Request for Proposal

Active Shooter Full-Scale Exercise

RFP Number:
OES051801

Release Date: May 10, 2018

For information: Kevin Twohey
Emergency Services Coordinator
1195 Third Street, Suite B20
Napa, CA 94559
Kevin.Twohey@countyofnapa.org
A. Purpose
The Napa County Department of Public Works is issuing this Request for Proposal (RFP) in order to define the County’s minimum requirements, solicit proposals, and gain adequate information by which the County may evaluate the services offered by Proposers that fall within the scope of services as further described in Attachment A of this RFP. The County of Napa, Office of Emergency Services (OES) hereinafter referred to as the “County,” intends to secure a service contract with a qualified firm that specializes in exercise design, planning, implementation, facilitation and evaluation planning to develop and implement a single-day training/exercise involving a Terrorist/Active Shooter Incident. The exercise will take place on either January 4, 2019. The exercise will involve representatives from: County of Napa; Cities of American Canyon, Calistoga, Napa, St. Helena, and Yountville; as well as applicable special districts, State and Federal Agencies, and other appropriate agencies.

B. Term of Contract and Scope of Work
Term of contract is anticipated to be seven (7) months. See Attachment A for full scope of work.

C. Schedule of Events*

<table>
<thead>
<tr>
<th>Date</th>
<th>Event Description</th>
</tr>
</thead>
<tbody>
<tr>
<td>May 10, 2018</td>
<td>Request for Proposal released.</td>
</tr>
<tr>
<td>May 18, 2018</td>
<td>Questions Due by 5:00 pm pst</td>
</tr>
<tr>
<td>May 25, 2018</td>
<td>Responses to questions will be published</td>
</tr>
<tr>
<td>June 5, 2018</td>
<td>Proposals due by 5:00 pm pst</td>
</tr>
<tr>
<td>June 6 – June 22, 2018</td>
<td>County review period &amp; Negotiations.</td>
</tr>
<tr>
<td>June 25, 2018</td>
<td>Intent to Award Notifications sent out.</td>
</tr>
<tr>
<td>July 3, 2018</td>
<td>Contract approval and contract start date.</td>
</tr>
</tbody>
</table>

*These dates may be changed at the discretion of Napa County. Changes to the due date for questions or due date for proposal submittal will be made by written addendum.

D. Submission Process
Respondents shall submit in a sealed envelope one (1) signed original RFP and 3 copies to:

Kevin Twohey
County of Napa Office of Emergency Services
Emergency Services Coordinator
1195 Third Street, B-20
Napa, CA 94559

Sealed envelope containing original signed RFP and copies should be marked as follows: “Active Shooter Full-Scale Exercise RFP, Number OES051801 ”

Proposals received in the Office of Emergency Services after June 5, 20108 at 5:00 p.m. will not be considered under any circumstances and will be returned to the sender.

Proposals may be delivered in person, U.S. Mail, or Common Currier. No electronic or facsimile copies will be accepted. It is the responsibility of the submitting party to insure timely delivery.

It is recommended that Proposals be submitted on paper that contains at least 30% recycled content and printed on both sides (duplex).
Proposals must be submitted following the format provided in this RFP. RFPs not submitted in the manner prescribed herein will not be considered.

E. General Conditions
By submitting a Proposal, the Respondent represents and warrants that:

(a) The information provided is genuine and not a sham, collusive, or made in the interest or in behalf of any party not therein named, and that the Respondent has not directly or indirectly induced or solicited any other respondent to put in a sham proposal, or any other respondent to refrain from presenting information and that the prospective provider has not in any manner sought by collusion to secure an advantage; and

(b) The Respondent has not paid or agreed to pay any fee or commission, or any other thing of value contingent upon the award of an exclusive operating area, to any employee, official, or existing contracting consultant of the County.

This solicitation and related information can be found at www.countyofnapa.org/procurement. Napa County does not guarantee the accuracy of information posted on or obtained from third party organizations.

All Proposals become the property of the County. The County reserves the right to reject any and all submittals; to request clarification of information submitted; to request additional information from competitors; and to waive any irregularity in the submission and review process. None of the materials submitted will be returned to the Respondent unless they are not submitted in a timely manner.

Proposals will become a public record and available for release to the public upon selection of a successful Respondent and an Intent to Award Notification is distributed. Respondents shall specify in their cover letter if they desire that any portion of their Proposal be treated as proprietary and not releasable as public information. If Respondent chooses to claim any information as proprietary, it must specify those sections in the cover letter and provide any legal justification for treatment as such. However, respondents should be aware that all such requests may be subject to legal review and challenge. In such event, each Respondent shall be responsible for the legal defense against the release of their Proposal as public information.

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

The County reserves the right to request additional information not included in this RFP from any or all Respondents after proposal due date.

The County reserves the right to contact references not provided in the submittals.

The County reserves the right to incorporate its standard language into any contract resulting from this solicitation. The County’s contract template is attached for reference. Templates are attached for reference only and do not need to be signed or returned with proposal.

The County reserves the right to reject any and all Proposals or any part of a Proposal if it is determined it is not in the best interest of the County.

The County reserves the right to reject the proposal of any submitter who previously failed to perform properly, or complete on time, contracts of a similar nature, or to reject the Proposal of a respondent who
is not in a position to perform such a contract satisfactorily. The County may reject the Proposal of any respondent who is in default of the payment of taxes, or other monies due to Napa County. An individual who is authorized to bind the proposing agency contractually shall sign the Proposal. The signature must indicate the title or position that the individual holds in the firm. An unsigned Proposal shall be rejected.

F. Security and Privacy.
Any persons entering a Napa County building may be required to complete a privacy declaration form.

H. Modification or Withdrawal
Any modification, amendment, addition or alteration to any submission must be presented, in writing, executed by an authorized person or persons, and submitted prior to the final date for submissions. An individual who is authorized to bind the submitting agency contractually shall sign the modification, amendment, addition, or alteration. The signature must indicate the title or position that the individual holds in the firm. An unsigned modification amendment, addition, or alteration shall be rejected.
NO AMENDMENTS, ADDITIONS OR ALTERATIONS WILL BE ACCEPTED AFTER THE TIME AND DATE SPECIFIED AS THE SUBMISSION DEADLINE UNLESS REQUESTED BY THE COUNTY.

At any time prior to the specified time and date set for the Proposal due date, a designated representative of the responding agency may withdraw the submission provided that such person provides acceptable proof of his or her identity and such person signs a receipt. No submissions may be withdrawn or returned after the date and time set for final submission.

I. Information Resource
Question about this RFP shall be submitted via email and be referred to:

Kevin Twohey
Kevin.Twohey@countyofnapa.org

Questions will not be answered that would tend to constitute an evaluation of a response being prepared or that might give an unfair advantage to a potential respondent. Except for the above named, potential respondents should not contact Napa County officials or staff regarding any aspect of this RFP. If such contact is made, the County reserves the right to reject the Proposal.

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.

J. Organization of Proposal
Proposals shall contain the following information and shall be organized in the same order as provided herein. Each of these section headers shall be listed in submitted proposal with pertinent information provided under the specific header:
Interested firms should review Attachment A (Scope of Work) and Attachment B (Company History, Experience, and Qualifications) in consideration of response.

1. **Cover Page.** Cover page shall state Title and RFP number (Active Shooter Full-Scale Exercise, RFP Number OES051801) date of submission; and name and signature of the person who is authorized to make decisions and represent the submitting firm with respect to this RFP.

2. **Company Information.** This section shall state:
   a. The legal name of the company which can enter into a contract with the County and any alternate names for which the company is known (D.B.A.);
   b. Mailing, and physical address(es);
   c. Remit-to billing address;
   d. Phone, fax, and website (if applicable);
   e. Organization type;
   f. Federal I.D. number
   g. List of owners;
   h. List of corporate officers with titles (if applicable); and
   i. Name (first and last), title, mailing address, phone number, fax and email of the person to receive notices and who is authorized to make decisions or represent the company with respect to this RFP.

3. **Company History, Experience, Qualifications, and Work Plan.** See Attachment B. This section shall consist of the information requested in Attachment B to allow for review of company history, experience, qualifications, and proposed work plan. Each question/information request should be copied into proposal with answers following each request.

4. **Pricing Information/Structure.** See Attachment B. This section shall communicate your proposed price and cost controls for required services.

5. **References.** Provide 3 references (company, contact, phone number, date(s) and description of service(s) provided). References should be entities for which similar work has been completed.

6. **Disclosures.** A complete disclosure of any alleged significant prior or ongoing contract failures, any civil or criminal litigation or investigation pending which involves the Proposer or a verification of no responsive incidents. Failure to comply with the terms of this provision may disqualify any proposal. The County of Napa reserves the right to reject any proposal based upon the Proposer’s prior history with the County of Napa or with any other party, which documents, without limitation, unsatisfactory performance, significant failures to meet contract milestones or other contractual failures.

   **If there are no disclosures to report, this section must still be included in submittal with an indication that there are no reportable disclosures.**

7. **Insurance Requirement.** This section shall contain a written statement indicating proposer’s willingness and ability to meet all of the County’s insurance requirements as indicated in Attachment E, Section 7.

   Respondents who are unable to meet all of the County’s insurance requirements may submit with their proposal an alternative plan for obtaining insurance that will adequately mitigate the risks associated with providing the services detailed above. Any alternative insurance coverage request is subject to review and approval by County Counsel and the County’s Risk Management Officer.

   Failure to meet the County’s insurance requirements (as determined by County Counsel and County Risk Management) may be sufficient reason for disqualification from the selection process.
8. **RFP Addenda, if any.** Any and all addenda shall include an acknowledgment of receipt that must be returned. The acknowledgement form must be signed and attached to the final response. Failure to attach any acknowledgement form may result in the rejection of the final response (See section L).

*All information provided as a response to this RFP should be in the context of the information requested in the RFP. Please do not submit additional flyers, brochures, marketing material, etc.*

**K. Evaluation Process.**
An evaluation team will rank the proposals received in accordance with the terms of this RFP in the following manner:

- **Company History, Experience, and Qualifications. See Attachment B** – **45 points**
- **Work Plan and Schedule** – **35 points**
- **Pricing / Rate Proposal** – **20 points**

**L. Award**
The County intends to award a contract to the firm who distinguish themselves as capable of the type and breadth of services provided for in Attachment A as evident in submitted Proposal. Selection and determination of qualifications is at the sole discretion of the County.

The County will attempt to negotiate a contract with the firm submitting the top ranked Proposal. If no contract can be successfully negotiated with the top ranked respondents, then the County may, at its election enter into negotiations with the next highest ranked respondent; and move down the list of respondents in order of scoring until a contract can be negotiated.

Upon selection of qualified respondent, completion of successful negotiations, and distribution of the “Intent to Award Notification” has taken place, the contract will be presented to the appropriate authority level for authorization.

The County reserves the right to decline awarding a contract to any of the Respondents.

**M. Protests or Objections**
1. **Filing of Protest**
Any directly affected party who is aggrieved in connection with the solicitation or award of a purchase order or contract issued through a formal sealed bid procedure may protest the procurement action taken. Such protests must be filed in writing with:

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

Protests must be filed in writing within five (5) working days from the time of the occurrence generating the protest. Protests received after this time will not be considered. Any protest shall include the following information:
(a) The date and action taken resulting in a protest, and
(b) Identification of the material issue, including a detailed explanation of the basis for the protest, and the remedy sought. Specification related protests must be fully supported by technical data test results, or other pertinent information, that the substitute offered is equal to or better than the specification requirement.

2. Resolution Process
(a) Informal Resolution. Upon receipt of 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.

(c) 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.

3. Appeal to the Board of Supervisors
(a) In the event 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 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 no less than ten (10) working days from the date of hearing.

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

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

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 using department and County Counsel, makes a written determination that the award of the purchase order or contract without further delay is necessary to protect a substantial interest of the County.

N. RFP Addenda.
Any changes to the RFP requirements and answers to questions submitted pursuant to the provisions of this RFP will be made by addendum. All addenda shall include an acknowledgment of receipt that must be returned. The acknowledgement form must be signed and attached to the final response. Failure to attach any acknowledgement form may result in the rejection of the final response. Addenda will be provided to all known interested firms and posted on the County website.

O. Local Vendor Preference.
This project is Federally Funded and therefore no Local Vendor Preference is allowable.
P. Attachments.
A. Project Description and Scope of Work
B. Company History, Experience, Qualifications, Work Plan, and Costing
C. Professional Services Agreement (PSA) Example
D. Federal Provisions Example
ATTACHMENT A

PROJECT DESCRIPTION and SCOPE OF SERVICES

Under the direction the Emergency Services Coordinator and the County of Napa Planning Team, the selected consultant shall develop, facilitate, record, and assist in the evaluation of a Terrorist/Active Shooter Incident full-scale exercise. The exercise will be conducted in accordance with the Homeland Security Exercise and Evaluation Program (HSEEP) criteria. The selected contractor will coordinate exercise-planning efforts for a multiple site Terrorist/Active Shooter exercise by developing multiple training scenarios for one full-scale exercise running simultaneously at two locations involving first responder participants and teams from various disciplines. Each exercised site will have its own set of evaluators.

Exercise elements will include, but are not limited to the following criteria:
- Analysis of typical active shooter incidents
- Threat tactics (including weapons and equipment)
- Strategic Considerations for the Incident and Tactical Commander
- Command, Control, & Communications at the Command Post
- Maneuver Tactics to stop the threat
- Mass Casualty treatment and evacuation

Task 1: Planning Team and Initial Planning Meeting (IPM)
The consultant shall work with Napa County OES to coordinate the official County Planning Team. Participating jurisdictions may include County OES, Cities of American Canyon, Calistoga, Napa, St. Helena, and Yountville. The initial planning meeting shall take place in-person. This is expected as a professionally facilitated meeting led by the consultant who shall engage all team members within the meeting, ensuring that all have an opportunity to provide feedback. All planning and exercise conduct shall follow established HSEEP guidance and core capability criteria.

- Deliverables for Task 1:
  - Develop draft exercise scope, objectives and aligned core capabilities;
  - Identify exercise design and development elements and begin development of exercise documentation;
  - Develop and distribute meeting minutes; and
  - Provide an analysis of research that may be used in developing a realistic/plausible scenario for a winter storm / flood event.

Task 2: Midterm Planning Meeting (MPC)
The consultant shall review and refine all exercise materials, documents and tasks. In consideration of travel costs, this meeting may take place as a facilitated webinar.

- Deliverables for Task 2:
  - Provide a draft of the refined exercise materials;
  - Develop and distribute meeting minutes; and
  - Invite the perspective of Subject Matter Experts (SME) to provide information on the exercise scenario.
Task 3: Final Planning Conference (FPC)
The consultant shall work with Exercise Planning Team to identify final gaps in the exercise design, and work to review and approve all exercise documents, finalize exercise staffing and establish facilitator and evaluator training schedules. Elements of a quality design will include realistic components to engage players. These elements should be developed with the idea of remaining evergreen for the next few years so they may be re-used in regional exercises or training. This professionally facilitated meeting will be led by the consultant who shall engage all team members within the meeting, ensuring that all have an opportunity to provide feedback.

- Deliverables for Task 3:
  o Facilitate the meeting and finalize exercise design documents;
  o Develop and distribute meeting minutes; and
  o Develop exercise documents to include: Exercise/Situation Manual (SitMan), Controller/Evaluator Handbook, Exercise Evaluation Guides (EEGs), and Participant Feedback Tools.

Task 4: Exercise Logistics
The consultant shall support the exercise with the following:

- Deliverables for Task 4:
  o Consultant on-site presence at both exercise locations on date of exercise;
  o Provide sufficient quantities of evaluator and facilitator materials and handouts (player materials to be provided by each jurisdiction);
  o As needed, conduct pre-exercise trainings;
    ▪ Controller/Evaluator training
    ▪ Facilitator training

Task 5: Exercise Evaluation and Reporting
The consultant shall prepare an After-Action Report (AAR) for the overall exercise and jurisdictional specific annexes for each participating jurisdiction. Each evaluator will provide completed exercise evaluations to contractor.

- Deliverables for Task 5:
  - After Action Report (AAR/IP);
    o Conduct an after-action meeting with participating jurisdictions;
    o Develop and provide an After-Action Report (AAR) and Improvement Plan (IP), provide one (1) draft and one (1) final document in electronic editable format.
ATTACHMENT B

EVALUATION

1. **History, Qualifications, Experience and References:** Please provide a description and brief history/background of your company. Included should be the number of years in business. Also identify the qualifications and experience of the key team member(s) that will work on the project. Emphasize the specific qualifications and experience from projects similar to this project for the key team members. Key team members are expected to be committed for the duration of the project. Replacement of key team members will not be permitted without prior consultation with and approval of the County. Experience and qualifications of key field personnel should be included. Any current or past contracts with government agencies can be listed and described in this section. Licensing and certification shall also be described in this section. Attention to the details provided in Attachment A – Scope of Work should be considered with your response. (45 Points)

2. **Work Plan and Schedule:** Please provide information on you will conduct each task of the project, identification of deliverables for each task and a schedule. The work plan should be in sufficient detail to demonstrate a clear understanding of the project. The schedule should show the expected sequence of tasks and include durations for the performance of each task. (35 Points)

3. **Cost Control:** Please provide information on how you will control project costs to ensure all work is completed within the negotiated budget for the project. Include the name and title of the individual responsible for cost control. (20 Points)
ATTACHMENT E

NAPA COUNTY AGREEMENT NO. ________

PROFESSIONAL SERVICES AGREEMENT

[Insert/attach the most recent PSA template for the proper authorization level.]

ATTACHMENT C

NAPA COUNTY AGREEMENT NO. ________

PROFESSIONAL SERVICES AGREEMENT

THIS AGREEMENT is made and entered into as of this __________ day of __________________, _____, by and between NAPA COUNTY, a political subdivision of the State of California, hereinafter referred to as “COUNTY”, acting by and through its Purchasing Agent, and _______________________

“doing business as ______________” 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; and

WHEREAS, because the aggregate compensation by COUNTY to CONTRACTOR through this and any prior agreements for the same services does not exceed $65,500 annually and this Agreement does not exceed a total term, including renewals, of three (3) years, COUNTY’s Purchasing Agent, or designee, is authorized by Napa County Code section 2.36.040(G) to execute this Agreement on behalf of COUNTY.

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). 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, not to exceed _______ additional years, 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. 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 in addition to the RFP and CONTRACTOR’s proposal, 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 _________________ 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. 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 shall be a total of _________________ ($_______) for professional services and ____________ ($____) for expenses per fiscal year; 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.

4. Method of Payment.
   (a) Professional Services. 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, a detailed description of the tasks completed during the billing period, the names of person(s) performing the services and the position(s) held by such person(s), and the approved hourly or task rate.
   (b) Expenses. If the Agreement provides for expense reimbursement, requests for reimbursement shall describe the nature and cost of the expense, the date incurred. With the exception of per diem reimbursements, receipts must be attached.
   (c) Fixed Price. If the Agreement provides for a fixed price, if CONTRACTOR presents interim invoices, CONTRACTOR must state the percentage of work completed, which must be verified by COUNTY, i.e., 35% design, 95% design, draft report, et cetera, at which time CONTRACTOR shall be paid the equivalent percentage of the fixed price.
(d) CONTRACTOR shall submit invoices not more often than ____________ to the
____________________ 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. A
sample invoice showing the level of detail required is attached as Exhibit “C”.

(e) 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 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 required by court order. 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.

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 ONE MILLION DOLLARS ($1,000,000) combined single limit per occurrence. Coverage shall be business auto insurance coverage using Insurance Services Office (ISO) form number CA 0001 06 92 including symbol 1 (any Auto) or the exact equivalent. If CONTRACTOR owns no vehicles, this requirement may be satisfied by a non-owned auto endorsement to the General Liability Insurance described in subparagraph (b)(1) above. If CONTRACTOR or CONTRACTOR's employees, officers, or agents will use personal automobiles in any way in the performance of this Agreement, CONTRACTOR shall provide evidence of personal auto liability coverage for each such person upon request.

(c) **Certificates of Coverage.** 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 prior to commencement of performance of any of CONTRACTOR's duties.

1. The certificate(s) or other evidence of coverage 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.

2. **Waiver of Subrogation and Additional Insured Endorsements.** For the commercial general liability insurance coverage referenced in 7(b)(1) and, for the comprehensive automobile liability insurance coverage referenced in 7(b)(3) where the vehicles are covered by a commercial policy rather than a personal policy, 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.
the Workers Compensation insurance coverage, CONTRACTOR shall file with the evidence of coverage an endorsement waiving subrogation.

(3) 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.

(4) 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.

(e) Inclusion in Subcontracts. CONTRACTOR agrees to require all subcontractors and any other entity or person who is involved in providing services under this Agreement to comply with the Workers Compensation and General Liability insurance requirements set forth in this Paragraph 7.


(a) In General. To the full extent permitted by law, CONTRACTOR shall defend at its own expense, indemnify, and hold harmless COUNTY and its officers, agents, employees, volunteers, or representatives from and against any and all liability, claims, actions, proceedings, losses, injuries, damages or expenses of every name, kind, and description, including litigation costs and reasonable attorney’s fees incurred in connection therewith, brought for or on account of 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, actions, losses, injuries, damages or expenses arising from the sole negligence or willful acts of COUNTY or its officers, agents, employees, volunteers, representatives, 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.

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). The Napa County Purchasing Agent or designee pursuant to Napa County Code section 2.36.050 is hereby authorized 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.

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. Notwithstanding the foregoing and to the extent services under this Agreement involve the development of previously patented inventions or copyrighted software, then 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 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.

<table>
<thead>
<tr>
<th>COUNTY</th>
<th>CONTRACTOR</th>
</tr>
</thead>
<tbody>
<tr>
<td>[Name]</td>
<td>[Name]</td>
</tr>
<tr>
<td>[Address]</td>
<td>[Address]</td>
</tr>
</tbody>
</table>

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.


(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 __________________. 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. Additionally, CONTRACTOR shall only access, use or disclose County Protected Information if such access, use, or disclosure is expressly permitted by the terms of its agreement with County. Any other access, use or disclosure of County Protected Information is prohibited. Examples of prohibited accesses, uses and disclosures include, but are not limited to: the removal of confidential
files, documents or devices containing County Protected Information from a County facility; the unauthorized transmission of County Protected Information via email, fax or other means; and the discussion of such information with other individuals (including other CONTRACTOR or County employees) who do not have a County approved business reason to obtain the information.

2) CONTRACTOR shall ensure that its staff and any third party organizations or individuals that it engages to perform services in conjunction with the terms if this agreement are trained to its privacy and security policies, as well as Paragraph 15 of this agreement; and procedures and that appropriate physical, technological and administrative safeguards are in place to protect the confidentiality of COUNTY’s Protected Information. 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. This includes instances wherein CONTRACTOR encounters unsecured Protected Information in areas where CONTRACTOR employees are performing services.

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.

(c) Protection of County Data. If CONTRACTOR will be processing and storing the COUNTY’s data in an offsite location, such as a cloud service site, cloud storage site, hosted application site, or hosted storage site, CONTRACTOR shall guarantee that such data is encrypted using an encryption algorithm that meets the current US Department of Defense minimum requirements in order to protect COUNTY data against a breach of protected data if lost or stolen. All offsite cloud applications and storage systems utilized by CONTRACTOR shall be located in the United States, which includes any backup and failover facilities. Application and storage solutions in any foreign location is prohibited.

All desktop and laptop computers, as well other similar type computer systems, used by CONTRACTOR shall be encrypted using the same encryption algorithm described above. All data in transit shall require the same encryption. Storage of COUNTY data on removable portable storage is prohibited.

Upon termination of this agreement, CONTRACTOR shall purge all COUNTY data from all CONTRACTOR systems using a forensic grade deletion that conforms to US Department of Defense DoD 5220.22-M (E) standards.

CONTRACTOR shall reimburse the COUNTY for all associated costs of a breach, including but not limited to reporting costs and associated penalties the COUNTY must bear.

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 ________________________.

(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. Failure of CONTRACTOR to secure such authorization in writing in advance of performing any 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 (over 40), 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 Act 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.

By executing this Agreement, the ______________ hereby determines in writing on behalf of COUNTY that CONTRACTOR has been hired to perform a range of duties so limited in scope as to not be required to comply with such disclosure obligation.

24. **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.

25. **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.

26. **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.

27. **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.

28. **Special Terms and Conditions.** CONTRACTOR shall adhere to the special terms and conditions set forth in Exhibit “__”, attached hereto and incorporated by reference herein.

(a) Contractor shall comply with those requirements set for in Exhibit “__” and any other applicable federal, state, or local requirements subsequently deemed applicable to the work completed in connection with this Agreement.

(b) Contractor shall document all work done in connection with this Agreement and utilize FEMA project identification codes as directed by the Napa County Auditor and/or the Director of Public Works.
IN WITNESS WHEREOF, this Agreement was executed by the parties hereto as of the date first above written.

[Business Name]

By ____________________________

Name, Title

"CONTRACTOR"

NAPA COUNTY, a political subdivision of the State of California, acting by and through its Purchasing Agent

By ____________________________

MINH C. TRAN, Napa County Executive Officer/Purchasing Agent

APPROVED AS TO FORM
Office of County Counsel
By: ____________________________
Date: ____________________________
EXHIBIT “A”

SCOPE OF WORK

CONTRACTOR shall provide COUNTY with the following services:

I. DESCRIPTION OF SERVICES

For purposes of this Exhibit “A”, references in the Attachment to __________ shall mean __________,”

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
# 1 SAMPLE

## 2 INVOICE

**INVOICE #__________**

**DATE:__________**

### 2.1 To:

- **[Customer Name]**
- **[Street Address]**
- **[City, ST ZIP Code]**

### 2.2 For:

- **[Project or service description]**
- **Contract No.**

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</table>

**TOTAL**

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1
ATTACHMENT D
SPECIAL PROVISIONS
Exhibit "______"
FEDERAL PROVISIONS

I. DEFINITIONS
A. Government means the United States of America and any executive department or
agency thereof.
C. Third Party Subcontract means a subcontract at any tier entered into by Contractor or
subcontractor, financed in whole or in part with Federal assistance originally derived
from the Federal Emergency Management Agency.

II. FEDERAL CHANGES
A. Contractor shall at all times comply with all applicable regulations, policies, procedures,
and FEMA Directives as they may be amended or promulgated from time to time during
the term of this Agreement, including but not limited to those requirements of 2 CFR
200.317 through 200.326 and more fully set forth in Appendix II to Part 200—Contract
Provisions for non–Federal Entity Contracts Under Federal Awards, which is included
herein by reference. Contractor's failure to so comply shall constitute a material breach
of this contract.
B. The Contractor agrees to include the above clause in each third party subcontract
financed in whole or in part with Federal assistance provided by FEMA. It is further
agreed that the clause shall not be modified, except to identify the subcontractor who
will be subject to its provisions.

III. ACCESS TO RECORDS
A. The Contractor agrees to provide the County, FEMA, the Comptroller General of the
United States or any their authorized representatives access to any books, documents,
papers, and records of the Contractor which are directly pertinent to this Agreement for
the purposes of making audits, examinations, excerpts, and transcriptions.
B. The Contractor agrees to permit any of the foregoing parties to reproduce by any means
whatsoever or to copy excerpts and transcriptions as reasonably needed.
C. The Contractor agrees to maintain all books, records, accounts, and reports required
under this Agreement for a period of not less than three years after the later of: (a) the
date of termination or expiration of this Agreement or (b) the date County makes final
payment under this Agreement, except in the event of litigation or settlement of claims
arising from the performance of this Agreement, in which case, Contractor agrees to
maintain same until the County, FEMA, the Comptroller General, or any of their duly
authorized representatives, have disposed of all such litigation, appeals, claims, or
exceptions related thereto.
D. The requirements set for in paragraphs A, B, and C above are all in addition to, and should not be considered to be in lieu of, those requirements set forth in Section 21 of the Agreement.

IV. DEBARMENT AND SUSPENSION
A. This contract is a covered transaction for purposes of 2 C.F.R. pt. 180 and 2 C.F.R. pt. 3000. As such the contractor is required to verify that none of the contractor, its principals (defined at 2 C.F.R. § 180.995), or its affiliates (defined at 2 C.F.R. § 180.905) are excluded (defined at 2 C.F.R. § 180.940) or disqualified (defined at 2 C.F.R. § 180.935).
B. Contractor represents and warrants that it is not debarred, suspended, or otherwise excluded from or ineligible for participation in Federal assistance programs under Executive Order 12549, "Debarment and Suspension" or on the USEPA's List of Violating Facilities. Contractor agrees that neither Contractor nor any of its third party subcontractors shall enter into any third party subcontracts for any of the work under this Agreement with a third party subcontractor who is debarred, suspended, or otherwise excluded from or ineligible for participation in Federal assistance programs under executive Order 12549 or on the USEPA's List of Violating Facilities. Gov. Code § 4477.
C. The contractor must comply with 2 C.F.R. pt. 180, subpart C and 2 C.F.R. pt. 3000, subpart C and must include a requirement to comply with these regulations in any lower tier covered transaction it enters into. Contractor agrees to the provisions of Attachment 1, Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion—Lower Tier Covered Transactions, attached hereto and incorporated herein. For purposes of this Agreement and Attachment 1, Contractor is the “prospective lower tier participant.”
D. The Contractor agrees to include paragraphs A and B above in each third party subcontract financed in whole or in part with Federal assistance provided by FEMA. It is further agreed that the paragraphs shall not be modified, except to identify the subcontractor who will be subject to its provisions.
E. This certification is a material representation of fact relied upon by County. If it is later determined that the contractor did not comply with 2 C.F.R. pt. 180, subpart C and 2 C.F.R. pt. 3000, subpart C, in addition to remedies available to the State of California, the County, and the Federal Government may pursue available remedies, including but not limited to suspension and/or debarment.
F. The bidder or proposer agrees to comply with the requirements of 2 C.F.R. pt. 180, subpart C and 2 C.F.R. pt. 3000, subpart C while this offer is valid and throughout the period of any contract that may arise from this offer. The bidder or proposer further agrees to include a provision requiring such compliance in its lower tier covered transactions.”

V. NO FEDERAL GOVERNMENT OBLIGATIONS TO CONTRACTOR
A. The County and Contractor acknowledge and agree that, notwithstanding any concurrence by the Federal Government in or approval of the solicitation or award of the underlying contract, absent the express written consent by the Government, the Government is not a party to this contract and shall not be subject to any obligations or
liabilities to the County, Contractor, or any other party (whether or not a party to that contract) pertaining to any matter resulting from the underlying contract.

B. The Contractor agrees to include the above clause in each third party subcontract financed in whole or in part with Federal assistance provided by FEMA. It is further agreed that the clause shall not be modified, except to identify the subcontractor who will be subject to its provisions.

VI. **EQUAL EMPLOYMENT OPPORTUNITY COMPLIANCE** (applicable to all construction contracts awarded meeting the definition of “federally assisted construction contract” under 41 CFR 61-1.3)


A. Contractors and subcontractors shall not unlawfully discriminate, harass, or allow harassment against any employee or applicant for employment because of sex, race, color, ancestry, religious creed, national origin, sexual orientation, physical disability (including HIV and AIDS), mental disability, medical condition (cancer), age (over 40), marital status, and denial of family care leave.

B. Contractors, and subcontractors shall ensure that the evaluation and treatment of their employees and applicants for employment are free from such discrimination and harassment.

C. Contractors and subcontractors shall comply with the provisions of the Fair Employment and Housing Act (Gov. Code, § 12990 (a-f) et seq.) and the applicable regulations promulgated thereunder (California Code of Regulations, Title 2, Section 7285 et seq.). The applicable regulations of the Fair Employment and Housing Commission implementing Government Code Section 12990 (a-f), set forth in Chapter 5 of Division 4 of Title 2 of the California Code of Regulations, are incorporated into this Agreement by reference and made a part hereof as if set forth in full.

D. Contractors, and subcontractors shall give written notice of their obligations under this clause to labor organizations with which they have a collective bargaining or other agreement.

VII. **ANTI-KICKBACK ACT COMPLIANCE** (applicable to all contracts and subgrants for construction or repair; 44 CFR §13.36(i)(4))

Contractor agrees to comply with the Copeland “Anti-Kickback” Act (18 U.S.C. 874) as supplemented in Department of Labor regulations (29 CFR Part 3).

VIII. **DAVIS-BACON ACT COMPLIANCE** (applicable to construction contracts in excess of $2,000 awarded by grantees and subgrantees when required by Federal grant program legislation;)

To the extent required by any Federal grant programs applicable to expected funding or reimbursement of County’s expenses incurred in connection with the services provided under this Agreement, Contractor agrees to comply with the Davis-Bacon Act (40 U.S.C. 276a to 276a–7) as supplemented by Department of Labor regulations (29 CFR Part 5) as
set forth below. These requirements are in addition to the requirements set forth in Section 19(b) of the Agreement.

**A.** The Contractor shall be bound to the provisions of the Davis-Bacon Act, and agrees to be bound by all the provisions of Labor Code section 1771 regarding prevailing wages. All labor on this project shall be paid neither less than the greater of the minimum wage rates established by the U.S. Secretary of Labor (Federal Wage Rates), or by the State of California Director of Department of Industrial Relations (State Wage Rates). Current DIR requirements may be found at http://www.dir.ca.gov/lcp.asp.

**B.** The general prevailing wage rates may be accessed at the Department of Labor Home Page at www.wdol.gov. Under the Davis Bacon heading, click on “Selecting DBA WDs.” In the drop down menu for State, select, “California.” In the drop down menu for County, select “Sonoma.” In the drop down menu for Construction Type, make the appropriate selection. Then, click Search.

### 2.2.1

**IX. CONTRACT WORK HOURS AND SAFETY STANDARDS** (applicable to all contracts in excess of $100,000 that involve the employment of mechanics or laborers, but not to purchases of supplies or materials or articles ordinarily available on the open market, or contracts for transportation or transmission of intelligence)

**A. Compliance:** Contractor agrees that it shall comply with Sections 103 and 107 of the Contract Work Hours and Safety Standards Act (40 U.S.C. 327–330) as supplemented by Department of Labor regulations (29 CFR Part 5), which are incorporated herein.

**B. Overtime:** No contractor or subcontractor contracting for any part of the work under this Agreement which may require or involve the employment of laborers or mechanics shall require or permit any such laborer or mechanic in any workweek in which he or she is employed on such work to work in excess of forty hours in such workweek unless such laborer or mechanic receives compensation at a rate not less than one and one-half times the basic rate of pay for all hours worked in excess of forty hours in such workweek.

**C. Violation; liability for unpaid wages; liquidated damages:** In the event of any violation of the provisions of Paragraph B, the Contractor and any subcontractor responsible therefore shall be liable to any affected employee for his unpaid wages. In additions, such Contractor and subcontractor shall be liable to the United States for liquidated damages. Such liquidated damages shall be computed with respect to each individual laborer or mechanic employed in violation of the provisions of paragraph B in the sum of $10 for each calendar day on which such employee was required or permitted to be employed on such work in excess of eight hours or in excess of his standard workweek of forty hours without payment of the overtime wages required by paragraph B.

**D. Withholding for unpaid wages and liquidated damages:** The County shall upon its own action or upon written request of an authorized representative of the Department of Labor withhold or cause to be withheld, from any moneys payable on account of work performed by the contractor or subcontractor under any such contract or any other Federal contract with the same prime contractor, or any other federally-assisted contract subject to the Contract Work Hours and Safety Standards Act, which is held by the same
prime contractor, such sums as may be determined to be necessary to satisfy any liabilities of such contractor or subcontractor for unpaid wages and liquidated damages as provided in the clause set for in paragraph C of this section.

E. **Subcontracts:** The contractor or subcontractor shall insert in any subcontracts the clauses set forth in paragraphs A through D of this section and also a clause requiring the subcontractors to include these clauses in any lower tier subcontracts. The prime contractor shall be responsible for compliance by any subcontractor or lower tier subcontractor with the clauses set forth in paragraphs A through D of this section.

X. **NOTICE OF REPORTING REQUIREMENTS**

A. Contractor acknowledges that it has read and understands the reporting requirements of FEMA in Part III of Chapter 11 of the United States Department of Justice’s Office of Justice Programs Financial Guide, and agrees to comply with any such applicable requirements.

B. The Contractor agrees to include the above clause in each third party subcontract financed in whole or in part with Federal assistance provided by FEMA. It is further agreed that the clause shall not be modified, except to identify the subcontractor who will be subject to its provisions.

XI. **NOTICE OF REQUIREMENTS PERTAINING TO COPYRIGHTS**

A. Contractor agrees that FEMA shall have a royalty-free, nonexclusive, and irrevocable license to reproduce, publish or otherwise use, and to authorize others to use, for government purposes:
   1) The copyright in any work developed with the assistance of funds provided under this Agreement;
   2) Any rights of copyright to which Contractor purchases ownership with the assistance of funds provided under this Agreement.

B. The Contractor agrees to include paragraph A above in each third party subcontract financed in whole or in part with Federal assistance provided by FEMA. It is further agreed that the clause shall not be modified, except to identify the subcontractor who will be subject to its provisions.

XII. **PATENT RIGHTS** *(applicable to contracts for experimental, research, or development projects financed by FEMA; 44 CFR §13.36(l)(8))*

A. General. If any invention, improvement, or discovery is conceived or first actually reduced to practice in the course of or under this Agreement, and that invention, improvement, or discovery is patentable under the laws of the United States of America or any foreign country, the County and Contractor agree to take actions necessary to provide immediate notice and a detailed report to FEMA.

B. Unless the Government later makes a contrary determination in writing, irrespective of Contractor's status (a large business, small business, state government or state instrumentality, local government, nonprofit organization, institution of higher education, individual), the County and Contractor agree to take the necessary actions to provide, through FEMA, those rights in that invention due the Federal Government as described in U.S. Department of Commerce regulations, “Rights to Inventions Made by

C. The Contractor agrees to include paragraphs A and B above in each third party subcontract for experimental, developmental, or research work financed in whole or in part with Federal assistance provided by FEMA.

XIII. ENERGY CONSERVATION REQUIREMENTS
A. The Contractor agrees to comply with mandatory standards and policies relating to energy efficiency which are contained in the state energy conservation plan issued in compliance with the Energy Policy and Conservation Act (42 USC 6201).
B. The Contractor agrees to include paragraph A above in each third party subcontract financed in whole or in part with Federal assistance provided by FEMA. It is further agreed that the clause shall not be modified, except to identify the subcontractor who will be subject to its provisions.

XIV. CLEAN AIR AND WATER REQUIREMENTS (applicable to all contracts and subcontracts in excess $100,000, including indefinite quantities where the amount is expected to exceed $100,000 in any year)
A. Contractor agrees to comply with all applicable standards, orders or regulations issued pursuant to the Clean Air Act (42 U.S.C. 7401-7671q) and the Federal Water Pollution Control Act as amended (33 U.S.C. 1251-1387), and will report violations to FEMA and the Regional Office of the Environmental Protection Agency (EPA).
B. Contractor agrees to report each violation of these requirements to the County and understands and agrees that the County will, in turn, report each violation as required to assure notification to FEMA and the appropriate EPA regional office.
C. The Contractor agrees to include paragraph A and B above in each third party subcontract exceeding $100,000 financed in whole or in part with Federal assistance provided by FEMA.

XV. TERMINATION FOR CONVENIENCE OF COUNTY (applicable to all contracts in excess of $10,000)

See Paragraphs 10 and 11 of the Agreement.

XVI. TERMINATION FOR DEFAULT (applicable to all contracts in excess of $10,000)

Contractor’s failure to perform or observe any term, covenant or condition of this Agreement shall constitute an event of default under this Agreement. See Paragraphs 9 and 11 of the Agreement.

XVII. CHANGES.

See Paragraph 17 of the Agreement.
XVIII.  **LOBBYING (Byrd Anti-Lobbying Amendment, 31 U.S.C. § 1352 (as amended).)**
A. Contractor shall not use or pay any funds received under this Agreement to influence or attempt to influence an officer or employee of an agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with the awarding of any Federal contract, the making of any Federal contract, the making of any Federal grant, the making of any Federal loan, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any Federal contract, grant, loan, or cooperative agreement.

B. Contractor agrees to the provisions of Attachment 2, Certification Regarding Lobbying, attached hereto and incorporated herein (applicable for contracts or subcontracts in excess of $100,000).

C. Contractor agrees to include paragraphs A and B above in each third party subcontract financed in whole or in part with Federal assistance provided by FEMA. It is further agreed that the clause shall not be modified, except to identify the subcontractor who will be subject to its provisions.

XIX.  **MBE / WBE REQUIREMENTS**
The County intends to seek reimbursement of its costs incurred in connection with this project from FEMA. Accordingly, the CONTRACTOR shall make every effort to procure Minority and Women's Business Enterprises ("DBEs") through the "Good Faith Effort" process as required in 2 CFR 200.321. Failure to perform the "Good Faith Effort" process and submit the forms listed below with the bid shall be cause for a bid to be rejected as non-responsive and/or be considered as a material breach of the contract.

**PRIME CONTRACTOR RESPONSIBILITIES**
All recipients of this grant funding, as well as their prime contractors and subcontractors, must take all affirmative steps to assure that minority firms, women's business enterprises, and labor surplus area firms are used when possible make every effort to solicit bids from eligible DBEs. This information must be documented and reported.

2.2.2  **"GOOD FAITH" EFFORT PROCESS**
Any public or private entity receiving federal funds must demonstrate that efforts were made to attract MBE/WBEs. The process to attract MBE/WBEs is referred to as the "Good Faith" effort. This effort requires the recipient, prime contractor and any subcontractors to take the steps listed below to assure that MBE/WBEs are used whenever possible as sources of supplies, construction, equipment, or services. If a CONTRACTOR fails to take the steps outlined below shall cause the bid to be rejected as non-responsive and/or be deemed a material breach of the contract.

A. Place qualified small and minority businesses and women's business enterprises on solicitation lists;

B. Assure that small and minority businesses, and women's business enterprises are solicited whenever they are potential sources;
C. Divide total requirements, when economically feasible, into smaller tasks or quantities 
to permit maximum participation by small and minority business, and women's business 
enterprises;
D. Establish delivery schedules, where the requirement permits, which encourage 
participation by small and minority business, and women's business enterprises; and
E. Use the services and assistance of the Small Business Administration, and the Minority 
Business Development Agency of the Department of Commerce.
F. If subcontracts are to be let, Contractor shall take the affirmative steps listed in 2 CFR 
200.321.

2.2.3
XX. PROCUREMENT OF RECOVERED MATERIALS (2 CFR 200.322)
Contractor shall comply with Section 6002 of the Solid Waste Disposal Act, as amended 
by the Resource Conservation and Recovery Act. The requirements of Section 6002 
include procuring only items designated in guidelines of the Environmental Protection 
Agency (EPA) at 40 CFR part 247 that contain the highest percentage of recovered 
materials practicable, consistent with maintaining a satisfactory level of competition, 
where the purchase price of the item exceeds $10,000 or the value of the quantity 
acquired during the preceding fiscal year exceeded $10,000; procuring solid waste 
management services in a manner that maximizes energy and resource recovery; and 
establishing an affirmative procurement program for procurement of recovered materials 
identified in the EPA guidelines.

XXI. INCORPORATION OF UNIFORM ADMINISTRATIVE 
REQUIREMENTS
The preceding provisions include, in part, certain standard terms and conditions required by 
FEMA, whether or not expressly set forth in the preceding contract provisions. All 
contractual provisions required by FEMA are hereby incorporated by reference. Anything to 
the contrary herein notwithstanding, all FEMA mandated terms shall be deemed to control 
in the event of a conflict with other provisions contained in this Agreement. Contractor shall 
not perform any act, fail to perform any act, or refuse to comply with any County requests 
that would cause County to be in violation of the FEMA terms and conditions.

XXII. PROGRAM FRAUD AND FALSE OR FRAUDULENT STATEMENTS OR 
RELATED ACTS.

The contractor acknowledges that 31 U.S.C. Chap. 38 (Administrative Remedies for 
False Claims and Statements) applies to the contractor’s actions pertaining to this 
contract.

XXIII. DHS SEAL, LOGO, AND FLAGS.

The contractor shall not use the DHS seal(s), logos, crests, or reproductions of flags or 
likenesses of DHS agency officials without specific FEMA pre- approval.
CERTIFICATION REGARDING DEBARMENT, SUSPENSION, INELIGIBILITY AND VOLUNTARY EXCLUSION – LOWER TIER COVERED TRANSACTIONS

(Lower Tier refers to the agency or contractor receiving Federal funds, as well as any subcontractors that the agency or contractor enters into contract with using those funds)

As required by Executive Order 12549, Debarment and Suspension, as defined at 44 CFR Part 17, County may not enter into contract with any entity that is debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded by the Federal Government from participating in transactions involving Federal funds. Contractor is required to sign the certification below which specifies that neither Contractor nor its principals are presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded by the Federal agency. It also certifies that Contractor will not use, directly or indirectly, any of these funds to employ, award contracts to, engage the services of, or fund any contractor that is debarred, suspended, or ineligible under 44 CFR Part 17.

Instruction for Certification

1. By signing and submitting this proposal, the prospective lower tier participant is providing the certification set out below.

2. The certification in this clause is a material representation of fact upon which reliance was placed when this transaction was entered into. If it is later determined that the prospective lower tier participant knowingly rendered an erroneous certification, in addition to other remedies available to the Federal Government the department or agency with which this transaction originated may pursue available remedies, including suspension and/or debarment.

3. The prospective lower tier participant shall provide immediate written notice to the person to whom this proposal is submitted if at any time the prospective lower tier participant learns that its certification was erroneous when submitted or had become erroneous by reason of changed circumstances.

4. The terms covered transaction, debarred, suspended, ineligible, lower tier covered transaction, participant, person, primary covered transaction, principal, proposal, and voluntarily excluded, as used in this clause, have the meaning set out in the Definition and Coverage sections of rules implementing Executive Order 12549. You may contact the person to which this proposal is submitted for assistance in obtaining a copy of those regulations.

5. The prospective lower tier participant agrees by submitting this agreement that, should the proposed covered transaction be entered into, it shall not knowingly enter into any lower tier covered transaction with a person who is proposed for debarment under 48 CFR Part 9, subpart 9.4, debarred, suspended, declared ineligible, or voluntarily excluded from participation in this covered transaction, unless authorized by the department or agency with which this transaction originated.
6. The prospective lower tier participant further agrees by submitting this proposal that it will include this clause titled "Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion-Lower Tier Covered Transaction," without modification, in all lower tier covered transactions and in all solicitations for lower tier covered transactions.

7. A participant in a covered transaction may rely upon a certification of a prospective participant in a lower tier covered transaction that it is not proposed for debarment under 48 CFR part 9, subpart 9.4, debarred, suspended, ineligible, or voluntarily excluded from covered transactions, unless it knows that the certification is erroneous. A participant may decide the method and frequency by which it determines the eligibility of its principals. Each participant may, but is not required to, check the List of Parties Excluded from Federal Procurement and Nonprocurement Programs.

8. Nothing contained in the foregoing shall be construed to require establishment of a system of records in order to render in good faith the certification required by this clause. The knowledge and information of a participant is not required to exceed that which is normally possessed by a prudent person in the ordinary course of business dealings.

9. Except for transactions authorized under paragraph 5 of these instructions, if a participant in a covered transaction knowingly enters into a lower tier covered transaction with a person who is proposed for debarment under 48 CFR part 9, subpart 9.4, suspended, debarred, ineligible, or voluntarily excluded from participation in this transaction originated may pursue available remedies, including suspension and/or debarment.

Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion
– Lower Tier Covered Transactions

1. The prospective lower tier participant certifies, by submission of its proposal, that neither it nor its principals is presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from participation in this transaction by any Federal department or agency.

2. Where the prospective lower tier participant is unable to certify to any of the statements in this certification, such prospective participant shall attach an explanation to this proposal.

________________________________________  ________________________________
Contractor Signature                      Date
CERTIFICATION REGARDING LOBBYING

Certification for Contracts, Grants, Loans, and Cooperative Agreements

The undersigned certifies, to the best of his or her knowledge and belief, that:

1. No Federal appropriated funds have been paid or will be paid, by or on behalf of the undersigned, to any person for influencing or attempting to influence an officer or employee of an agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with the awarding of any Federal contract, the making of any Federal grant, the making of any Federal loan, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any Federal contract, grant, loan, or cooperative agreement.

2. If any funds other than Federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with this Federal contract, grant, loan, or cooperative agreement, the undersigned shall complete and submit Standard Form-LLL, "Disclosure Form to Report Lobbying," in accordance with its instructions.

3. The undersigned shall require that the language of this certification be included in the award documents for all subawards at all tiers (including subcontracts, subgrants, and contracts under grants, loan, and cooperative agreements) and that all subrecipients shall certify and disclose accordingly.

This certification is a material representation of fact upon which reliance was placed when this transaction was made or entered into. Submission of this certification is a prerequisite for making or entering into this transaction imposed by section 1352, title 31, U.S. Code. Any person who fails to file the required certification shall be subject to a civil penalty of not less than $10,000 and not more than $100,000 for each such failure.

__________________________________________  ________________________________
Contractor Signature                        Date
[When needed, insert the most recent and applicable version of the Federal Provisions as provided by County Counsel]