place for some period of time, providing inmate overflow, daily holding of approximately 100 inmates for court related appearances, offices, meeting space, and classrooms. When funding becomes available, the existing HOJ could be replaced with a new building or buildings containing similar uses and a sally port, where vehicles transporting prisoners from the new Jail would drop off and pick up prisoners destined for the holding area and/or the adjacent courthouse.

## **3. REQUESTED SCOPE OF WORK**

Proposals should briefly describe the respondent's understanding and approach to this scope of work. Respondents are encouraged to provide ideas, programs, formats, and suggestions throughout the proposal, based on experience with other projects.

At a minimum, the Scope of Work shall address the following:

- A. Environmental Impact Report Preparation & Schedule
- B. Public Participation
- C. Technical Analyses

## **A. Environmental Impact Report**

The Environmental Impact Report (EIR) shall be prepared in accordance with the procedural requirements of the California Environmental Quality Act (CEQA), the State CEQA Guidelines, and Napa County's local guidelines. The EIR is intended to be project specific, but the levels of detail will depend upon information available from jail planners and designers. The respondent shall be responsible for all procedural steps, including, but not limited to, preparation of the Initial Study, a Notice of Preparation, and a Notice of Completion. The respondent may also be asked to assist staff with preparation of the Notice of Determination and CEQA Findings. The respondent shall also be responsible for assisting staff with conducting scoping meetings, scheduling, noticing, and mailing.

To the extent feasible, the EIR shall utilize the findings and technical data contained in the Napa County General Plan (2008) and the Baseline Data Report (BDR). The respondent will also take the lead on preparing response to comments on the draft EIR and will maintain an administrative record of public outreach and a file of all public/agency comments and correspondence (Note: This administrative record will be kept at the County's offices). The County expects that consultation and outreach to the staff at the City of Napa will be required.

## **B. Public Participation**

For the Jail project to be successful, it will need to reflect input from the surrounding businesses, nearby neighborhoods and other interested constituencies. While the County expects that the public outreach effort will be coordinated by County staff or the Jail planner/designer, the EIR respondent will be expected to work as part of the team, and proposals should include public outreach beyond scoping and Draft EIR public hearings as an optional task.

## **C. TECHNICAL ANALYSES**

The HOJ is conveniently serviced by public transportation, with a transit stop directly located at the southeast corner of Third Street and Coombs, and the Pearl Street Transit Center located approximately 4 blocks from the HOJ. There is ample parking for existing Jail functions, however redevelopment of the Downtown site would increase demand for parking in the area. The alternative site selected for analysis will be determined in the next several months and is expected to be within 5 miles of the downtown site.

Proposals should address your experience with parking and circulation issues, as well as alternative transportation strategies. A quantitative analysis of intersection performance will be required, referencing City of Napa guidelines and County significance standards and policies. Proposals should anticipate preparation of a

stand-alone technical report addressing transportation issues associated with both sites.

Proposals should also address recommended methodologies for assessing Air Quality, Greenhouse Gas Emissions, and Public Utilities.

#### **4. COORDINATION WITH OTHER AGENCIES**

The respondent will be expected to consult and coordinate with and file all necessary documentation with all appropriate governmental agencies at federal, state, regional, and local levels as deemed pertinent to the preparation of the EIR.

#### **5. DOCUMENT FORMAT TEXT/MAPPING**

There will need to be an emphasis on providing information not just through text but visually through the use of graphics, tables and matrices. Boilerplate text is not desirable. A technically accurate document is essential. Final editions of the EIR and special studies shall be provided in an 8.5" x 11" loose-leaf binder format. All documentation submitted to the County shall be formatted for Microsoft Word and delivered on CD-ROM or an approved alternative.

Maps, site plans, and other drawings/schematics shall be produced using the County's standard coordinate system (North American Datum 1983, California State Plane Zone 2 in feet, EPSG code 2226). Digital drawings and data layers used in the project-related mapping shall be delivered in the projected coordinated system above in a format compatible with ESRI (Environmental Systems Research Institute, Inc.) GIS software. Examples of digital drawings and data layers include, but may not be limited to, site plans/illustrative drawings drafted in CAD (computer aided design), GIS shapefiles, aerial imagery and other raster data, and three-dimensional building models.

#### **6. INSTRUCTIONS TO PROPOSERS**

##### **A. Examination of RFP Documents**

By submitting a proposal, the respondent indicates that it has thoroughly examined and become familiar with the services required under this RFP and that it is capable of performing the quality of services necessary to achieve the County's objectives.

##### **B. Addenda**

The County reserves the right to revise the RFP documents. Any County changes to the requirements will be made by written addenda to this RFP. Any written addenda issued pertaining to this RFP may be incorporated into the terms and conditions of

any contract resulting from this RFP. Addenda will be posted on the County's website. It is the respondent's responsibility to check the County's website to determine if any addenda have been issued. The County will not be bound to any modifications to or deviations from the requirements set forth in this RFP as the result of oral instructions.

### **C. The County's Rights**

The County may investigate the qualifications of any respondent under consideration, require confirmation of information furnished by a respondent, and require additional evidence of qualifications to perform the Scope of Work described in this RFP. The County reserves the right to:

- Accept or reject any and all proposals, or any item or part thereof, or to waive any informalities or irregularities in proposals;
- Issue new or subsequent RFPs;
- For any reasons, withdraw or cancel this RFP, or any part thereof at any time without prior notice and the County makes no representations that any contract will be awarded to any Respondent responding to this RFP;
- Require confirmation of information furnished by respondent or for the respondent to provide additional evidence of qualifications to perform the work or to obtain information from any source that has the potential to improve the understanding and evaluation of the proposal;
- Postpone proposal openings for its own convenience;
- Release the proposals, received as public information, upon request after award (submitted proposals are not to be copyrighted);
- Remedy or overlook technical errors in the RFP process;
- Appoint an Evaluation Committee to review proposals;
- Establish a short list of respondents eligible for interview after review of written proposals;
- Negotiate with any, all or none of the respondents to the RFP;
- Solicit best and final offers from all or some of the respondents;
- Award a contract to one or more respondents;
- Reject the proposal of any respondent who previously failed to perform properly, or complete on time, contracts or a similar nature;
- Waive informalities and minor irregularities in proposals; and
- Accept the proposal that appears from all considerations to be in the best interest of the County. The County also reserves the right to modify the scope of work subsequent to the selection process without re-issuing the RFP.

#### **D. Non Return of Proposals**

None of the materials submitted will be returned to the respondent unless they are not submitted in a timely manner.

#### **E. Provision of Information to Respondents**

Any documents provided by the respondents are considered confidential until a contract is signed. After that, the information is public record and will be provided to anyone who requests it. However, if the documents contain any proprietary information, the portion of the documents containing the proprietary information will be withheld. Proprietary information should be clearly marked and include an explanation of why information is proprietary. After a contract is signed, CDPD staff also may share with an unsuccessful respondent the reasons that the respondent's proposal was not selected.

#### **F. Appeals**

The County's appeals process is as follows:

1) Filing of Protest.

Any directly affected party who is aggrieved in connection with the solicitation or award of a contract issued through a formal sealed solicitation may protest the procurement taken. Such protests must be filed in writing with:

County of Napa  
Purchasing Agent  
1195 Third Street, Room 310  
Napa, CA 94559

2) Protests must be filed in writing within five (5) working days from the time of the occurrence generating the protest. Protests may be sent via facsimile to (707) 253-4176. Protests received after this time will not be considered. Any protest shall include the following information:

- The date and action taken resulting in a protest, and
- Identification of the material issue, including a detailed explanation of the basis for the protest and the remedy sought.

3) Resolution Process.

a) Informal Resolution. Upon receipt of a protest, the Purchasing Agent will convene, at the earliest possible convenience, discussions between the

protesting party and appropriate County staff to seek informal resolution and/or to clarify the issues.

b) Response to Protest/Appeal. If the protest is not resolved by mutual agreement, the Purchasing Agent shall provide a written response to the protesting party within fifteen (15) working days following the informal meeting. County Counsel shall be consulted before the written response is issued. The response shall state the Purchasing Agent's decision, the facts supporting the decision, and shall inform the protesting party of its right to appeal the decision to the Board of Supervisors.

4) Appeal to the Board of Supervisors.

In the event that the informal resolution procedure is unsuccessful, the protesting party may request an appeal hearing before the Board of Supervisors by filing a written request with the Clerk of the Board no later than five (5) working days after notification of the Purchasing Agent's decision. Any appeal hearing shall be scheduled within thirty (30) working days from the date the request is received by the Clerk of the Board. The Clerk of the Board shall notify the appellant by personal service of the scheduled hearing date not less than ten (10) working days from the date of hearing.

The appellant shall have the right to testify at the hearing, to be represented by counsel, to present witnesses on his/her behalf, and to present oral and written documents and evidence on the issue(s).

After the conclusion of the hearing, the Board of Supervisors shall make findings of fact and a decision concerning the issue(s).

5) Stay of Procurement Action during a Protest.

In the event of a timely protest under this section, the County shall not proceed further with the solicitation or the award of the contract or purchase order until the protest is resolved, unless the Purchasing Agent, in consultation with the head of the relevant County department and County Counsel, makes a written determination that the award of the contract without further delay is necessary to protect a substantial interest of the County.

**G. Compensation**

A budget has not been established for these services. Respondents shall provide hours/cost estimates for each task detailed in the Scope of Work.

## 7. DELIVERABLES

The proposal shall include a list of deliverables including status reports to be provided to the County. For budgeting purposes, the following general items are to be provided. All transmitted materials shall include one unbound original:

- 1) Draft & Final Traffic/Transportation Studies: .....10 copies
- 2) Administrative Draft #1 and #2 and Screencheck Draft EIR: .....10 copies each
- 3) Draft EIR for public distribution:.....50 copies
- 4) Final Environmental Impact Report (EIR): .....50 copies
- 5) CD-Rom of all digital data mentioned in Section 5 above.

## 8. PROPOSED SCHEDULE

Proposals must contain an estimated time schedule of actions covering the entire process for preparing the Environmental Impact Report, including public outreach sessions, review periods and noticing periods. Each action item must identify the applicable deliverable, its action dates and responsible parties.

## 9. SUBMITTAL REQUIREMENTS

A. Ten (10) copies and one reproducible copy of the proposal must be received by Napa County **no later than 4:45 p.m. on Monday, April 9, 2012**. Late proposals will not be accepted. All proposals and documents submitted become the property of Napa County. Information considered proprietary shall be identified as such when the proposal is submitted.

Proposals may be submitted by mail or in person to the address shown below:

NAPA COUNTY  
CONSERVATION DEVELOPMENT AND PLANNING DEPARTMENT  
Attn: Hillary Gitelman, Director  
1195 Third Street, Room 210  
Napa, California 94559  
707/253-4417

Faxed or electronically submitted proposals will not be accepted.

B. The following requirements shall be met in all proposals submitted to the County.

- 1) Ten copies and one reproducible copy of the proposal must be submitted by the deadline. Proposals are limited to a maximum of 20 pages in length, including resumes. The proposal should be typed (12 point font) and submitted on a

8.5" x 11" paper with a single method of fastening. Charts and schedules may be included on 11" x 17" format. It is recommended that proposals be submitted on paper that is made from at least 30% recycled content.

2) The proposal must be submitted in an envelope clearly marked with the respondent's name and "Napa County Jail Project EIR."

3) A Cover letter signed by an individual authorized to bind the proposing entity to the proposal for a period of 90 days.

4) A statement of understanding and project approach which outlines the respondent's understanding of the relevant issues which are to be addressed in the preparation of the Napa County Jail Project EIR and recommendations for the overall program.

5) A detailed Scope of Services, providing information on all of the work tasks you propose to complete as part of the program and are identified in this RFP. Also include any additional or optimal tasks which you recommend.

6) A detailed budget showing costs per each discrete task shown in the Scope of Services, plus the cost of any reimbursable items. The costs shall be in a "menu" format to permit each item's cost to be identified. The costs should be represented in a format that permits identification of the total cost of the Napa County Jail Project EIR, as well as its subcomponents or phases.

7) A recent example of an EIR document prepared by your firm or team (Note: provide a website/link to the document, not a hardcopy).

8) Respondents shall provide a minimum of three (3) references for which their organization has provided services similar to those described in this RFP. References are to include: entity and contact name, address, title, phone number, and term of contract. The County reserves the right to contact references not provided in the submittals.

9) A statement of qualifications, including any additional information that would reflect on your firm's ability to provide the services described in this RFP. The statement of qualifications should provide a matrix showing applicable projects performed by the respondent, which personnel identified in the proposal participated in each of those projects, and what role those personnel had in the projects. Also identify all key personnel that would be working in Napa County, and a schedule of applicable billing rates.

10) A statement to the effect that by signing the letter of transmittal, the respondent is attesting that all information submitted with the proposal is true and correct.

C. The following schedule for the respondent selection process shall be adhered to the maximum extent possible:

- March 26, 2012      Requests for Clarifications due
- March 29, 2012      Pre-Submittal Conference Held (2:00pm)
- April 2, 2012        Posting of Responses to Clarifications
- April 9, 2012        Proposals Due by 4:45 pm  
(late proposals will NOT be accepted)
- April 23, 2012      Finalists Selected for Interview
- May 7, 2012         Finalists Interviewed By Selection Committee
- May 2012             Board of Supervisors Considers the Top-Ranked  
Proposal & Awards Contract
- June 2012            Work Initiated

A pre-submittal meeting will be held on March 29, 2012 at 2:00 pm in the second floor Training Room in the Napa County Hall of Justice, 1125 Third Street in downtown Napa. Please contact Kelli Felker at (707) 265-2325 or by email at [kelli.felker@countyofnapa.org](mailto:kelli.felker@countyofnapa.org) by the close of business on Monday, March 26, 2012 to confirm your attendance. Attendance is not mandatory, but prospective respondents are encouraged to attend in person or by phone. Minutes of the pre-submittal meeting will be posted on the County's website. Any unanswered questions from the meeting will be addressed. Changes to the RFP, if any, will be addressed through the issuance of an addendum to the RFP. All questions, including questions that could not be specifically answered at the pre-submittal meeting, must be put in writing and must be received by the County by March 30, 2012. Responses to questions and requests for clarification will be posted on April 2, 2012. All emailed and verbal questions received shall be answered at the Pre-Submittal Conference. All questions and requests for clarification received and the answers provided will be added to the RFP as a separate addendum and published on the County's website and available to all proposers.

## **10. SELECTION CRITERIA AND PROCESS**

Proposals received by the deadline will be reviewed to ensure that each has met the minimum submittal requirements outlined in this RFP. Proposals that do not meet these minimum requirements will be rejected.

Napa County is looking for respondents who are experienced and flexible. The respondent should demonstrate technical expertise and ability in problem solving and producing results. Respondents should document past efforts and discuss how their experiences are relevant to this project.

A favorable response from references regarding timeliness, meeting deadlines, technical ability, and solving problems in a creative manner will be important factors. The intent is to gauge the general skill of the respondent firm, review the specific talents of key personnel and the quality of products produced. Although a quality work product is the County's first objective, cost will be a factor. Financial resources are limited.

Napa County has a local vendor preference which covers the acquisition of requested services. Local vendors will be awarded contracts for services where qualifications are determined by the reviewing panel to be otherwise equal, unless such preference is not allowable by law. For this matter, a local vendor is a vendor who has a billing address located within Napa County. Where appropriate, out of county vendors are encouraged to subcontract with qualified local vendors.

The respondent shall be selected on the basis of demonstrated competence and on the professional qualifications necessary for the satisfactory performance of the services required. In addition, the selection procedures shall specifically prohibit practices which might result in unlawful activity including, but not limited to, rebates, kickbacks, or other unlawful consideration, and shall specifically prohibit government agency employees from participating in the selection process when those employees have a relationship with a person or business entity seeking a professional services contract which would subject those employees to the prohibition of Government Code Section 87100.

Criteria used to select the respondent/respondent team for the Napa County Jail EIR Project shall include the following:

- 1) Knowledge of and demonstrated experience in preparing documents that fulfill the requirements of the California Environmental Quality Act (CEQA); including the ability to perform any necessary technical studies which may be required to prepare the EIR, such as traffic modeling, Air Quality and Greenhouse Gas Emission analysis, Public Utilities and Community Services, and others as needed;

- 2) Respondent's understanding of the County's needs and its general approach to the project as demonstrated in the Project Approach and Scope of Work;
- 3) Expertise, qualifications, and directly related experience of the proposed Project Manager and technical staff assigned to the project; indicate project team members with local knowledge/experience (Note: senior personnel may not be removed from the project team without the prior written consent of the County);
- 4) Demonstrated ability to perform quality work, control costs, and meet time schedules; ability to work and communicate effectively with the public and County staff, the ability to work with interested parties in the EIR process, and accessibility of the Respondent for discussions and feedback; and
- 5) References of the firm and project manager(s).

Two or more firms may be invited to take part in an interview process that will include a brief presentation by the respondent and a question-and-answer session conducted by a panel. The size and make-up of the interview panel has not yet been determined.

Acceptance of any proposal submitted pursuant to this RFP shall not constitute any implied intent to enter into a contract for consulting services. The County reserves the right to reject any and all proposals or cancel the project prior to contract execution. Furthermore, the County shall NOT compensate for any work done pertaining to the preparation of a proposal, preparation for and attendance of an interview, and/or contract preparation work made in response to this solicitation.

The County intends to award a contract to the respondent who submits the proposal that is determined to be the most advantageous and the best value to the County, price and other factors considered, as determined by the County at its sole discretion. The proposal that provides the lowest cost proposal will not necessarily be selected as the best value to the County. Technical proposals, qualifications and experience, and references as well as cost proposals will be evaluated to determine the respondent that provides the best value to the County.

Negotiations will be initiated with the highest ranked respondent. The County retains the right to terminate negotiations with the highest ranked respondent and open negotiations with the next highest ranked respondent.

At any time during the evaluation process, the County may request "Best and Final" offers based upon the County's improved understanding of the offers or changed scope of work. Based on the initial applications, further clarification and/or revision of applications, and Best and Final offers, if requested, the panel will select the

application that provides the best value to the County. The County may negotiate final pricing and a contract form with the successful respondent.

Because this application is negotiable, all pricing data shall remain confidential until after an award is made, and there shall be no public opening and reading of bids. Evaluation of the applications is expected to be completed within 30 days after their receipt.

The County reserves the right to award an agreement without further competition based on the responses received to this RFP.

## **11. PROFESSIONAL SERVICES AGREEMENT**

Attached to this proposal and marked "Exhibit A" is the County's standard Professional Services Contract. The respondent proposal, this RFP, and all subsequent modifications to either document will be included as appendices to the Contract. It is recommended that the respondent review this Agreement prior to submittal. Any exceptions to the language and content of the Agreement **must** be noted and explained in the respondent proposal. If no exceptions are made, then the proposer agrees to be bound by, and thereby represents its ability to satisfy all terms of the Agreement, if selected. County Counsel may make minor modifications to the standard agreement to fit the particulars of this project.

## **12. ACCEPTANCE OF TERMS AND CONDITIONS**

Submission of a proposal pursuant to this RFP shall constitute acknowledgement and acceptance of all the terms and conditions set forth in this RFP, unless otherwise expressly stated in the proposal.

**A. Inclusion of Proposal.** The proposal submitted in response to this RFP will be required to be included as part of the final contract with the selected firm.

**B. Accountability.** The respondent firm will be required to submit monthly status reports covering such items as progress of work being performed, milestones attained, resources expended, problems encountered and corrective action taken.

**C. Project Status Meetings.** The respondent shall attend project status meetings at least twice per month or as otherwise determined during the course of the project.

**D. Insurance.** The respondent firm shall not start work until all insurance requirements meet the approval of the County. The primary respondent also is responsible for submitting all sub-contractor insurance requirements.

**E. Acceptance and Payment Terms.** Payments for the work performed shall be based on defined deliverables such as background reports, draft EIR, and Final EIR document. No payments will be made in advance of work performed. Requests for payment (invoices) will include detailed "backup" information to justify charges (i.e. who did what for how long). Not less than the remaining balance of ten percent (10%) of the total contract shall be due upon final adoption of the General Plan. Monthly invoices shall include a status of work performed with a percentage of each task completed.

**F. Costs.** All costs shall be stated as "not to exceed" amounts. All costs must be detailed specifically in the cost summary section of the proposal. No additional charges (e.g., for sales tax, transportation, out-of-pocket expenses, etc.) will be allowed unless so specified in the proposal.

**G. Confidentiality of Documents.** All documents submitted as part of the respondent proposal will be deemed confidential during the evaluation process. Respondent proposals will not be available for review by anyone other than County personnel, the selection committee, and the interview panel.

### **13. DISPOSITION OF PROPOSALS**

All proposals submitted in response to this RFP will become the property of the County. None of the materials submitted will be returned to the respondent unless they are not submitted in a timely manner. The respondent must identify in writing all copyrighted material, trade secrets, or other proprietary information that it claims is exempt from disclosure under the Public Records Act (California Government Code Sections 6250 et.seq.).

The County shall not, in any event be liable for any expenses incurred by respondent in the preparation of its proposal. The respondent shall not include any such expenses as part of its proposal. Proposal preparation expenses include the following: attendance at the non-mandatory pre-submittal meeting; preparing its proposal in response to this RFP; submitting that proposal to the County; negotiating with the County on any matter related to this RFP; or, any other expenses incurred by the respondent prior to the date an agreement is executed.

### **14. MODIFICATIONS TO THE RFP**

The County may modify the RFP prior to the date fixed for submission of proposals by issuance of an addendum to all parties that request notice. All addenda will be posted on the County website and incorporated into the final RFP.

## **15. PROPOSAL INFORMATION**

All communication and inquiries regarding this project are preferred by email, directed to Kelli Felker, Project Planner ([kelli.felker@countyofnapa.org](mailto:kelli.felker@countyofnapa.org)) at (707) 265-2325 before the close of business on Monday, March 26, 2012 or communicated verbally at the Pre-Submittal Conference on Thursday, **March 29, 2012**. All emailed and verbal questions received shall be answered at the Pre-Submittal Conference. No further questions will be answered after that time.

Except for the above named, potential respondents should not contact Napa County staff regarding any aspect of this RFP. If such contact is made, the County reserves the right to reject the application.

No prior, current or post award verbal conversations or agreements with any officer, agent, or employee of the County or any other person or entity shall affect or modify any terms or obligations of this RFP or any agreement resulting from this process.

### **Attachments:**

Exhibit "A" – Professional Services Agreement

# Exhibit “A”

## Professional Service Agreement

**[\* \* \* DRAFT SUBJECT TO CHANGE \*\*\* \*]**

**NAPA COUNTY AGREEMENT NO. \_\_\_\_\_**

**PROFESSIONAL SERVICES AGREEMENT**

**THIS AGREEMENT** is made and entered into as of this \_\_\_\_\_ day of \_\_\_\_\_, \_\_\_\_\_, by and between the COUNTY OF NAPA, a political subdivision of the State of California, hereinafter referred to as "COUNTY", and \_\_\_\_\_ **[TYPE IN LEGAL NAME OF CONTRACTOR; IF THE CONTRACTOR USES A FICTITIOUS BUSINESS NAME AS WELL, ADD "doing business as \_\_\_\_\_"; IF THE CONTRACTOR IS A CORPORATION, ADD THE STATE OF INCORPORATION BY SAYING, "a \_\_\_\_\_ corporation"]**, whose mailing [or business] address is \_\_\_\_\_, hereinafter referred to as "CONTRACTOR";

**RECITALS**

**WHEREAS**, COUNTY wishes to obtain specialized services, as authorized by Government Code section 31000, in order to \_\_\_\_\_; and \_\_\_\_\_;

**WHEREAS**, CONTRACTOR is willing to provide such specialized services to COUNTY under the terms and conditions set forth herein;

**TERMS**

**NOW, THEREFORE**, COUNTY hereby engages the services of CONTRACTOR, and CONTRACTOR agrees to serve COUNTY in accordance with the terms and conditions set forth herein:

- 1. Term of the Agreement.** The term of this Agreement shall commence on the date first above written and shall expire on \_\_\_\_\_, unless terminated earlier in accordance with Paragraphs 9 (Termination for Cause), 10 (Other Termination) or 23(a) (Covenant of No Undisclosed Conflict); except that the obligations of the parties under Paragraphs 7 (Insurance) and 8 (Indemnification) shall continue in full force and effect after said expiration date or early termination in relation to acts or omissions occurring prior to such dates during the term of the Agreement, and the obligations of CONTRACTOR to COUNTY shall also continue after said expiration date or early termination in relation to the obligations prescribed by Paragraphs 15 (Confidentiality), 20 (Taxes) and 21 (Access to Records/Retention). **[IF THE TERM NEEDS TO ROLLOVER, ADD THE FOLLOWING]** The term of this Agreement shall be automatically renewed for an additional year at the end of each fiscal year, under the terms and conditions then in effect, unless either party gives the other party written notice of intention not to renew no less than thirty (30) days prior to the expiration of the then current term. Such notice of nonrenewal may be given on behalf of COUNTY by the Napa County Executive Officer or designee thereof. For purposes of this Agreement, "fiscal year"

shall mean the period commencing on July 1 and ending on June 30.

2. **Scope of Services.** CONTRACTOR shall provide COUNTY those services set forth in Exhibit "A", attached hereto and incorporated by reference herein.

3. **Compensation.**

(a) Rates. In consideration of CONTRACTOR's fulfillment of the promised work, COUNTY shall pay CONTRACTOR at the [rate of \_\_\_\_\_] **[OR, IF THERE IS MORE THAN A SINGLE RATE, USE THE FOLLOWING]** [at the rates set forth in Exhibit "B", attached hereto and incorporated by reference herein].

(b) Expenses. No travel or other expenses will be reimbursed by COUNTY. **[OR, USE THIS ALTERNATE LANGUAGE]** Travel and other expenses will be reimbursed by COUNTY upon submission of an invoice in accordance with Paragraph 4 at the rates and/or in accordance with the provisions set forth in Exhibit "B".

(c) Maximum Amount. Notwithstanding subparagraphs (a) and (b), the maximum payments under this Agreement **[ADD "per fiscal year" IF PARAGRAPH 1 HAS AN AUTOMATIC ROLLOVER]** shall be a total of \_\_\_\_\_ (\$\_\_\_\_\_) for professional services and \_\_\_\_\_ (\$\_\_\_\_\_) for expenses; provided, however, that such amounts shall not be construed as guaranteed sums, and compensation shall be based upon services actually rendered and reimbursable expenses actually incurred. **[DELETE THE TWO REFERENCES TO EXPENSES IF (b) SAYS NO EXPENSES WILL BE REIMBURSED]**

4. **Method of Payment.**

(a) Invoices. All payments for compensation and reimbursement for expenses shall be made only upon presentation by CONTRACTOR to COUNTY of an itemized billing invoice in a form acceptable to the Napa County Auditor which indicates, at a minimum, CONTRACTOR's name, address, Social Security or Taxpayer Identification Number, itemization of the hours worked or, where compensation is on a per-task basis, a description of the tasks completed during the billing period, the person(s) actually performing the services and the position(s) held by such person(s), and the approved hourly or task rate. Requests for reimbursement shall also describe the nature and cost of the expense and the date incurred. CONTRACTOR shall submit invoices not more often than \_\_\_\_\_ to the

\_\_\_\_\_ **[INSERT POSITION TITLE]** who, after review and approval as to form and content, shall submit the invoice to the Napa County Auditor no later than fifteen (15) calendar days following receipt. **[DELETE ALL SENTENCES AND PHRASES IN THIS SUBPARAGRAPH WHICH REFER TO EXPENSES IF PARAGRAPH 3(b) DOES NOT PROVIDE FOR EXPENSE REIMBURSEMENT]**

(b) Legal status. So that COUNTY may properly comply with its reporting obligations under federal and state laws pertaining to taxation, if CONTRACTOR is or becomes a corporation during the term of this Agreement, proof that such status is currently recognized by and complies with the laws of both the state of incorporation or organization and the State of California, if different, shall be provided to the **[INSERT POSITION TITLE]** upon request in a form satisfactory to the Napa County Auditor. Such proof shall include, but need not be limited to, a copy of any annual or other periodic filings or registrations required by the state of origin or California, the current address for service of process on the corporation or limited liability partnership, and the name of any agent designated for service of process by CONTRACTOR

within the State of California.

5. **Independent Contractor.** CONTRACTOR shall perform this Agreement as an independent contractor. CONTRACTOR and the officers, agents and employees of CONTRACTOR are not, and shall not be deemed, COUNTY employees for any purpose, including workers' compensation and employee benefits. CONTRACTOR shall, at CONTRACTOR's own risk and expense, determine the method and manner by which duties imposed on CONTRACTOR by this Agreement shall be performed; provided, however, that COUNTY may monitor the work performed by CONTRACTOR. COUNTY shall not deduct or withhold any amounts whatsoever from the compensation paid to CONTRACTOR, including, but not limited to amounts required to be withheld for state and federal taxes. As between the parties to this Agreement, CONTRACTOR shall be solely responsible for all such payments.

6. **Specific Performance.** It is agreed that CONTRACTOR, including the agents or employees of CONTRACTOR, shall be the sole providers of the services required by this Agreement. Because the services to be performed by CONTRACTOR under the terms of this Agreement are of a special, unique, unusual, extraordinary, and intellectual or time-sensitive character which gives them a peculiar value, the loss of which cannot be reasonably or adequately compensated in damages in an action of law, COUNTY, in addition to any other rights or remedies which COUNTY may possess, shall be entitled to injunctive and other equitable relief to prevent a breach of this Agreement by CONTRACTOR.

7. **Insurance.** CONTRACTOR shall obtain and maintain in full force and effect throughout the term of this Agreement, and thereafter as to matters occurring during the term of this Agreement, the following insurance coverage:

(a) Workers' Compensation insurance. To the extent required by law during the term of this Agreement, CONTRACTOR shall provide workers' compensation insurance for the performance of any of CONTRACTOR's duties under this Agreement, including but not limited to, coverage for workers' compensation and employer's liability and a waiver of subrogation, and shall provide COUNTY with certification of all such coverages upon request by COUNTY's Risk Manager.

(b) Liability insurance. CONTRACTOR shall obtain and maintain in full force and effect during the term of this Agreement the following liability insurance coverages, issued by a company admitted to do business in California and having an A.M. Best rating of A:VII or better or equivalent self-insurance:

(1) General Liability. Commercial general liability [CGL] insurance coverage (personal injury and property damage) of not less than ONE MILLION DOLLARS (\$1,000,000) combined single limit per occurrence, covering liability or claims for any personal injury, including death, to any person and/or damage to the property of any person arising from the acts or omissions of CONTRACTOR or any officer, agent, or employee of CONTRACTOR under this Agreement. If the coverage includes an aggregate limit, the aggregate limit shall be no less than twice the per occurrence limit.

**[COMMENT: IF THIS IS A CONSTRUCTION CONTRACT, THE AGGREGATE LIMIT SHALL BE NO LESS THAN FIVE MILLION DOLLARS OR, IF CRANES ARE INVOLVED, NO LESS THAN TEN MILLION DOLLARS. CHECK WITH THE**

**COUNTY'S RISK MANAGER FOR THE CORRECT AGGREGATE AMOUNT, BEFORE LETTING BIDS BECAUSE THE AMOUNTS MUST BE STATED IN THE BID SOLICITATION, NOT JUST IN THE EVENTUAL CONTRACT DOCUMENT.**

(2) Professional Liability/Errors and Omissions. Professional liability [or errors and omissions] insurance for all activities of CONTRACTOR arising out of or in connection with this Agreement in an amount not less than ONE MILLION DOLLARS (\$1,000,000) per claim

(3) Comprehensive Automobile Liability Insurance. Comprehensive automobile liability insurance (Bodily Injury and Property Damage) on owned, hired, leased and non-owned vehicles used in conjunction with CONTRACTOR's business of not less than THREE HUNDRED THOUSAND DOLLARS (\$300,000) combined single limit per occurrence.

(c) Certificates. All insurance coverages referenced in 7(b), above, shall be evidenced by one or more certificates of coverage or, with the consent of COUNTY's Risk Manager, demonstrated by other evidence of coverage acceptable to COUNTY's Risk Manager, which shall be filed by CONTRACTOR with the **[INSERT NAME OF COUNTY DEPARTMENT MANAGING THE AGREEMENT]** prior to commencement of performance of any of CONTRACTOR's duties; shall reference this Agreement by its COUNTY number or title and department; shall be kept current during the term of this Agreement; shall provide that COUNTY shall be given no less than thirty (30) days prior written notice of any non-renewal, cancellation, other termination, or material change, except that only ten (10) days prior written notice shall be required where the cause of non-renewal or cancellation is non-payment of premium; and shall provide that the inclusion of more than one insured shall not operate to impair the rights of one insured against another insured, the coverage afforded applying as though separate policies had been issued to each insured, but the inclusion of more than one insured shall not operate to increase the limits of the company's liability. For the commercial general liability insurance coverage referenced in 7(b)(1) and, where the vehicles are covered by a commercial policy rather than a personal policy, for the comprehensive automobile liability insurance coverage referenced in 7(b)(3) CONTRACTOR shall also file with the evidence of coverage an endorsement from the insurance provider naming COUNTY, its officers, employees, agents and volunteers as additional insureds and waiving subrogation, and the certificate or other evidence of coverage shall provide that if the same policy applies to activities of CONTRACTOR not covered by this Agreement then the limits in the applicable certificate relating to the additional insured coverage of COUNTY shall pertain only to liability for activities of CONTRACTOR under this Agreement, and that the insurance provided is primary coverage to COUNTY with respect to any insurance or self-insurance programs maintained by COUNTY. The additional insured endorsements for the general liability coverage shall use Insurance Services Office (ISO) Form No. CG 20 09 11 85 or CG 20 10 11 85, or equivalent, including (if used together) CG 2010 10 01 and CG 2037 10 01; but shall not use the following forms: CG 20 10 10 93 or 03 94. Upon request by COUNTY's Risk Manager, CONTRACTOR shall provide or arrange for the insurer to provide within thirty (30) days of the request, certified copies of the actual insurance policies or relevant portions thereof.

(d) Deductibles/Retentions. Any deductibles or self-insured retentions shall be declared to, and be subject to approval by, COUNTY's Risk Manager, which approval shall not be denied unless the COUNTY's Risk Manager determines that the deductibles or self-insured retentions are unreasonably large in relation to compensation payable under this Agreement and

the risks of liability associated with the activities required of CONTRACTOR by this Agreement. At the option of and upon request by COUNTY's Risk Manager if the Risk Manager determines that such deductibles or retentions are unreasonably high, either the insurer shall reduce or eliminate such deductibles or self-insurance retentions as respects COUNTY, its officers, employees, agents and volunteers or CONTRACTOR shall procure a bond guaranteeing payment of losses and related investigations, claims administration and defense expenses.

**8. Hold Harmless/Defense/Indemnification.**

(a) In General. To the full extent permitted by law, CONTRACTOR shall hold harmless, defend at its own expense, and indemnify COUNTY and the officers, agents, employees and volunteers of COUNTY from any and all liability, claims, losses, damages or expenses, including reasonable attorney's fees, for personal injury (including death) or damage to property, arising from all acts or omissions of CONTRACTOR or its officers, agents, employees, volunteers, contractors and subcontractors in rendering services under this Agreement, excluding, however, such liability, claims, losses, damages or expenses arising from the sole negligence or willful acts of COUNTY or its officers, agents, employees, volunteers, or other contractors or their subcontractors. Each party shall notify the other party immediately in writing of any claim or damage related to activities performed under this Agreement. The parties shall cooperate with each other in the investigation and disposition of any claim arising out of the activities under this Agreement, providing that nothing shall require either party to disclose any documents, records or communications that are protected under peer review privilege, attorney-client privilege, or attorney work product privilege.

(b) Employee Character and Fitness. CONTRACTOR accepts responsibility for determining and approving the character and fitness of its employees (including volunteers, agents or representatives) to provide the services required of CONTRACTOR under this Agreement, including completion of a satisfactory criminal/background check and period rechecks to the extent permitted by law. Notwithstanding anything to the contrary in this Paragraph, CONTRACTOR shall hold COUNTY and its officers, agents and employees harmless from any liability for injuries or damages resulting from a breach of this provision or CONTRACTOR's actions in this regard.

(c) Obligations Relating to Criminal Background Checks.

(1) CONTRACTOR shall investigate by all lawful means, including but not limited to obtaining information from official government sources as the result of taking fingerprints, the criminal background of each and all of its officers, agents, employees, interns, and volunteers, however denominated (hereafter, "employees"), who will have direct personal contact with, or provide direct personal services to, third persons in the performance of this contract. Depending upon the information acquired by its investigation, CONTRACTOR shall not allow any of its employees to have personal contact with, or provide direct personal services to, third persons where it may reasonably be concluded as a result of its investigation that an employee should not have such contact or provide such service. Nothing herein requires CONTRACTOR to investigate the criminal background of an employee who is currently licensed by the State of California and whose license requires a criminal background

investigation.

(2) Notwithstanding anything to the contrary in (a) or (b), CONTRACTOR shall defend and indemnify COUNTY and its officers, agents and employees from any and all claims, actions, settlements or judgments of whatever kind which may arise from the failure of CONTRACTOR to conduct the criminal background investigation described in this subparagraph (c) or from the failure of CONTRACTOR after the investigation to reasonably disallow an employee from having such personal contact or providing such direct personal service.

9. **Termination for Cause.** If either party shall fail to fulfill in a timely and proper manner that party's obligations under this Agreement or otherwise breach this Agreement and fail to cure such failure or breach within \_\_\_\_\_ ( ) days of receipt of written notice from the other party describing the nature of the breach, the non-defaulting party may, in addition to any other remedies it may have, terminate this Agreement by giving \_\_\_\_\_ ( ) days prior written notice to the defaulting party in the manner set forth in Paragraph 13 (Notices). COUNTY hereby authorizes the Napa County Executive Officer to make all decisions and take all actions required under this Paragraph to terminate this Agreement on behalf of COUNTY for cause.

10. **Other Termination.** This Agreement may be terminated by either party for any reason and at any time by giving prior written notice of such termination to the other party specifying the effective date thereof at least \_\_\_\_\_ days prior to the effective date, as long as the date the notice is given and the effective date of the termination are in the same fiscal year; provided, however, that no such termination may be effected by COUNTY unless an opportunity for consultation is provided prior to the effective date of the termination. COUNTY hereby authorizes the Napa County Executive Officer to make all decisions and take all actions required under this Paragraph to terminate this Agreement on behalf of COUNTY for the convenience of COUNTY.

If, during the term of this Agreement or any extension thereof subsequent to the first fiscal year during the term, COUNTY is unable to appropriate sufficient funds to meet its obligations to CONTRACTOR under this Agreement, such funds are not otherwise available to COUNTY for this purposes, and there are no other legal procedures or available funds by or with which such obligations can be met, and such non-appropriation of funds has not resulted from any act or omission within the control of COUNTY; or, if the funds appropriated to meet such obligations were granted to COUNTY by any agency of the State of California, any federal government agency, or other source and such grant funds are discontinued or otherwise become unavailable to COUNTY during the term of the Agreement or any extension thereof, COUNTY shall have the right to terminate this Agreement by giving CONTRACTOR written notice of such termination at least thirty (30) days prior to the effective date of the termination. In the event of such termination, COUNTY shall be obligated to CONTRACTOR only for payment of compensation and reimbursement of expenses for services satisfactorily completed or incurred and for which invoices are submitted as of the effective date of such termination. The notice of termination shall include a certification by the Napa County Executive Officer or designee thereof that sufficient funds have not been made available to COUNTY to meet COUNTY's future obligations under the Agreement. In the event of termination under this Agreement,

COUNTY shall not enter into a functionally similar agreement with a third party during the remainder of the then-current term, except that if during said period, funds again become available to COUNTY for such services, COUNTY shall offer to execute a new agreement with CONTRACTOR for such services with CONTRACTOR to expire no earlier than the expiration date of this Agreement had it not been terminated under this Paragraph, and on the same terms and conditions as set forth in this Agreement.

**11. Disposition of, Title to and Payment for Work upon Expiration or Termination.**

(a) Upon expiration of this Agreement or termination for cause under Paragraph 9 or termination for convenience of a party under Paragraph 10:

(1) To the extent CONTRACTOR has provided services through Software and Applications materials licensed to COUNTY, COUNTY shall promptly return the Software and Application materials to CONTRACTOR. In addition, to the extent CONTRACTOR maintains COUNTY data on those portions of digital software hosted by CONTRACTOR and not controlled by COUNTY ("County data"), CONTRACTOR shall promptly return County data to COUNTY Information Technology Department (ITS) in a format designated by ITS and shall subsequently purge County data from CONTRACTOR's systems upon confirmation from COUNTY that the copy of the data provided to COUNTY is comprehensive of the data previously hosted by CONTRACTOR.

(2) All finished or unfinished documents and other materials, if any, and all rights therein shall become, at the option of COUNTY, the property of and shall be promptly returned to COUNTY, although CONTRACTOR may retain a copy of such work for its personal records only, except as otherwise provided under Paragraph 15 (Confidentiality) of this Agreement. Unless otherwise expressly provided in this Agreement, any copyrightable or patentable work created by CONTRACTOR under this Agreement shall be deemed a "work made for hire" for purposes of copyright or patent law and only COUNTY shall be entitled to claim or apply for the copyright or patent thereof. **[ADD THE FOLLOWING LANGUAGE ONLY IF THE SERVICES INVOLVE DEVELOPMENT OF PREVIOUSLY PATENTED INVENTIONS OR PREVIOUSLY COPYRIGHTED SOFTWARE]** Notwithstanding the foregoing, upon expiration or termination of this Agreement, title to, ownership of, and all applicable patents, copyrights and trade secrets in the products developed or improved under this Agreement, shall remain with CONTRACTOR or any other person or entity if such person previously owned or held such patents, copyrights, and trade secrets, and such persons shall retain complete rights to market such product; provided, however, that COUNTY shall receive, at no additional cost, a perpetual license to use such products for its own use or the use of any consortium or joint powers agency to which COUNTY is a party. If the product involves a source code, CONTRACTOR shall either provide a copy of the source code to COUNTY or shall place the source code in an escrow account, at CONTRACTOR's expense, from which the source code may be withdrawn and used by COUNTY for the sole purpose of maintaining and updating the system dependent upon such code when such use is necessary to prevent loss of service to COUNTY.

(b) CONTRACTOR shall be entitled to receive compensation for any

satisfactory work completed prior to expiration or receipt of the notice of termination or commenced prior to receipt of the notice of termination and completed satisfactorily prior to the effective date of the termination; except that CONTRACTOR shall not be relieved of liability to COUNTY for damages sustained by COUNTY by virtue of any breach of the Agreement by CONTRACTOR whether or not the Agreement expired or was otherwise terminated, and COUNTY may withhold any payments not yet made to CONTRACTOR for purpose of setoff until such time as the exact amount of damages due to COUNTY from CONTRACTOR is determined.

12. **No Waiver.** The waiver by either party of any breach or violation of any requirement of this Agreement shall not be deemed to be a waiver of any such breach in the future, or of the breach of any other requirement of this Agreement.

13. **Notices.** All notices required or authorized by this Agreement shall be in writing and shall be delivered in person or by deposit in the United States mail, by certified mail, postage prepaid, return receipt requested. Any mailed notice, demand, request, consent, approval or communication that either party desires to give the other party shall be addressed to the other party at the address set forth below. Either party may change its address by notifying the other party of the change of address. Any notice sent by mail in the manner prescribed by this paragraph shall be deemed to have been received on the date noted on the return receipt or five days following the date of deposit, whichever is earlier.

COUNTY

CONTRACTOR

[Name]

[Name]

[Address]

[Address]

14. **Compliance with COUNTY Policies on Waste, Harassment, Drug/Alcohol-Free Workplace, and Computer Use.** CONTRACTOR hereby agrees to comply, and require its employees and subcontractors to comply, with the following policies, copies of which are on file with the Clerk of the Board of Supervisors and incorporated by reference herein. CONTRACTOR also agrees that it shall not engage in any activities, or permit its officers, agents and employees to do so, during the performance of any of the services required under this Agreement, which would interfere with compliance or induce violation of these policies by COUNTY employees or contractors.

(a) Waste Source Reduction and Recycled Product Content Procurement Policy adopted by resolution of the Board of Supervisors on March 26, 1991.

(b) County of Napa "Policy for Maintaining a Harassment and Discrimination Free Work Environment" revised effective August 23, 2005.

(c) County of Napa Drug and Alcohol Policy adopted by resolution of the Board of Supervisors on June 25, 1991.

(d) Napa County Information Technology Use and Security Policy adopted by resolution of the Board of Supervisors on April 17, 2001. To this end, all employees and subcontractors of CONTRACTOR whose performance of services under this Agreement requires access to any portion of the COUNTY computer network shall sign and have on file with COUNTY's ITS Department prior to receiving such access the certification attached to said

Policy.

(e) Napa County Workplace Violence Policy, adopted by the BOS effective May 23, 1995 and subsequently revised effective November 2, 2004, which is located in the County of Napa Policy Manual Part I, Section 37U.

**15. Confidentiality.**

(a) **Maintenance of Confidential Information.** Confidential information is defined as all information disclosed to CONTRACTOR which relates to COUNTY's past, present, and future activities, as well as activities under this Agreement. CONTRACTOR shall hold all such information as CONTRACTOR may receive, if any, in trust and confidence, except with the prior written approval of COUNTY, expressed through its \_\_\_\_\_ **[INSERT POSITION TITLE]**. Upon cancellation or expiration of this Agreement, CONTRACTOR shall return to COUNTY all written and descriptive matter which contains any such confidential information, except that CONTRACTOR may retain for its files a copy of CONTRACTOR's work product if such product has been made available to the public by COUNTY.

(b) **Protection of Personally Identifiable Information and Protected Health Information.**

(1) To the extent CONTRACTOR is provided, creates, or has access to, Protected Health Information (PHI), Personally Identifiable Information (PII), or any other legally protected confidential information or data in any form or matter (collectively referred to as "Protected Information"), CONTRACTOR shall adhere to all federal, state and local laws, rules and regulations protecting the privacy of such information. CONTRACTOR shall adhere to all existing and future federal, state and local laws, rules and regulations regarding the privacy and security of Protected Information, including, but not limited to, laws and regulations requiring data encryption or policy and awareness programs for the protection of COUNTY Protected Information provided to, or accessed or created by, CONTRACTOR.

(2) CONTRACTOR shall ensure that its staff is trained to its privacy and security policies and procedures and that appropriate physical, technological and administrative safeguards are in place to protect the confidentiality of COUNTY's Protected Information, including, but not limited to, PHI and PII. Upon request, CONTRACTOR shall make available to COUNTY its policies and procedures, staff training records and other documentation of compliance with this Paragraph 15.

(3) CONTRACTOR agrees to notify COUNTY immediately of any unauthorized access to or disclosure of Protected Information that it becomes aware of.

(4) CONTRACTOR will be responsible for all costs associated with CONTRACTOR's breach of the security and privacy of COUNTY's Protected Information, or its unauthorized access to or disclosure of COUNTY's Protected Information, including, but not limited to, mitigation of the breach, cost to the County of any monetary sanctions resulting from breach, notification of individuals affected by the breach, and any other action required by federal, state, or local laws, rules or regulations applicable at the time of the breach.

**16. No Assignments or Subcontracts.**

(a) **In general.** A consideration of this Agreement is the personal reputation of CONTRACTOR; therefore, CONTRACTOR shall not assign any interest in this Agreement or subcontract any of the services CONTRACTOR is to perform hereunder without the prior written consent of COUNTY, which shall not be unreasonably withheld. The inability of the

assignee to provide personnel equivalent in experience, expertise, and numbers to those provided by CONTRACTOR, or to perform any of the remaining services required under this Agreement within the same time frame required of CONTRACTOR shall be deemed to be reasonable grounds for COUNTY to withhold its consent to assignment. For purposes of this subparagraph, the consent of COUNTY may be given by the \_\_\_\_\_ **[INSERT POSITION TITLE]**.

(b) **Effect of Change in Status.** If CONTRACTOR changes its status during the term of this Agreement from or to that of a corporation, limited liability partnership, limited liability company, general partnership, or sole proprietorship, such change in organizational status shall be viewed as an attempted assignment of this Agreement by CONTRACTOR. Failure of CONTRACTOR to obtain approval of such assignment under this Paragraph shall be viewed as a material breach of this Agreement.

17. **Amendment/Modification.** Except as specifically provided herein, this Agreement may be modified or amended only in writing and with the prior written consent of both parties. In particular, only COUNTY, through its Board of Supervisors in the form of an amendment of this Agreement, may authorize extra and/or changed work if beyond the scope of services prescribed by Exhibit "A". Failure of CONTRACTOR to secure such authorization in writing in advance of performing any of the extra or changed work shall constitute a waiver of any and all rights to adjustment in the contract price or contract time and no compensation shall be paid for such extra work.

18. **Interpretation; Venue.**

(a) **Interpretation.** The headings used herein are for reference only. The terms of the Agreement are set out in the text under the headings. This Agreement shall be governed by the laws of the State of California without regard to the choice of law or conflicts.

(b) **Venue.** This Agreement is made in Napa County, California. The venue for any legal action in state court filed by either party to this Agreement for the purpose of interpreting or enforcing any provision of this Agreement shall be in the Superior Court of California, County of Napa, a unified court. The venue for any legal action in federal court filed by either party to this Agreement for the purpose of interpreting or enforcing any provision of this Agreement lying within the jurisdiction of the federal courts shall be the Northern District of California. The appropriate venue for arbitration, mediation or similar legal proceedings under this Agreement shall be Napa County, California; however, nothing in this sentence shall obligate either party to submit to mediation or arbitration any dispute arising under this Agreement.

19. **Compliance with Laws.** CONTRACTOR shall observe and comply with all applicable Federal, State and local laws, ordinances, and codes. Such laws shall include, but not be limited to, the following, except where prohibited by law:

(a) **Non-Discrimination.** During the performance of this Agreement, CONTRACTOR and its subcontractors shall not deny the benefits thereof to any person on the basis of race, color, ancestry, national origin or ethnic group identification, religion or religious creed, gender or self-identified gender, sexual orientation, marital status, age, mental disability, physical disability, genetic information, or medical condition (including cancer, HIV and AIDS), or political affiliation or belief nor shall they discriminate unlawfully against any employee or applicant for employment because of race, color, ancestry, national origin or ethnic group

identification, religion or religious creed, gender or self-identified gender, sexual orientation, marital status, age, mental disability, physical disability, genetic information, or medical condition (including cancer, HIV and AIDS), use of family care leave, or political affiliation or belief. CONTRACTOR shall ensure that the evaluation and treatment of employees and applicants for employment are free of such discrimination or harassment. In addition to the foregoing general obligations, CONTRACTOR shall comply with the provisions of the Fair Employment and Housing Act (Government Code section 12900, et seq.), the regulations promulgated thereunder (Title 2, California Code of Regulations, section 7285.0, et seq.), the provisions of Article 9.5, Chapter 1, Part 1, Division 3, Title 2 of the Government Code (sections 11135-11139.5) and any state or local regulations adopted to implement any of the foregoing, as such statutes and regulations may be amended from time to time. To the extent this Agreement subcontracts to CONTRACTOR services or works required of COUNTY by the State of California pursuant to agreement between COUNTY and the State, the applicable regulations of the Fair Employment and Housing Commission implementing Government Code section 12990 (a) through (f), set forth in Chapter 5 of Division 4 of Title 2 of the California Code of Regulations are expressly incorporated into this Agreement by reference and made a part hereof as if set forth in full, and CONTRACTOR and any of its subcontractors shall give written notice of their obligations thereunder to labor organizations with which they have collective bargaining or other agreements.

(b) Documentation of Right to Work. CONTRACTOR agrees to abide by the requirements of the Immigration and Control Reform Act pertaining to assuring that all newly-hired employees of CONTRACTOR performing any services under this Agreement have a legal right to work in the United States of America, that all required documentation of such right to work is inspected, and that INS Form 1-9 (as it may be amended from time to time) is completed and on file for each employee. CONTRACTOR shall make the required documentation available upon request to COUNTY for inspection.

(c) Inclusion in Subcontracts. To the extent any of the services required of CONTRACTOR under this Agreement are subcontracted to a third party, CONTRACTOR shall include all of the provisions of this Paragraph 19 in all such subcontracts as obligations of the subcontractor.

(d) Prevailing Wages.

(1) Affected work. CONTRACTOR shall comply with Labor Code sections 1774 and 1775 in relation to payment of prevailing wages for any portion of the required work performed under this Agreement on or after January 1, 2002 relating to construction design, testing, surveying and/inspection work, and construction if the State Director of Industrial Relations has established prevailing wage rates for the types of work involved.

(2) Prevailing wages rates. In accordance with the provisions of Section 1774 of the Labor Code of the State of California, to the extent the Director of Industrial Relations has established the general prevailing rate of wages (which rate includes employer payments for health and welfare, pension, vacation and similar purposes) for the above-described portions of the work required under this Agreement, such rates of wages will be on file and available for inspection at the office of the County of Napa Department of Public Works, 1195 Third Street, Room 201, Napa, California.

(3) Payroll records. In accordance with Labor Code section 1776, a copy of all payrolls for work subject to this subparagraph shall be submitted weekly to COUNTY's Director of

Public Works. Payrolls shall contain the full name, address and social security number of each employee, his correct classification, rate of pay, daily and weekly number of hours worked, itemized deductions made and actual wages paid. They shall also indicate apprentices and ratio of apprentices to journeymen. The employee's address and social security number need only appear on the first payroll on which his name appears. The payroll shall be accompanied by a "Statement of Compliance" signed by the employer or his agent indicating that the payrolls are correct and complete and that the wage rates contained therein are not less than those required by the contract. The "Statement of Compliance" shall be on forms furnished by the Director of Public Works or his designee or on any form with identical wording. CONTRACTOR shall be responsible for the submission of copies of payrolls of all subcontractors.

(4) Apprentices. CONTRACTOR shall be responsible for ensuring compliance with the provisions of Labor Code section 1777.5 relating to employment and payment of apprentices for work under this Agreement relating to land surveying and/or construction inspection if the total compensation to be paid CONTRACTOR for such work is \$30,000 or more.

20. **Taxes.** CONTRACTOR agrees to file federal and state tax returns or applicable withholding documents and to pay all applicable taxes or make all required withholdings on amounts paid pursuant to this Agreement and shall be solely liable and responsible to make such withholdings and/or pay such taxes and other obligations including, without limitation, state and federal income and FICA taxes. CONTRACTOR agrees to indemnify and hold COUNTY harmless from any liability it may incur to the United States or the State of California as a consequence of CONTRACTOR's failure to pay or withhold, when due, all such taxes and obligations. In the event that COUNTY is audited for compliance regarding any withholding or other applicable taxes or amounts, CONTRACTOR agrees to furnish COUNTY with proof of payment of taxes or withholdings on those earnings.

21. **Access to Records/Retention.** COUNTY, any federal or state grantor agency funding all or part of the compensation payable hereunder, the State Controller, the Comptroller General of the United States, or the duly authorized representatives of any of the above, shall have access to any books, documents, papers and records of CONTRACTOR which are directly pertinent to the subject matter of this Agreement for the purpose of making audit, examination, excerpts and transcriptions. Except where longer retention is required by any federal or state law, CONTRACTOR shall maintain all required records for at least seven (7) years after COUNTY makes final payment for any of the work authorized hereunder and all pending matters are closed, whichever is later.

22. **Authority to Contract.** CONTRACTOR and COUNTY each warrant hereby that they are legally permitted and otherwise have the authority to enter into and perform this Agreement.

23. **Conflict of Interest.**

(a) Covenant of No Undisclosed Conflict. The parties to the Agreement acknowledge that they are aware of the provisions of Government Code section 1090, et seq., and section 87100, et seq., relating to conflict of interest of public officers and employees. CONTRACTOR hereby covenants that it presently has no interest not disclosed to COUNTY and shall not acquire any interest, direct or indirect, which would conflict in any material manner or degree with the

performance of its services or confidentiality obligation hereunder, except as such as COUNTY may consent to in writing prior to the acquisition by CONTRACTOR of such conflict. CONTRACTOR further warrants that it is unaware of any financial or economic interest of any public officer or employee of County relating to this Agreement. CONTRACTOR agrees that if such financial interest does exist at the inception of this Agreement, COUNTY may terminate this Agreement immediately upon giving written notice without further obligation by COUNTY to CONTRACTOR under this Agreement.

(b) Statements of Economic Interest. CONTRACTOR acknowledges and understands that COUNTY has developed and approved a Conflict of Interest Code as required by state law which requires CONTRACTOR to file with the Elections Division of the Napa County Assessor-Clerk Recorder "assuming office", "annual", and "leaving office" Statements of Economic Interest as a "consultant", as defined in section 18701(a)(2) of Title 2 of the California Code of Regulations, unless it has been determined in writing that CONTRACTOR, although holding a "designated" position as a consultant, has been hired to perform a range of duties so limited in scope as to not be required to fully comply with such disclosure obligation. CONTRACTOR agrees to timely comply with all filing obligations for a consultant under COUNTY's Conflict of Interest Code unless such a determination is on file on the filing dates for each of the required Statements of Economic Interest.

24. **Non-Solicitation of Employees.** Each party agrees not to solicit for employment the employees of the other party who were directly involved in the performance of the services hereunder for the term of this Agreement and a period of six (6) months after termination of this Agreement except with the written permission of the other party, except that nothing in this Paragraph shall preclude either party from publishing or otherwise distributing applications and information regarding that party's job openings where such publication or distribution is directed to the public generally.

25. **Third Party Beneficiaries.** Nothing contained in this Agreement shall be construed to create any rights in third parties and the parties do not intend to create such rights.

26. **Attorney's Fees.** In the event that either party commences legal action of any kind or character to either enforce the provisions of this Agreement or to obtain damages for breach thereof, the prevailing party in such litigation shall be entitled to all costs and reasonable attorney's fees incurred in connection with such action.

27. **Severability.** If any provision of this Agreement, or any portion thereof, is found by any court of competent jurisdiction to be unenforceable or invalid for any reason, such provision shall be severable and shall not in any way impair the enforceability of any other provision of this Agreement.

28. **Entirety of Contract.** This Agreement, including any documents expressly incorporated by reference whether or not attached hereto, constitutes the entire agreement between the parties relating to the subject of this Agreement and supersedes all previous agreements, promises, representations, understandings and negotiations, whether written or oral, among the parties with respect to the subject matter hereof.

29. **Special Terms and Conditions. [RESERVED]**

**IN WITNESS WHEREOF**, this Agreement was executed by the parties hereto as of the date first above written.

**TYPE IN LEGAL NAME OF CONTRACTOR; IF THE CONTRACTOR USES A FICTITIOUS BUSINESS NAME AS WELL, ADD "doing business as \_\_\_\_\_" FOLLOWED BY THE FICTITIOUS BUSINESS NAME]**

By \_\_\_\_\_  
[NAME] , [Title]

**[IF CONTRACTOR IS A CORPORATION, EITHER ADD A SECOND SIGNATURE LINE AND MAKE SURE THAT ONE SIGNATURE IS BY THE CORPORATION'S PRESIDENT, VICE-PRESIDENT OR CHAIRMAN AND THE OTHER IS BY THE SECRETARY, TREASURER OR CHIEF FINANCIAL OFFICER OR OBTAIN AUTHORIZATION FROM THE CORPORATION FOR A SINGLE PERSON OR POSITION TO SIGN THE CORPORATION'S CONTRACTS]**

By \_\_\_\_\_  
[NAME] , [Title]

"CONTRACTOR"

COUNTY OF NAPA, a political subdivision of the State of California

By \_\_\_\_\_  
, Chairman of the Board of Supervisors

"COUNTY"

ATTEST: GLADYS I. COIL,  
Clerk of the Board of Supervisors

By: \_\_\_\_\_

<p><b>APPROVED AS TO FORM</b> Office of County Counsel</p> <p>By: _____</p> <p>Date: _____</p>
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<p><b>APPROVED BY THE NAPA COUNTY BOARD OF SUPERVISORS</b></p> <p>Date: _____</p> <p>Processed by: _____ Deputy Clerk of the Board</p>
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## **EXHIBIT "A"**

### **SCOPE OF WORK**

CONTRACTOR shall provide COUNTY with the following services:

#### **I. DESCRIPTION OF SERVICES**

**II. COMPLIANCE WITH GOVERNMENT CODE SECTION 7550.** As required by Government Code section 7550, each document or report prepared by CONTRACTOR for or under the direction of COUNTY pursuant to this Agreement shall contain the numbers and dollar amounts of the Agreement and all subcontracts under the Agreement relating to the preparation of the document or written report. The Agreement and subcontract dollar amounts shall be contained in a separate section of the document or written report. If multiple documents or written reports are the subject of the Agreement or subcontracts, the disclosure section may also contain a statement indicating that the total contract amount represents compensation for multiple documents or written reports.

**EXHIBIT "B"**

**COMPENSATION AND EXPENSE REIMBURSEMENT**