



INTRODUCTION TO CONTRACTS MANUAL

TITLE I

INTRODUCTION TO CONTRACTS MANUAL

TABLE OF CONTENTS

	<u>Page</u>
CHAPTER 1 – OVERVIEW	1-3
1.01 PRELIMINARY CONSIDERATIONS	1-3
1. Authority	1-4
2. Civil Service	1-4
3. Competitive Selection	1-4
4. Responsibility for Contract Approval	1-4
5. Required Contract Terms and Provisions	1-4
6. Retroactive Contracts	1-4
1.02 DEFINITION OF A CONTRACT	1-4
1.03 AMENDMENT TO A CONTRACT	1-5
1.04 ELEMENTS OF A CONTRACT	1-5
1. Required Contract Information	1-5
2. Terms Must be Finalized before Execution of Contract	1-6
1.05 TYPES OF CONTRACTS	1-6
1. Construction and Other Public Works Contracts	1-6
2. Services Contracts	1-6
3. Section 71-J Contracts	1-6
4. Real Property Contracts	1-6
5. Purchase Contracts of Personal Property	1-7

CHAPTER 1 – OVERVIEW

1.01 PRELIMINARY CONSIDERATIONS

The contracting process starts with recognition of a need for goods or services. From that point the process varies depending on the type of good or service needed. Key considerations include:

1. Authority

a. **General Rule** – The County is prohibited, except subject to the requirements of Section 71-J of the County Charter or Government Code Sections 31000 *et seq.*, from contracting with the private sector for the performance of public services. See Chapter 5 for a discussion of the requirements of Section 71-J. See Chapter 4 for a discussion of contracting for special services.

b. Most contracts require approval by the Board of Supervisors. The contracting party is the County, not a particular County department or employee. Department heads or other County employees generally do not have the authority to contract (including an amendment, extension or termination of the contract) unless the Board of Supervisors has delegated that authority or unless there is a specific statute providing such authority. Chapter 2.61 of the Sacramento County Code enumerates circumstances in which the Board of Supervisors has delegated contract authority to departments. The contract delegation is based on a maximum monetary amount and on the type of services to be contracted. See Chapter 6 of this Manual for a further discussion of delegated contract authority. The Purchasing Agent also has certain delegated authority enumerated at Article IX, Section 45 of County Charter and in Section Chapter 2.56 of the Sacramento County Code. See Chapter 8 of this Manual for a further discussion of the Purchasing Agent's authority.

c. If the court orders the County to provide certain services, the court order is sufficient authority on which to rely. Under those circumstances, a contract is not required with the provider in order for the County to make payment for services rendered.

d. The Board of Supervisor's delegation of authority must be in writing, by ordinance, resolution, policy or Board order specifying the parameters of the authority being delegated. Some contracts require Board approval by a four-fifths vote.

e. Absent delegation or statutory authority, the authority to amend, extend or terminate a contract rests with the Board of Supervisors. A contract may include a provision authorizing a department head or other County official to amend, extend, renew or terminate the contract, or such authority may be included in the Board ordinance, resolution, etc. (Rev. 5/1/09)

2. **Civil Service** – Because the County Charter provides for a career civil service, the County is generally required to utilize civil service employees, rather than contractors. Contracting for County services, in lieu of using civil service personnel, is permitted only if the requirements outlined in Section 71-J of the County Charter are met. Contracts for special services are permissible if the services are not the type performed by County employees but are of a unique or specialized character.

3. **Competitive Selection** – In general, a competitive selection process is always the preferred method to select County vendors and contractors. The Public Contract Code requires competitive bidding for certain categories of procurement. The County charter requires a competitive selection process when the County considers contracting for services that have ever been provided by a County civil servant. The competitive selection process includes specific legal requirements; Chapter 10 of this Manual includes further discussion of issues relating to competitive selection.

4. **Responsibility for Contract Approval** – Each department is responsible for making sure that its contract complies with applicable County, state and federal legal requirements as well as County policies and procedures and is based on sound business practices. In many instances, approvals may be needed from other departments, such as County Counsel and the Risk Manager.

5. **Required Contract Terms and Provisions** – Contracts must contain certain essential elements in order to be legally binding. See Section 1.04 of this Chapter for a further discussion of the required elements of a contract. In addition, the County requires that standard provisions be utilized in all contracts, unless otherwise waived under certain designated circumstances. See Chapter 18 of this Manual for further discussion of the required standard provisions.

6. **Retroactive Contracts** – The County cannot compensate a contractor for services rendered if: a) there is no written contract; b) the written contract does not cover the services rendered; or, c) the services are rendered prior to the execution of the written contract and the Board of Supervisors does not thereafter ratify the contract. Only the Board of Supervisors may ratify a contract that seeks to reimburse a contractor for services rendered prior to execution of the contract. This includes services when purchase orders are utilized. See Chapter 11 of this Manual for further discussion of the issue of retroactive contracts and the limitations on ratification of such contracts.

1.02 DEFINITION OF A CONTRACT

Civil Code Definitions: “A contract is an agreement to do or not to do a certain thing.” (Civ. Code § 1549.) It gives rise to an obligation or legal duty, enforceable in an action at law. (Civ. Code §§ 1427, 1428.) It sets forth terms, conditions, and the statement of all work to be performed.

Restatement 2d Definitions: “A contract is a promise or set of promises for the breach of which the law gives a remedy, or the performance of which the law in some way recognizes as a duty.” (Rest. 2d, Contracts §1.)

A Memorandum of Understanding (MOU) is generally a legally binding contract when it is between the County and any non-County entity. It is not a legally binding agreement when it is between two or more County departments or agencies. However, intra-County MOUs are useful to clarify policies, procedures, and expectations of the respective departments or agencies.

1.03 AMENDMENT TO A CONTRACT

An amendment to a contract is a modification to a contract. An amendment is also a contract. See Chapter 13 of this Manual for a further discussion of amendments to contracts. An amendment must comply with all the requirements for a contract. (Rev. 5/1/09)

1.04 ELEMENTS OF A CONTRACT

There are a number of essential elements for a valid contract. “It is essential to the existence of a contract that there should be: (1) parties capable of contracting; (2) their consent; (3) a lawful object; and, (4) a sufficient cause or consideration.” (Civ. Code § 1550.)

1. Required Contract Information – In order to set forth the essential elements for a contract, each contract must contain the following information:

- a. **Parties** – The contract must clearly identify parties.
- b. **Term** – The time for the performance or completion of the contract, i.e. dates or length of time.
- c. **Consideration** – The contract must clearly express the maximum amount to be paid and the basis on which payment is to be made. (e.g., a fixed amount regardless of time spent, billing based on time spent at a specified rate plus actual expenses, or cost recovery.) In addition to monetary payment, consideration may be an act, forbearance, change in legal relationship or a promise. (Rest. 2d Contracts, §71(3).)
- d. **Mutual Assent** – Mutual assent is also sometime referred to as “a meeting of the minds” of the parties. If there is no meeting of the minds, there is no contract. Mutual assent is usually accomplished through an offer communicated to the one receiving the offer and acceptance communicated to the one making the offer. For there to be mutual assent, there must be a clear and mutual expression of the parties' expectations under the contract.

e. **Scope of Services** – The contract must describe the work or service to be performed or the product to be delivered, rendered or provided. The department must use clear, accurate and concise language to describe the scope. The scope must be sufficiently detailed to allow the County to determine whether or to what extent a contractor has satisfied the terms of the contract. See Chapter 14 of this Manual for further discussion of scope of services.

f. **Other** – The contract may contain other general or unique terms and conditions of the agreement.

g. **Signature** – The contract must contain the signature of the person or persons for each party who is authorized to bind that party. Electronic/digital signatures are acceptable.

2. Terms Must Be Finalized Before Execution of Contract – The contract must contain all essential terms, which should be agreed upon prior to execution of the contract. There is no binding contract if a material term of the contract is deferred for decision at a later date.

1.05 TYPES OF CONTRACTS

This Manual focuses on personal services and Section 71-J contracts. However, there are many other types of contracts which have different legal requirements. (Rev. 5/1/09)

1. Construction and Other Public Works Contracts. The primary authority regarding public works contracts is the Local Agency Public Construction Act, Public Contract Code sections 20100 *et seq.* Counties are generally addressed at Sections 20150 *et seq.* It is important to know whether the work in a contract qualifies as a "public project" or "public works" for purposes of bidding and prevailing wage requirements. See Chapter 7 of this Manual for further discussion.

2. Services Contracts. Services contracts are for specialized services that generally fall outside the expertise or job description of County employees. These are the type of contracts for which most departments have delegated authority. See Chapters 4 and 6 of this Manual for further discussion.

3. Section 71-J Contracts. Section 71-J contracts are contracts for services normally provided by County employees that are subject to certain procedural requirements. See Chapter 5 of this Manual for further discussion.

4. Real Property Contracts. Real property contracts include sales both to and from the County. They also include leases and license agreements in which the County may be the lessor, lessee, licensor, or licensee. Sales and leases of County real property are addressed at Government Code sections 25520 *et seq.* When a lease of real property for the County's use requires the landlord to modify the premises, there

may be a "public works component" that triggers legal requirements associated with public works contracts.

5. Purchase Contracts of Personal Property. Purchase contracts for County supplies and other personal property are addressed at Government Code sections 25480 *et seq.* Some legal requirements are different for counties that employ a purchasing agent, such as Sacramento County. Government Code sections 25500 *et seq.* See Chapter 8 of this Manual for further discussion.

TABLE OF CONTENTS

	<u>Page</u>
CHAPTER 2 – ROLE OF COUNTY COUNSEL	2-2
2.01 REVIEW OF CONTRACTS	2-2
1. Mandatory Review	2-2
2. Discretionary Review	2-2
2.02 OBTAINING COUNTY COUNSEL APPROVAL	2-2
1. Process.....	2-2
2. Required Supporting Documents.....	2-3
3. Contract Approval Review Time	2-3

CHAPTER 2 – ROLE OF COUNTY COUNSEL

2.01 REVIEW OF CONTRACTS

1. Mandatory Review – The Sacramento County Code requires certain contracts (listed in Section 2.61.014) to be approved by County Counsel. The following contracts require review and approval by County Counsel:

- a. Any contract that requires approval by the Board of Supervisors (including, but not limited to Section 71-J contracts);
- b. Any contract approved in concept or otherwise authorized by the Board of Supervisors except if the contract is being renewed from the prior fiscal year and County Counsel has previously reviewed and approved the contract;
- c. Any contract for the provision of services, functions and/or programs not previously provided by, or to, the department;
- d. Any contract that does not utilize the required standard format developed and drafted by County Counsel;
- e. Any contract between the County and another governmental entity, including a city, state, county, federal government, joint powers agency, school district or university;
- f. Any contract involving real property transactions, including leases;
- g. Any contract for which a waiver is sought from the withholding provisions for contractors; and
- h. Any contract for goods or services executed after the services have been rendered or goods have been received.

2. Discretionary Review – All other contracts do not require County Counsel review or approval. However, County Counsel strongly encourages departments to consult and will provide advice review/approval services for any contract, regardless of value or type, if requested by a department. (Rev. 5/1/09)

2.02 OBTAINING COUNTY COUNSEL APPROVAL

1. Process – The department requesting approval should submit a contract which requires County Counsel review and approval as early in the process as possible. This will ensure timely processing of the contract and will avoid unnecessary delays.

NOTE: County Counsel must review and approve the contract **before** it is executed by the Contractor.

2. Required Supporting Documents – If the contract contains supporting documentation, exhibits or attachments, the department should, whenever possible include these supporting documents at the time it requests County Counsel review. If a waiver of the status of contractor (independent contractor) provision is being requested, the Department should provide such information and/or documents as are necessary for County Counsel to evaluate the tax status of the Contractor.

3. Contract Approval Review Time – Departments shall notify County Counsel of any desired contract review period. As a general rule, the **initial** County Counsel review of a contract can be accomplished in five (5) business days. However, the complexity of the issues raised by a particular contract may require more extended County Counsel review. Additional time may be required for further negotiations with the contracting party based on County Counsel comments on the contract. Therefore, Departments are strongly encouraged to contact County Counsel as early in the contract process as feasible and to allow sufficient time to ensure a thorough review by County Counsel.

TABLE OF CONTENTS

	<u>Page</u>
CHAPTER 3 – ROLE OF AUDITOR AND RISK MANAGER	3-2
3.01 AUDITOR	3-2
1. General Responsibilities	3-2
2. EDD Reporting	3-2
3. Maintenance of Contracts	3-2
4. Periodic Audits	3-2
3.02 RISK MANAGER	3-3
1. Indemnification Waiver	3-3
2. Insurance	3-3

CHAPTER 3 – ROLE OF AUDITOR AND RISK MANAGER

3.01 DEPARTMENT OF FINANCE-AUDITOR-CONTROLLER DIVISION (AUDITOR)

1. General Responsibilities – The Auditor is responsible for auditing, and allowing or rejecting certain types of claims. (Gov. Code § 29740.) The Auditor is also required to account for monies in the public treasury and under a duty to undertake necessary financial audits. (Gov. Code §§ 26881, 26900 *et seq.*) This duty applies to any entity, including a special district, that maintains its monies in the County treasury. Personal liability may be imposed on any officer of the County who authorizes, aids to authorize, audits, allows or pays any claim or demand upon or against the County's treasury in violation of law or of the California Constitution.

Pursuant to Government Code section 29741, the Auditor may pay claims relating to: 1) expenditures that have been authorized by purchase orders issued by the purchasing agent or other officer authorized by the Board of Supervisors; 2) expenditures that have been authorized by contract, ordinance, resolution or order of the Board of Supervisors; 3) expenditures under any statute authorizing payment of public aid or assistance that have been ordered by the Board; 4) expenditures for charges incurred by the County pursuant to Government Code §§ 29600 *et seq.*; and, 5) refunds of unearned business license fees, permit fees, and similar fees authorized by the Board of Supervisors.

2. EDD Reporting – The Auditor, on behalf of the County, is responsible for reporting to the Employment Development Department certain information about payments made to independent contractors.

3. Maintenance of Contracts – Pursuant to Chapter 2.61, all contracts executed under delegated authority must be submitted to the Auditor prior to payment of such contracts. The identity of any subordinate to whom the County Executive, Agency Administrator or Department head has delegated authority to execute contracts must be submitted to the Auditor before the delegation is effective. The written notice of such delegation must identify the subordinate by name and job classification. Such delegation remains in effect unless a written notice is filed with the Auditor, changing or rescinding such delegation or until the person to whom such authority has been delegated no longer holds the job classification specified in the delegation.

4. Periodic Audits – Pursuant to Chapter 2.61, the Auditor may conduct periodic audits of the method and manner that each Agency or Department has used and administered the delegated contract authority. The findings of such audit shall be reported to the Board of Supervisors.

3.02 RISK MANAGER

1. Indemnification Waiver – The County's Risk Manager is authorized to waive the standard indemnification provisions. (SCC §2.61.012(f).) See Chapter 16 of this Manual for further discussion of this issue.

2. Insurance – The Risk Manager is authorized to determine the amount of, and necessity for, insurance to be purchased by the contractor. (SCC §2.61.012(f).) See Chapter 16 of this Manual for further discussion of this issue.

TITLE II

AUTHORITY TO CONTRACT

TABLE OF CONTENTS

	<u>Page</u>
Chapter 4- CONTRACTS FOR SPECIAL SERVICES	4-3
4.01 GOVERNMENT CODE SECTION 31000	4-3
4.02 DEFINITION OF SPECIAL SERVICES	4-3
4.03 SPECIAL SERVICES ARE NOT THOSE PERFORMED BY COUNTY EMPLOYEES	4-3
4.04 RETIRED EMPLOYEES.....	4-3

CHAPTER 4 - CONTRACTS FOR SPECIAL SERVICES

4.01 GOVERNMENT CODE SECTION 31000 – Pursuant to Government Code Section 31000, the Board of Supervisors is authorized to contract for specific special services with persons specially trained, experienced and competent to perform such services.

4.02 DEFINITION OF SPECIAL SERVICES – Whether services are special or expert requires a consideration of factors such as the nature of the services, the qualifications of the persons furnishing them and their availability from public sources. Services may be special because of the outstanding skill or expertise of the person furnishing them. Special services are generally intermittent, limited in term or scope, and unrelated to the ongoing provision of direct services to the County or its residents.

4.03 SPECIAL SERVICES ARE NOT THOSE PERFORMED BY COUNTY EMPLOYEES – Services currently being performed by civil service employees do not constitute special services. Contracts for such services are subject to the requirements of Charter Section 71-J.

4.04 RETIRED COUNTY EMPLOYEES - Government Code section 7522.56 applies to post-retirement employment of Sacramento County Employee's Retirement System (SCERS), retired members by or in service to the County and is applicable to all SCERS retired members returning to work for a County contractor where that retired member is providing direct services to the County. The retired member is limited to a maximum of 960 hours annually. Contractor shall provide county a report, no less than semi-annually (by January 31 and July 31 of each year), disclosing the names of the retired members who have been employed, their hours worked, their duration of service.

TABLE OF CONTENTS

	<u>Page</u>
CHAPTER 5 – CHARTER SECTION 71-J - CONTRACTS FOR COUNTY SERVICES	5-2
5.01 OVERVIEW	5-2
1. Section 71-J Provisions.....	5-2
2. Section 71-J Applies Only to County Contracts.....	5-2
3. Board of Supervisors Resolution Required for Section 71-J Contracts.....	5-2
5.02 REQUIRED FINDINGS	5-3
1. County Services	5-3
2. Economy and Efficiency	5-3
3. Displacement of Civil Service Employees	5-4
4. Publicized Competitive Selection Process	5-5
5. Meet and Confer	5-6

CHAPTER 5 – CHARTER SECTION 71-J – CONTRACTS FOR COUNTY SERVICES

5.01 OVERVIEW

1. Section 71-J Provisions – Section 71-J of the County Charter authorizes the Board of Supervisors to contract for the provision of County services for reasons of economy and efficiency when:

- a. the contract does not cause the displacement of civil service employees;
- b. the County meets and confers with any organization that represents County employees who perform the type of services to be contracted; and
- c. the contract for services is awarded through a publicized competitive selection process.

A chart demonstrating the analysis required for determining whether a contract falls within the provisions of Section 71-J is attached as Appendix A.

2. Section 71-J Applies Only to County Contracts – Section 71-J is not applicable to districts or other agencies governed by an independent governing body. Thus, contracts entered into by districts or agencies such as the following do not need to comply with Section 71-J: Sacramento Regional County Sanitation District, County Sanitation District No. 1, Sacramento Housing and Redevelopment Agency, Sacramento Area Flood Control Agency, Library Authority, Cable TV Commission, Sacramento Employment & Training Agency, Sacramento Metropolitan Air Quality Management District, Civil Service Commission, Retirement Board, Sacramento Water Agency, Solid Waste Authority, and independent and dependent park districts. However, if the County is purchasing services from one of the above districts or agencies, the County needs to evaluate whether it is entering into a Section 71-J contract. (Rev. 5/1/09)

3. Board of Supervisors Resolution Required for Section 71-J Contracts – The department seeking authority to execute a Section 71-J contract must provide, in the staff report and during the hearing, sufficient factual information for the Board to conclude that the requirements of Section 71-J have been satisfied. Unless those requirements have been met, the County is prohibited from contracting for County services. In order to establish that the requirements have been satisfied, the Board must adopt a resolution detailing the basis for its conclusions. The resolution authorizing a contract subject to Section 71-J must contain express findings, and the factual basis for those findings, that the requirements of Section 71-J have been satisfied. A sample resolution is attached as Appendix B

5.02 REQUIRED FINDINGS

1. County Services

a. Definition of County Services – County services that are subject to Section 71-J requirements encompass those types of governmental services, functions, programs and/or activities which either are provided directly to County residents in the ordinary and usual course of business and/or are necessary for the ongoing operation and administration of County government. Section 71-J does not distinguish between "new" County services, existing County services, or expanded County services. The determinative factor is whether County civil service employees currently provide or have provided, the types of services that the County seeks to privatize through the contract process. If those services have been provided by County civil service employees at any time and to any degree, then Section 71-J is applicable. The issue is not whether County civil service employees "could" provide the services, but whether they have in the past provided, or currently provide, those services. (Rev. 5/1/09)

NOTE: A Section 71-J contract remains subject to the provisions of Section 71-J even though, as a direct result of that contract, the County discontinued the provision of the contracted services through County employees.

NOTE: Contracts for special services do not constitute contracts for County services. Special services, by their very nature, provide specialized assistance or advice which is not ordinarily available from the County work force. These types of services are frequently intermittent, limited in term or scope, or unrelated to the ongoing provision of direct services to County residents. (See, e.g., 71 Ops.Cal.Atty.Gen. 266 (services relating to the ordinary and necessary business of a school district do not constitute "special services").)

NOTE: Section 71-J applies to the contracting authority of the Purchasing Agent. No exception to Section 71-J requirements exists based on the value of services; limited purchase orders, departmental field orders and purchase orders are not exempt from Section 71-J. See Chapter 8 of this Manual for more information on this issue.

b. Determination Made on Countywide Basis – In determining whether a contract falls within Section 71-J, the contracting department must identify which County job classifications currently perform the work to be contracted or, if this is an expansion of existing services, which classification would perform the work. This determination must be made on a countywide, not a departmental, basis.

2. Economy and Efficiency

a. Determination Cannot Be Delegated – The Board of Supervisors must make a finding that economy and efficiency will be achieved if the private sector, rather than civil service employees, perform the specified County services.

b. Factors – Factors to be considered may include: cost effectiveness, anticipated cost savings, managerial flexibility necessary to address intermittent workload increases and/or demands, economies of scale, superior technology or lower overhead costs that cannot be offset by reasonable improvements in the County's equipment and operating procedures, improvement in the County service delivery system, the availability of facilities and program infrastructure of a community-based organization, quality considerations, ease and convenience of services to the County's constituents, and underlying program goals.

Although cost effectiveness is not the sole criteria, it is strongly recommended that all justifications for a Section 71-J include cost efficiencies as one basis for the contract.

c. Evaluation of County Costs – Evaluation of County cost in providing services may include, but is not limited to, costs of salaries and benefits, supplies, department overhead. Evaluation of contractor cost should include County cost of monitoring/administering contract.

(i) A Section 71-J contract need not be awarded solely on the basis of price, unless otherwise required by state or federal requirements. Therefore, the County may consider such other facts as discussed above.

(ii) The Board may award the contract even if the cost is higher than that incurred by the County in providing the same type and level of services with County employees if the Board finds that the contract is necessary for other reasons of economy and efficiency.

(iii) The costs and/or ability of County departments to provide the services should be determined without requiring those departments to engage in the competitive selection process.

d. Amendment of Section 71-J Contract – If the County proposes to amend a Section 71-J contract, the amendment must comply with the requirements of Section 71-J. Therefore, the evaluation of economy and efficiency for a multi-year contract or a contract that includes the right to extend the contract for another year should include the total potential term of the agreement, including the extension period. If it does not, it will be necessary to take the amendment back to the Board of Supervisors for approval, even if the original contract delegated amendment authority to the department.(Rev. 5/1/09)

3. Displacement of Civil Service Employees

Displacement is specifically defined in Section 71-J as layoff, demotion and involuntary transfer to a new classification. It does not include changes in shifts or days off, nor does it include reassignment to other positions within the same class. Section 71-J prohibits displacement of those County employees who have attained permanent status in a civil service position, but does not prohibit "displacement" of temporary

employees, including intermittent employees. Persons appointed to a limited term position fall within Section 71-J's prohibition against displacement of civil service employees.

a. Causal Relationship Required – Section 71-J precludes displacement if there is a direct nexus between the decision to contract out County services and the displacement of civil service employees. In other words, the displacement must be as a result of the contract. Whether such a nexus exists is largely a factual determination. Absent a showing that civil service employees were displaced because of the decision to contract out their jobs or the services and functions performed by such employees, the fact that employees are subsequently laid off or terminated does not by itself violate Section 71-J. However, Section 71-J prohibits any contract for County services that are the type performed by employees who are laid off or terminated during the term of the contract. Under such circumstances, it will be necessary to either terminate or reduce the contract in order to avoid such displacement.

b. Factors – While the time lapse between the decision and a subsequent "displacement" may be indicative of that causal connection, that factor alone is not determinative. Other factors to be considered include, but are not limited to: (a) the existence of a plan for contracting activity which contributes to the displacement of permanent and limited term employees; and, (b) a decision to contract for services despite budget reductions which will trigger layoffs.

c. Procedures in the Event of Layoff -Before an employee can be laid off, a department must first assess whether there are any Section 71-J contracts for the services being performed by the employee subject to layoff. The assessment includes a review of department, agency and countywide contracts. Prior to issuance of a notice of layoff, a Section 71-J contractor must be notified that the contract is subject to reduction and/or elimination. A layoff cannot be effective until the contract is actually reduced and/or eliminated. Following layoff, Section 71-J contracts cannot generally be entered until the departmental or countywide reemployment list has been eliminated.
(Rev. 5/1/09)

4. Publicized Competitive Selection Process

a. Publicized – A Section 71-J contract must be awarded through a publicized, competitive selection process. "Publicized" means the advertisement of the proposed contract, using such methods as are reasonably calculated to generate competition among potential contractors.

b. Types of Competitive Selection Processes – A competitive selection process includes, but is not limited to, a request for bids, a request for proposal or merely an interview process. The nature of the County services to be contracted and the circumstances that will trigger such proposals may vary from department to department. State and federal regulations may be applicable to certain types of contracts.

NOTE: County departments that provide the services to be contracted are **not** required to engage in the competitive selection process. For purposes of determining efficiency and economy, the costs and/or ability of County departments to provide the services should be determined **before** the Section 71-J process begins.

5. Meet and Confer

a. Arises After Completion of Selection Process – The County's obligation to meet and confer pursuant to Section 71-J arises after completion of the competitive selection process, but prior to the award of the proposed contract. However, nothing prohibits the County from inviting the affected employee organization to informally meet to discuss the Section 71-J proposal before the initiation of the competitive selection process.

b. Amendment of Section 71-J Contract – If the County proposes to amend a Section 71-J contract, the amendment must comply with the requirements of Section 71-J. Therefore, the meet and confer process for a multi-year contract or a contract that includes the right to extend the contract for another year should pertain to the total potential term of the agreement and should include the justification for the Section 71-J contract with respect to the entire potential term. Non-material amendments need not comply with the requirements of Section 71-J. Material amendments include but are not limited to changes in the scope of services, contract amount, and term of the contract.

c. Process – The obligation to meet and confer is satisfied after the parties have met over a reasonable period of time, discussed the specific contract proposal, exchanged proposals and counter proposals, and either reached an agreement or an impasse has been reached. During the meet and confer process, the County should provide the affected employee organization with the documentation and/or information that establishes that the proposed contract is being awarded for reasons of economy and efficiency. This includes, if requested, the response of the proposed contractor.

TABLE OF CONTENTS

	<u>Page</u>
CHAPTER 6 – DELEGATED CONTRACT AUTHORITY	6-3
6.01 OVERVIEW	6-3
6.02 EXCLUDED CONTRACTS	6-3
6.03 BASIC REQUIREMENTS	6-3
1. Monetary Limits	6-3
2. Excluded Contracts.....	6-4
3. Submission to Auditor.....	6-4
4. Semi-Annual Report Required	6-4
5. Identification of Contract Authority	6-4
6. No Splitting	6-4
7. Amendments	6-4
8. Indemnification Required	6-4
9. Insurance Required	6-4
10. Delegation to Subordinate	6-5
11. County Counsel Review.....	6-5
6.04 TYPES OF DELEGATED CONTRACTS	6-5
1. General Authority.....	6-5
2. County Executive	6-5
3. Agency Administrators	6-6
4. Chief Fiscal Officer and Chief Information Officer.....	6-6
5. Revenue Applications, Plans and/or Agreements.....	6-7

TABLE OF CONTENTS (CON'T)

6.	Municipal Services Agency/Administrative Services Agency (ASA)	6-7
7.	DHHS, DHA	6-11
8.	Sheriff	6-12
9.	Sheriff and DHHS (Correctional Medical Services).....	6-13
10.	Airports	6-13
11.	Regional Parks	6-14
12.	Public Defender and District Attorney – Expert Witness Services	6-15
13.	County Counsel	6-15
14.	Coroner	6-15
15.	Economic Development.....	6-15
6.05	MINOR PURCHASES OF GOODS OR SERVICES	6-16

CHAPTER 6 – DELEGATED CONTRACT AUTHORITY

6.01 OVERVIEW

A department's authority to contract is presently limited to those County officers who are authorized by the Sacramento County Code. Sacramento County Code Chapter 2.61 delineates the types of contracts that County officer's may sign. A copy of Chapter 2.61, including the amendments relating to County Counsel review is attached as Appendix B.

NOTE: There are frequent amendments to Chapter 2.61 throughout the year. Therefore, Departments should verify contract authority with County Counsel or reference Chapter 2.61.

Chapter 2.61 delegates contracting authority for certain types of contracts. The type of contract must be specifically authorized by Chapter 2.61 for a department director to have signature authority. The Board of Supervisors must approve all other contracts or specifically delegate signature authority.

Section 71-J contracts are not included within the authority delegated by Chapter 2.61.

6.02 EXCLUDED CONTRACTS

The departments have no authority to execute or approve the following type of contracts:

1. Section 71-J contracts
2. Contracts for legal services

NOTE: County Counsel, by virtue of Charter authority, may contract for legal services.

6.03 BASIC REQUIREMENTS

1. Monetary Limits – The contract must be within the specified monetary limit set for each Department or Agency by Chapter 2.61. The specified limit, not the source of funds, is controlling.

a. Amendments - Any contract authorized pursuant to Chapter 2.61 or approved by the Board of Supervisors may include a provision authorizing adjustment of the contract amount by the County Executive, Chief Operations Officer, Agency Administrators or applicable department director, provided that the amendment does not exceed the lesser of 10% of the annual contract amount or \$25,000. All such amendments must be reported in accordance with Section 2.61.012. (Rev. 11/25/13)

2. Excluded Contracts – No officer or employee is authorized to execute any contract for the provision of services which the County Charter or State law requires to be provided by County personnel, unless such contract has been approved by the Board of Supervisors. Section 71-J contracts are not included in the delegated contract authority. Contracts for legal services are not within a department's delegated authority.

3. Submission to Auditor – Contracts approved pursuant to Chapter 2.61 must be submitted to the Auditor prior to payment of such contracts.

4. Semi-Annual Report Required – Any department that executes a contract pursuant to Chapter 2.61 must make a semi-annual report to the Board regarding all contracts approved in that period. For the period January 1 through June 30 of each year, the semi-annual report must be submitted to the Board not later than August 15; for the period July 1 through December 31, the report must be submitted to the Board not later than February 15. Such reports must also be filed with the Auditor. The report must include the amount of each contract, with whom the contract has been entered, the subject matter of the contract and the term of the contract.

5. Identification of Contract Authority – All contracts executed pursuant to Chapter 2.61 must identify the specific section under which such contract is being executed.

6. No Splitting – Departments are prohibited from splitting or separating contract services into smaller units of purchase in order to evade monetary limitations.

A renewal of a contract with the same provider and for the same services in a different fiscal year than the original contract does not constitute splitting.

7. Amendments – If amended, the total monetary amount of the contract, including the amendment, cannot exceed the monetary limit specified in Chapter 2.61. Notwithstanding those limits, any delegated contract or contract approved by the Board of Supervisors may include a provision authorizing adjustment of the contract amount by the County Executive, Chief Operations Officer, Agency Administrators or applicable Department Director, provided that the amendment does not exceed the lesser of 10% of the annual contract amount or \$20,000. All such amendments must be reported in accordance with subsection (4) above. (SCC §2.61.440.) Absent inclusion of this provision in the contract, there is no delegated authority to amend a contract beyond the monetary limit specified in Chapter 2.61. (Revised 11/7/13)

8. Indemnification Required – All contracts must require the contractor to indemnify the County for any and all damages, claims or liabilities arising out of the contractor's malfeasance or negligence in performance of the identified services, unless specifically waived by the County's Risk Manager.

9. Insurance Required – All contracts shall require maintenance of insurance in such amount as determined necessary by the County's Risk Manager.

10. Delegation to Subordinate – If a department director delegates contract authority to a subordinate, the delegation is not effective until written notice is filed with the Clerk of the Board of Supervisors and the Director of Finance. The notice must identify the subordinate to whom contract authority has been delegated, by name and job classification. Delegation remains effective until written notice has been filed with the Clerk of the Board of Supervisors and the Director of Finance changing or rescinding such delegation or until the person to whom such authority has been delegated no longer holds the specified job classification.

11. County Counsel Review – Certain delegated contracts must be reviewed and approved by County Counsel. See Chapter 2 for discussion of this issue.

6.04 TYPES OF DELEGATED CONTRACTS. The following constitutes a summary of the types of contracts that are specifically authorized. The provisions of Chapter 2.61 should be reviewed for detailed requirements relating to the delegated contract authority. The discussion below of delegated contract authority does not purport to cover all contracts delegated pursuant to Chapter 2.61.

NOTE: Any type of contract identified in Chapter 2.61 that is for County Services is subject to the requirements of Section 71-J and may not be executed by the Departments.

1. General Authority – Departments may contract for employee training services or programs administered by the Department and for expert analysis, advice or assistance in the planning, design, development, operation, implementation, organization or rendition of services as required to administer department functions.

2. County Executive

a. County Executive may retain firms or individuals to provide: 1) employee training services; 2) expert analysis, advice or assistance in the planning, design, development, operation, implementation, organization or rendition of County services, programs or projects; or, 3) other expert services as required to administer functions of the County Executive's Office. The monetary limit of such contracts is \$175,000. (SCC §2.61.015.)

NOTE: Subject to the monetary limits established by Chapter 2.61, the County Executive may execute contracts for departmental services when the contract exceeds the department's authority. However, the department and the County Executive may not both execute a contract with the same contractor for the same services.

b. County Executive may exercise emergency contracting authority that has otherwise been delegated to County officials pursuant to SCC Section 2.56.040 (purchasing) and SCC Section 2.61.056 (public works) only in the absence or other unavailability of officials to whom such authority has been directly delegated, subject to

the same conditions and restrictions as would be applicable to the officials to whom such authority is directly delegated.

c. County Executive is prohibited from contracting for the same services by the same individual or firm as have been contracted for by the Agency Administrators or Directors included within the respective agencies, or the Purchasing Agent.

3. Agency Administrators

a. All Agency Administrators are authorized to retain firms or individuals to provide: 1) employee training services; 2) expert analysis, advice or assistance in the planning, design, development, operation, implementation, organization or rendition of County services, programs or projects; or, 3) other expert services as required to administer functions of their respective Agencies. The monetary limit of such contracts is \$75,000. (SCC §2.61.017; SCC §2.61.070.)

NOTE: Subject to the monetary limits established by Chapter 2.61, the Agency Administrator may execute contracts for departmental services when the contract exceeds the department's authority. However, the department and the Agency Administrator may not both execute a contract with the same contractor for the same services.

b. Agency Administrators are prohibited from contracting for the same services by the same individual or firm as have been contracted for by the County Executive or Directors included within the respective agencies, or the Purchasing Agent.

c. Agency Administrators may not use their authority to amend a department-initiated agreement if the amendment would exceed the department's delegated authority. The amendment must be approved by the Board of Supervisors.

4. Chief Fiscal Officer, Chief Operations Officer and Chief Information Officer

a. Chief Fiscal Officer, Chief Operations Officer and Chief Information Officers are authorized to retain firms or individuals to provide: 1) employee training services; 2) expert analysis, advice or assistance in the planning, design, development, operation, implementation, organization or rendition of County services, programs or projects; or 3) other expert services as required to administer department function.

b. Chief Fiscal Officer, Chief Operations Officer and Chief Information Officer have contract authority of \$75,000.

c. Chief Fiscal Officer and Chief Information Officer are prohibited from contracting for the same services by the same individual or firm as have been contracted for by the County Executive, the Agency Administrators or the Departments included within the agencies, or the Purchasing Agent.

d. Chief Information Officer is authorized to contract with other governmental entities to recover costs associated with providing access to county computer applications and information technology services provided by DTech at the request of county departments.

5. Revenue Applications, Plans and/or Agreements

a. The County Executive, County Counsel, Chief Operations Officer, Agency Administrators, Chief Information Officer, Director of Airports and Director of Economic Development, and their designees, may execute contracts, and any preliminary documents necessary for the execution of such contracts, for the receipt of revenues by the County, provided that the Board of Supervisors has previously authorized the programs or projects for which such revenues are intended. Such programs or projects may be authorized by the Board: 1) by approving such program or project in the departments' budget for the current fiscal year; or, 2) through an agenda item brought before the Board for consideration. (SCC §2.61.090(a).)

NOTE: Departments are not authorized to execute any contract for the receipt of revenues if such contract: 1) provides revenues for the creation of new county positions for the performance of the contract unless those new positions have been authorized by the Board; 2) attaches substantive terms and conditions affecting projects or programs other than those for which revenues are being received unless first authorized by the Board; 3) requires the expenditure of funds in addition to the revenues received; or 4) contains an indemnity provision in a form that has not been previously approved by either the County Risk Manager or County Counsel. (SCC §2.61.090(b).)

6. Municipal Services Agency (MSA)/Administrative Services Agency (ASA)

a. **Acquisition of interests in real property** – MSA and ASA Administrators may acquire, in the name of the County, by negotiated purchase or through settlement of eminent domain, interests in real property for any agency or department of the County and take relocation assistance actions related thereto subject to the following limitations:

(i) May acquire such interests by contract, stipulated judgment or other appropriate instrument.

(ii) If the total cost of acquisition does not exceed \$25,000; but may contract for any improvement to property remaining in private ownership pursuant to a negotiated purchase or settlement or necessary as a result of emergency, in order to reduce or eliminate severage or other damages.

(iii) Notwithstanding the above, may not enter into any lease of real property for use by the County if the firm lease term is longer than 3 years and rental payments exceed \$2,500 per month.

(iv) Notwithstanding any other provision, may acquire interests in real property for the use and purpose of County highways so long as the total cost does not exceed \$50,000.

(v) In acquiring interest in real property, the Administrators must be guided by the standard of fair market value as determined by real property appraisers and the advice of County Counsel regarding the expense and risks of eminent domain or other litigation. (SCC §2.61.020.)

b. Conveyance of Surplus Property - If the Board of Supervisors determines that any real property belonging to the County is no longer necessary for County, or other public purposes, that property may be sold, exchanged, quitclaimed or conveyed on terms and conditions approved by the Board of Supervisors without compliance with formal bidding procedures provided that:

(i) Notice is given.

(ii) The estimated value does not exceed \$10,000.

Final acceptance of a bid by the person conducting the sale is subject to Board of Supervisors approval by resolution. Any such transfer shall be in writing and shall be approved by County Counsel. (SCC §2.61.021.)

c. Retention of Real Estate Experts – MSA and ASA Administrators may retain appraisers and other real estate experts at negotiated usual and customary fees for the provision of real estate advice and services so long as the total cost per contract does not exceed \$50,000. (SCC §2.61. 030.)

d. Relocation Assistance – MSA and ASA Administrators may compensate eligible parties for moving costs, business or farm relocation expenses or other relocation assistance entitlements necessary under applicable statutes, in connection with acquisition of interests in real property so long as the combined costs of such relocation assistance items for a single residential or business relocation do not exceed \$50,000. (SCC §2.61.040.)

e. Building Service Contracts – MSA and ASA Administrators may engage independent contractors to provide real estate maintenance responsibility, including janitorial, repair, remodeling, landscape services and similar related services so long as the total cost does not exceed \$50,000 and monthly service contracts must be cancelable at the discretion of the County. (SCC §2.61.050.)

f. Cooperative Reimbursement Agreements – MSA and ASA Administrators may negotiate and execute cost reimbursement agreements for public facilities with developers, contractors or consulting engineers if: 1) the subject of the agreement is work covered by and performed in accordance with Section 4 (Streets) of

the County Improvement Standards; 2) the work is work for which the County has responsibility for cost participating pursuant to such Section 4; 3) the funds have been appropriated in the current County budget; and, 4) the individual agreement does not exceed \$50,000. (SCC §2.61.051.)

g. Small Highway Projects – MSA may negotiate and contract for small projects for any work to be done on any County highway in accordance with Public Contract Code Section 20394 so long as such agreements do not exceed the statutory limit of Public Contract Code Section 20394 (\$25,000). (SCC §2.61.053.)

h. Small Bridge Projects – MSA may negotiate and contract for the construction, maintenance, and repair of County bridges in accordance with Streets and Highways Code Section 1331 and Public Contract Code Section 20409 so long as the amount of such agreement does not exceed the \$25,000 statutory limit of Public Contract Code Section 20394. (SCC §2.61.054.)

i. Highway and Bridge Projects – MSA may contract for work to be done on any County highway or bridge on notice describing the work in general terms and stating a closing date for submission of bids in accordance with Public Contract Code Section 20394.5. The faithful performance, labor and material bonds must be 100% of the contract amount unless MSA determines that a lesser amount is sufficient for a specific project or that bonding is not compatible with the specific project. Such agreements shall not individually exceed the \$50,000 statutory limit of Public Contract Code Section 20394.5. (SCC §2.61.055.)

j. Emergency Contracts – MSA and ASA Administrators may negotiate and contract for necessary equipment, materials and services without advertising for bids when public interest and necessity demand immediate action, repair or replacement to safeguard life, health, or property, to permit the continued conduct of County operations or services, and to mitigate further damage in accordance with Public Contract Code Sections 20134, 20395(e) and 20407. Such agreements shall not individually exceed \$175,000. Upon award of such contract, MSA/ASA must present a report to the Board of Supervisors at the next available meeting of the Board, describing the emergency, the actions taken, and the number and amount of contracts let.

If the potential cost may exceed \$100,000, MSA/ASA may immediately retain a contractor for initiation of the necessary emergency services and, at the next available Board meeting, present a report and include the additional remedial actions that have been identified and the currently estimated cost. The Board may contract for the additional emergency services or authorize the Administrator to negotiate and execute an amendment to the original contracts or let additional contracts within limits established by the Board. (SCC §2.61.056.)

k. Changes in Construction Contracts – MSA and ASA Administrators may order changes, alterations, or additions to work being performed under construction contracts and execute such change orders in accordance with Public Contract Code

Section 20142. The change orders issued and executed shall be in accordance with the monetary limits stated in Public Contract Code Section 20142, except that any such change or alteration shall not exceed \$210,000. (SCC §2.61.057.) Pursuant to Public Contract Code Section 20142(a), the extra cost for any change or addition shall not exceed \$5,000 when the total amount of the original contract does not exceed \$50,000, nor 10% of the amount of any original contract that exceeds \$50,000, but does not exceed \$250,000. (Rev. 4/11/17)

NOTE: Airport Change Orders-The Director of Airports may be authorized on to order changes, alterations, or additions of work being performed under construction contracts for improvements to capital facilities of the Airport System and to execute and authorize payment of such change orders by the terms of any contract which specifically provides for such authority and payment in accordance with Public Contract Code Section 20139. No changes, alterations or additions to the work shall be approved by the Director unless they have been reviewed and approved as to conformance with technical standards by the Director of County Engineering or his or her designee. (Rev. 5/1/09)

I. Construction Contracts of \$100,000 or Less – MSA and ASA
Administrators may award contracts for public projects or maintenance work as defined by Public Contract Code Section 22002 so long as the total cost is \$100,000 or less. (SCC §2.61.058.)

m. Construction Contracts in Excess of \$100,000. - MSA and ASA
Administrators may award contracts for the construction or maintenance of public projects in excess of one hundred thousand dollars (\$100,000.00) but less than \$5 million, the plans and specifications for which have been approved by the Board of Supervisors, upon the following conditions:

- (i) Bids for the work are received and the lowest responsible bid is equal to or less than the engineer's public estimate of the project cost;
- (ii) No bid protest is received during the applicable protest period;
- (iii) No third party protest to the award is received; and
- (iv) For those contracts to which federal disadvantaged business enterprise (DBE) requirements are applicable, the lowest responsible bidder has met all required DBE participation levels.

After bids are received and within the time period available for bid protests, written notice of intent to award a contract shall be provided to the Clerk of the Board of Supervisors who shall include such notice as communication received on the next available public agenda for the Board of Supervisors. (SCC §2.61.059) (Rev. 5/1/09)

n. Sub-Delegation - The MSA and ASA Administrators may delegate the authority conferred by Sections 2.61.020-.022, 2.61.030, 2.61.040 and 2.61.050 to a

subordinate within the Agencies or Department who is charged with the responsibility for acquiring real estate for the County. The Administrators may delegate the authority conferred by Sections 2.61.051, 2.61.052, 2.61.053, 2.61.054 and 2.61.055 to a subordinate within a Department of the Agency who is charged with the responsibility for the planning, design, construction, repair and maintenance of the subject facilities. (SCC 2.61.060)

o. Retention of Experts and Consultants on Public Works. MSA and ASA Administrators may retain firms or individuals to prevent expert advice or assistance in the planning, design, construction, testing, or inspection of public works projects or other consulting services, including but not limited to engineering, architectural, financial, economic, insurance, personnel, staffing, investigative and training as required to administer public work functions. Experts shall be retained at or below negotiated usual and customary fees. The amount of any such contract executed by either the MSA or ASA Administrator shall not exceed \$250,000. The amount of any such contract executed by a designee of the MSA or ASA Administrator shall not be greater than \$100,000. (SCC §2.61.070.)

7. Departments of Health and Human Services, Behavior Health and Human Assistance (DHHS, DHA)

a. Open Enrollments – Departments may approve open enrollment of providers for delivery of social services, medical services, pharmacy services, mental health services, child protection and family preservation services, adult protection services and other services that support those programs and functions administered and/or operated by Departments so long as the Board of Supervisors has first authorized, by annual resolution, that such services be provided for those programs and functions through an open enrollment procedure. All providers who apply and are qualified shall be enrolled. Provider service enrollments shall provide for unit rates and/or other charges at or below those which are usual or customary, and utilization shall be pre-authorized and monitored by Departments. All referrals shall be made on a non-preferential basis except as to price and location for patient convenience. (SCC §2.61.080.)

b. Service Delivery, Consultant and Training Contracts – Departments may enter into contracts for:

(i) Delivery to the County or members of the public or subclasses thereof, diagnostic, therapeutic, treatment, training, nutritional, hygienic, laboratory and other related services within the fields of public health, mental health services, social services, public assistance, employment and training services, veterans services, housing services, senior programs, child development centers, and brief services if: 1) the Board of Supervisors has approved the provision of such services and has authorized funds therefor as evidenced in the current approved budget for the respective Department or subsequent amendments to it; and, 2) the contractor is: a) a legal entity with

which the County has contracted in the preceding fiscal year if payments to that contractor were reported to the Board of Supervisors pursuant to section 2.61.012(d), and that contractor will receive either a similar or annualized amount for the current fiscal year; or b) a legal entity identified by name and contractual amount in the final budget approved by the Board of Supervisors for the fiscal year in which the contractual services are to be rendered; or c) a health professional or other individual or entity whose compensation is paid on an hourly basis in amounts which do not exceed either usual and customary rates in Sacramento County or \$100 per hour, whichever is less. (SCC §2.61.100(a)(1).)

(ii) Provision of such services authorized by the Board by resolution or minute order specifying any payment limitation therefor, following approval of the County's final budget in any given year. (SCC §2.61.100(a)(2).)

(iii) Any of the above contracts must contain a provision authorizing adjustment of the contract amount or termination of services if the funding therefor is increased, decreased or eliminated in the County's final budget for the fiscal year in which the contractual services are to be rendered. (SCC §2.61.100(b).)

(iv) The Departments may execute amendments to increase the amount of the above contracts if: a) an increase in the contract amount resulting from said amendment does not exceed 10% of the maximum amount of the original contract or \$20,000, whichever is less; and, b) funding for the increased contract obligation is available within the Departments' allocated budget for that fiscal year. (SCC §2.61.100(c).)

(v) With the exception of revenue contracts, all of the above contracts shall be for a term not to exceed 12 consecutive months and shall be terminable at any time by the County on 30 days advance notice. (SCC §2.61.105(a).)

(vi) All of the above contracts shall contain a provision indicating the authority under which the Departments are executing such contracts and shall cite the authorizing resolution, minute order or approved budget item. (SCC §2.61.105(b).)

8. Sheriff

a. General – As a general rule, the Sheriff's Department does not have contracting authority. All contracts, except those identified in subsection (b), must be approved by the Board of Supervisors. (SCC §2.90.530.)

b. Open Enrollments – The Sheriff may approve open enrollment of providers for delivery of social services, medical services, pharmacy services, mental health services, and other services that support the correctional health programs and functions administered and/or operated by the Sheriff so long as the Board of

Supervisors has first authorized, by annual resolution, that such services be provided for those programs and functions through an open enrollment procedure. All providers who apply and are qualified shall be enrolled. Provider service enrollments shall provide for unit rates and/or other charges at or below those which are usual or customary, and utilization shall be pre-authorized and monitored by the Sheriff's Department. All referrals shall be made on a non-preferential basis except as to price and location for patient convenience. (SCC §2.61.080.)

9. Sheriff and DHHS (Correctional Medical Services) - Claims from DHHS and the Sheriff for medical services may be presented for payment by the auditor without a written contract if a) the invoice relates to medical services that have been provided to an individual for whom an Intent to Incarcerate form has been completed; b) the medical services do not exceed the amount of \$2,500; and c) the completed Intent to Incarcerate form is attached to the invoice submitted to the Auditor accompanied by a memorandum stating that such form is complete and accurate.

10. Airports

a. General Authority. Airports may retain firms or individuals to provide 1) employee training services; 2) expert analysis, advice or assistance in the planning, design, development, operation, implementation, organization or rendition of County services, programs or projects; or 3) other expert services as required to administer department function. Such authority shall not extend to agreements for engineering and architect services. Experts shall be retained at or below negotiated usual and customary fees. No such contract shall be in excess of \$75,000. (SCC §2.61.160).

b. Retention of Appraisers for Airport Property – Airports may retain real property appraisers and other experts, excluding engineers and architects, at negotiated usual and customary fees for the provision of valuation advice with respect to establishing rents for real property at the airport or to arbitrate or to present expert testimony during trial proceedings as to the rent for such property so long as such fees do not exceed \$50,000. (SCC §2.61.170.)

b. Airport Agreements for Mutual Aid in Fire Protection – Airports may contract for mutual aid in fire protection with other public entities having firefighting equipment and personnel provided that such agreements are subject to termination upon reasonable notice, not exceeding 30 days. (SCC §2.61.180.)

c. Leases - Concerning property held by the County ultimately for airport use, the County's Director of Airports may negotiate the terms and conditions and may execute on behalf of the County leases which are subject to the provisions of Section 2.62.015 (non-residential); provided, such leases do not exceed three (3) years in duration and \$2,500 in monthly rental, except that such airport property leases which are primarily for agricultural uses shall be negotiated as to terms and conditions by the Administrator of the MSA Agency or designee. (SCC §2.62.020.) With respect to commercial and industrial buildings, the County's Director of Airports may negotiate the

terms and conditions and may execute on behalf of the County leases which are subject to the provisions of Section 2.62.015; provided, such leases do not exceed three (3) years in duration and \$2,500 in monthly rental. (SCC §2.62.025.)

11. Regional Parks

a. Concession and Recreation Planning Program Development

Agreements – Regional Parks may execute concession agreements not to exceed \$5,000 and contracts for recreation planning program development not to exceed \$10,000 provided that the term of such contracts shall not exceed one year. (SCC §2.61.110(b).)

b. Special Recreational Service Contracts – Regional Parks may contract with individuals or organizations for the purpose of planning, organizing, carrying out and working in recreational programs, including, but not limited to, classes, athletic clinics and tournaments, crafts and craft exhibits if:

- (i) the individuals or organizations have a non-exclusive right of operation;
- (ii) the service, activity or program is performed or conducted within the boundaries of the County;
- (iii) the total amount paid for all of the service contracts is limited to the amount budgeted by the Board of Supervisors for that use;
- (iv) the rate of compensation does not exceed the rate that prevails in the community for comparable services;
- (v) when compensation is determined by a percentage of the revenue or fees collected, the compensation shall not exceed 75% of the revenue or fees collected;
- (vi) the compensation does not exceed \$1,000 in any calendar month;
- (vii) the contract does not exceed 12 months and may be terminated by either party on 30 days written notice. (SCC §2.61.120.)

c. Special Use Permit – Regional Parks may issue a special use activity permit to any requesting person subject to space availability and compatibility of the activity intended and public recreation use. Such permits entitle the holder to a temporary exclusive right to occupy, use or conduct recreational activities on County park property for the period of time designated, but not to exceed 7 days. (SCC §2.61.130.)

d. Residential Caretaker Leases – Regional Parks is authorized pursuant to Government Code Section 25537 to lease without charge residential sites on or in

County parks to individuals who in consideration for the lease agree to perform temporary and incidental caretaker services on the park sites. Such leases shall not exceed a rental value of \$1,000 per month or a term of 5 years. The lessee is required to perform services under the terms of the lease not to exceed 80 hours in any calendar month in exchange for the monthly rental. (SCC §2.61.140.)

e. Leases – Concerning property held by the County ultimately for park or recreation uses, the County’s Director of Regional Parks, Recreation and Open Space may execute on behalf of the County leases which are subject to the provisions of Section 2.62.010; provided, such leases do not exceed three (3) years in duration and \$2,500 in monthly rental, except that such park or recreation property leases which are primarily for agricultural uses shall be negotiated as to terms and conditions by the Administrator of the Municipal Services Agency or designee. (SCC §2.62.020.)

12. Public Defender and District Attorney – Expert Witness Services – The Public Defender and District Attorney may engage expert witness services in connection with any pending criminal defense or prosecution. Such engagement may be made without a formal contract. Payment of claims for expert witness services, if there is no written contract for such services, must include an invoice for such services; a signed approval of such invoice by the Public Defender or District Attorney; and a memorandum from the Public Defender or District Attorney stating that expert witness services were utilized to assist in the defense or prosecution of a criminal case or criminal cases. Absent such information, the Auditor shall not pay a claim for expert witness services. (SCC §2.61.365.)

13. County Counsel - County Counsel may contract for employee training services or programs administered by the Department and for expert analysis, advice or assistance in the planning, design, development, operation, implementation, organization or rendition of services as required to administer department functions. No such contract shall provide or authorize fees greater than \$75,000. (SCC §2.61.300).

14. Coroner - The Coroner may contract for employee training services or programs administered by the Department and for expert analysis, advice or assistance in the planning, design, development, operation, implementation, organization or rendition of services as required to administer department functions. No such contract shall provide or authorize fees greater than \$25,000. (SCC §2.61.295)

15. Economic Development - The Director of Economic Development may contract for employee training services or programs administered by the Department and for expert analysis, advice or assistance in the planning, design, development, operation, implementation, organization or rendition of services as required to administer department functions. No such contract shall provide or authorize fees greater than \$75,000. (SCC §2.61.320)

6.05 Minor Purchases of Goods or Services

1. The County Executive, the Chief Operations Officer, all Agency Administrators, all Department Directors and their designees are authorized to purchase goods and services which would otherwise be authorized by a Department Field Order or Limited Purchase Order, but which were not procured by either. No such purchases shall exceed \$5,000. Purchases under \$1,000 require approval of the Department Director. Purchases over \$1,000 require also require approval of the Directors of Finance and General Services.

a. Requests for payment must be made to the Department of Finance and must include a verification of the order, the purchase invoice, an explanation of the request and the written approval by the person authorized to make the purchase. The order and the invoice shall constitute the contract between the County and the vendor.

b. This delegation is for exceptions only. Departments are expected to continue to utilize appropriate procurement practices such as DFOs, LPOs and contract service orders. The Directors of Finance and General Services will monitor the use of this delegation and will recommend that the County Executive rescind a department's authority if it is determined that the department is by-passing the official procurement policies and procedures.

2. The County Executive, the Chief Operations Officer, All Agency Administrators, all Department Directors and their respective designees are also authorized to make purchases of goods and services which would not otherwise qualify for a DFO, Contract Service Order or LPO, but which are otherwise required for their operations. Purchases may not exceed \$5,000. Purchases under \$1,000 require approval of the Department Director and purchases over \$1,000 also require approval of the Directors of Finance and General Services.

a. This delegation is for exceptions only. Departments are expected to continue to utilize appropriate procurement practices such as DFOs, LPOs and contract service orders. The Directors of Finance and General Services will monitor the use of this delegation and will recommend that the County Executive rescind a department's authority if it is determined that the department is by-passing the official procurement policies and procedures.

b. Requests for payment must be made to the Department of Finance and must include a verification of the order, the purchase invoice, an explanation of the request and the written approval by the person authorized to make the purchase. The order and the invoice shall constitute the contract between the County and the vendor.

3. The County Executive, the Chief Operations Officer, all Agency Administrators and all Department Directors and their respective designees are authorized to use County resources to support community and business development functions or events, including but not limited to, sponsorships of events, purchases of

seats or tables at such events, admission to such events and meals at such events. Expenditures are subject to the following limits: County Executive: \$25,000, Chief Operations Officer, Agency Administrators, Chief Information Officer, Director of Airports, Director of Department of Economic Development and Intergovernmental Relations: \$10,000; all other Department Directors: \$5,000.

a. Requests for payment shall be made to the Department of Finance and must include a verification of the order, the receipt of the purchase, an explanation of the request and the written approval by the person authorized to make the purchase. The invitation or announcement of the function or event and the receipt of payment shall constitute the contract for the expenditure.

4. For all such expenditures, a semi-annual report shall be submitted to the Director of Finance and to the Director of General Services containing an itemized listing of such expenditure. (SCC §2.61.450.)

TABLE OF CONTENTS

	<u>Page</u>
CHAPTER 7 – PUBLIC WORKS CONTRACTS.....	7-2
7.01 PUBLIC WORKS CONSTRUCTION CONTRACTS.....	7-2
1. Definition of Public Works	7-2
2. Compliance with Statutory Requirements Necessary	7-2
3. Advertisement	7-3
4. Statutory Requirements or Restrictions.....	7-3
5. Lowest Responsible Bidder.....	7-4
6. Bid Protests.....	7-4
7. Payments	7-4
7.02 UNIFORM COST ACCOUNTING ACT.....	7-4
7.03 DESIGN BUILD CONTRACTING	7-4
7.04 SURETY (BONDING)	7-4
1. Bid Bonds.....	7-5
2. Performance Bonds	7-5
3. Payment Bonds.....	7-5
7.05 PREVAILING WAGE.....	7-5

CHAPTER 7 – PUBLIC WORKS CONTRACTS

7.01 PUBLIC WORKS CONSTRUCTION CONTRACTS

1. Definition of Public Works – The County faces comprehensive public contracting statutes when undertaking construction projects. Public contracting statutes apply, generally, to “public works contracts” defined as “an agreement for the erection, construction, alteration, repair or improvement of any public structure, building, road or other public improvement of any kind.” An “alteration, repair or improvement” of a public structure includes the installation of fixtures such as machinery, telephone equipment and wiring.

In public works contracting, the purpose of competitive bidding is to provide taxpayers with the lowest price and best quality construction for public projects by guarding against fraud, corruption, and favoritism by public officials responsible for awarding construction contracts. Statutes provide specific detailed rules concerning the preparation of bid documents, the information required for bidders, the standards by which the bids are reviewed and the ultimate decision to award the contract.

2. Compliance with Statutory Bidding Requirements Necessary – Public Contracts Code sections 20120-220145 cover all aspects of County construction contracts, including competitive bidding. Most public construction contracts require bidding procedures. If compliance with competitive bidding is required, compliance with the relevant statute is mandatory. Non-compliance with the required bidding procedure voids the contract and the public entity may not pay the contractor. (*Konica Business Machines USA, Inc. v. Regents of the University of California* (1986) 206 Cal.App.3d 449, 456 (“contracts awarded without strict compliance with bidding requirements will be set aside”).)

Special procedures apply to job order contracts. For repairs, remodeling or other repetitive work to be done according to unit prices, the Board of Supervisors may award contracts of \$3 million or less (adjusted from 1997 to reflect the California Consumer Price Index). Public Contracts Code 20128.5. For job order contracts, the contract documents contain a catalog of pre-priced construction tasks. The bidders bid an adjustment factor and the lowest adjustment factor is the basis for award. Job orders are given to the successful bidder as needed or desired throughout the year for construction tasks at the bid price.

As a general rule, the County may not accept any bids that deviate from specification, even if substantially lower in price. However, if the deviation is a minor irregularity (an irregularity is a mistake that does not give or provide a bidder with a substantial economic advantage or benefit not afforded the other bidders), the County may waive the irregularity. However, it is not required to do so, if it reserves that right in the bid documents.

Note: Every two to three years, the Board of Supervisors adopts its Standard Construction Specifications, with the General Provisions governing the basic contract items, including the right to reject all bids, waive irregularities and similar provisions. These specifications are always included in every County construction contract.

It is also unlawful any county to split or separate into smaller projects any public work project for the purpose of evading the competitive selection requirements. (Public Contracts Code §20123.5.)

3. Advertisement – The County must advertise for bids and must open bids publicly. (Public Contracts Code §20125.)

4. Statutory Requirements or Restrictions - Various statutory requirements or restrictions are mandated for public works contracts, including but not limited to the following:

a. The classification of the particular required contractor's license(s) must be included in the plans and in the notice inviting bids.

b. The notice inviting bids and the contract must include a statement that prevailing wages shall be paid in accordance with the prevailing wage rates included with the contract or on file at the County and posted at the job site.

c. It is a misdemeanor to split any public work project into segments to avoid competitive bidding.

d. Specifications must require that a prime contractor provide certain information about each subcontractor whose work exceeds one-half of one percent of the prime contractor's bid and the portion of the work that will be done by each subcontractor. This is intended to avoid bid shopping. Failure to so specify means that the prime contractor must perform that portion of the work with its own forces. Substitutions for a listed subcontractor are only for specified reasons and subject to the consent of the County.

e. Methodologies for determining the lowest bid are prescribed by statute

f. Addenda (corrections to ambiguities and errors in the bid solicitation) may be added to the contract before bid opening, but material changes require the extension of the date and time of bid opening if the addenda are added within 72 hours of bid opening.

g. To provide security for completion of performance of performance of public construction projects, a withhold of a portion of progress payments is required.

5. Lowest Responsible Bidder – The competitive bidding statutes generally require the County to award the contract to the “lowest responsible bidder.” (Public Contracts Code §20128.) “Lowest responsible bidder” means the lowest bidder whose offer best responds in quality, fitness and capacity to the particular requirements of the proposed work. (2 Dillon, Municipal Corporations §811 (5th ed).) Therefore to avoid an award to the lowest responsible bidder, the County would have to deem the low bidder not responsible. To reject a low bid for the reason that the bidder is not responsible, the County must conduct a hearing and make that finding. The County has no power to reject a low bid because another bidder is more responsible.

6. Bid Protests - When a competitive bid award is challenged, the contract may be entered into pending a final decision on the challenge. Public Contracts Code §5110. If the award is determined to be invalid because of the sole error of the County, the contractor which was awarded the contract is entitled, under certain circumstances, to be paid the reasonable cost, excluding profit, of the work and materials furnished prior to the date of determination of contract availability.

7. Payments - The County must make each progress payment within 30 days after receipt of an undisputed and properly submitted payment request. Within 60 days after completion of the work, the retention or amount withheld must be released.

7.02 UNIFORM PUBLIC CONSTRUCTION COST ACCOUNTING ACT (CUPCCA)– Under the provisions of Public Contracts Code section 22030 – 22045, the County may elect to follow uniform construction accounting rules and utilize alternative bidding procedures for certain public works construction contracts. The Board of Supervisors has adopted the necessary ordinances and resolutions to implement these sections. Therefore, it may contract by negotiated contract or force account up to \$45,000 and by informal bidding procedures up to \$175,000. "Force account" means work performed by the County's own work force. (Rev. 4/11/17)

7.03 DESIGN BUILD CONTRACT – Public Contract Code section 20133 provides for an alternative procedure on bidding on building construction projects in excess of \$10 million if approved by the Board of Supervisors. Design-build construction is a project delivery method designed to speed up construction project delivery, while increasing quality and reducing price. Both the design and construction of a project are procured from a single entity in the procurement process. For projects with costs ranging from \$10-\$20 million, the contract shall be awarded to the lowest responsible bidder. For projects in excess of \$20 million, the County may award the project using either the lowest responsible bidder or by best value, i.e. a value determined by objective criteria, including but not limited to price, features, functions, life-cycle costs and other criteria deemed appropriate by the County.

7.04 SURETY (BONDING) - Various types of surety bonds are required on public works projects. Bid, Performance and Payment bonds are required on projects meeting certain criteria. Additional types of surety such as warranty, maintenance and public improvement bonds are necessary and appropriate.

1. **Bid Bonds** -Public Contracts Code §20129 allows for three types of bid security, one of which is a bond from an admitted surety insurer.

2. **Performance Bonds** - Public Contracts Code §20129(b) requires a bond to be approved by the Board of Supervisors "for the faithful performance of the contract." No monetary threshold is stated to trigger this require.

3. **Payment Bonds** - Civil Code §3247(a) requires a bond for expenditures in excess of \$25,000.00.

7.05 PREVAILING WAGE -Labor Code sections 1770 *et seq.* provide that for public works projects in excess of \$1,000, not less than the general prevailing rate of per diem wages for work of a similar character in the locality in which the public work is performed shall be paid to all workers employed on public works. Because the County has a labor compliance program, our limits are \$15,000/25,000 (for remodel/new work). This requirement applies only to work performed under contract and does not apply to work carried out by a public agency with its own forces. It also applies to contracts let for maintenance work.

TABLE OF CONTENTS

	<u>Page</u>
CHAPTER 8 - PURCHASING AGENT	8-2
8.01 AUTHORITY	8-2
1. General Authority	8-2
2. Purchase of Personal Property	8-2
3. Purchases of Services	8-2
4. Term of Contract	8-2
5. Board Approval of Certain Contracts.....	8-2
6. Delegation to Departments	8-3
7. County Counsel Review	8-3
8.02 COMPETITIVE SELECTION PROCESS.....	8-3
1. General Rule	8-3
2. Exceptions	8-3
3. Type of Competitive Selection	8-3
4. Awards	8-4
8.03 CHARTER SECTION 71-J AND PURCHASING AGENT	8-5
8.04 PURCHASING PROCEDURES	8-5
1. Board Policy	8-5
2. Delegated Purchase Order (DPO)	8-5

CHAPTER 8 – PURCHASING AGENT

8.01 AUTHORITY

1. General Authority – The County Charter and the County Code assign the responsibility for County purchases to the County Purchasing Agent. See the “Purchasing Authority” section of the Introduction To Contract & Purchasing Services Division guide.

a. Written Contract – All purchases shall be made by written contract unless purchased in accordance with procedures established by the Purchasing Agent.

b. Emergency Contracts – If an emergency occurs at times other than regular business hours and the services of the Purchasing Agent are not immediately available, emergency purchases may be made by departments. The purchases must be made by written contract and approved by and executed on behalf of the department. The emergency contract must be reported in writing to the Purchasing Agent as soon as possible, but no later than 10 calendar days after the purchase and must include an explanation of the nature of the emergency and the reasons necessitating the contract.

2. Purchase of Personal Property – The Purchasing Agent is authorized to make purchases of personal property.

3. Purchases of Services – The Purchasing Agent is authorized to enter into agreements by which independent contractors provide services, with or without the furnishing of material, to the County; however, that the amount of any such contract shall not exceed the (\$100,000) amount prescribed by Government Code Section 25502.5 or any other applicable statute. Any contract which is known at the time of bidding to exceed pertinent statutory limitations shall be subject to approval by the Board of Supervisors. Any other contract for such services let by the Purchasing Agent shall contain a provision that such contract terminates upon the date of provision of services or personal property or incurring of expenses the cumulative total of which equals said statutorily prescribed amount.

4. Term of Contract – The Purchasing Agent shall not let any contract for the rental or lease of personal property or the acquisition of services which exceeds three years. No such contract shall exceed one (1) year unless the Purchasing Agent finds, and such findings are recited in the body of the contract, that a term longer than one (1) year is required in order to promote efficiency and economy, or for other reasons that a term of one (1) year is otherwise impractical.

5. Board Approval of Certain Contracts – The County Purchasing Agent has the independent authority to enter into contracts on behalf of the County, but must obtain Board of Supervisors approval for contracts where: (1) the labor portion exceeds \$100,000 during any 12-month period, or, (2) the contract term exceeds three years.

6. Delegation to Departments –The Purchasing Agent delegates certain purchasing authority to departments to make purchases by using a contract shipping order, or a Delegated Purchase Order (DPO) . The Purchasing Agent makes purchases by using a contract shipping order or Purchase Order. See Section 8.04 of this Chapter for further discussion of this delegation.

7. County Counsel Review - Purchasing contracts are subject to County Counsel review if they are the type of contracts specified in Section 2.61.014 of the County Code. Those types of contracts are listed in Chapter 2 of this Manual.

8.02 COMPETITIVE SELECTION PROCESS

1. General Rule – Chapter 2.56 of the Sacramento County Code, which governs purchases, generally requires competitive proposals, but also provides for purchases to be made without the necessity for competitive bidding under certain circumstances. (SCC §2.56.230.)

2. Exceptions – Although purchases should be made by competitive bidding to the maximum extent practical, some purchases may be let without competitive bidding under defined circumstances. See the “Competitive Bidding Process & Exceptions (Sole Source) section of the Introduction To Contract & Purchasing Services Division guide. In accordance with SCC 2.56.250, such purchases include:

a. When the aggregate or cumulative price to be paid under the purchase contract is one hundred thousand dollars (\$100,000) or less, unless otherwise required by state law; or

b. When a patented or proprietary item is being purchased; or

c. In the event of an emergency; or

d. When the following types of personal property or services are being acquired, obtained, rented or leased: 1) advertising; 2) books, recordings, motions picture films, subscriptions; 3) election supplies; 4) insurance; 5) public utility services; 6) travel services; 7) property or services provided by or through other governmental agencies, or obtainable from suppliers which have in force a current contract with another governmental agency for the same item or service; or, 8) property or services the price of which is fixed by law; or

e. When the purchasing agent determines that making of a purchase without competitive proposals is reasonably necessary for the conduct of County business.

3. Type of Competitive Selection –The competitive selection requirement may be met by receipt of oral or written bids and quotes. The Purchasing Agent or department may choose the method of soliciting bids or quotes based on: a) the estimated total value of the purchase; b) the complexity of specifications; c) the

available time to meet a delivery date; d) the potential controversy of the purchase; e) the number of different items to be purchased; and, f) the need for more or less rigid terms and conditions.

4. Awards

a. Basis for Award – Awards shall be determined by and be based upon the best proposal, which in the discretion of the Purchasing Agent is the proposal which most adequately meets the needs of the County, officer, department, or using agency at the lowest price.

b. Additional Factors – In addition to price, the Purchasing Agent may consider the quality, availability and functional or other suitability of the personal property, or contractual services to the particular use intended. The Purchasing Agent may also consider other factors, including, but not limited to, the following:

- (i) the ability, capacity and skill of the bidder to perform the contract or provide the service required;
- (ii) whether the bidder can perform the contract or provide the service promptly or within the time specified, without delay or interference;
- (iii) the character, integrity, reputation, judgment, experience and efficiency of the bidder;
- (iv) the quality of performance of previous contracts or services;
- (v) the previous and existing compliance by the bidder with laws and ordinances relating to the contract or service;
- (vi) the sufficiency of the financial resources and ability of the bidder to perform the contract or provide the service;
- (vii) the ability of the bidder to provide future maintenance and service for the use of the subject of the contract, and;
- (viii) the number and scope of conditions attached to the bid.

c. Preference for Sacramento County Items - When two or more proposals of the sale, rental or lease of personal property are the same, the purchasing agent must give preference to the lowest responsible bidder within Sacramento County who offers to supply items raised, grown, manufactured, fabricated, processed or assembled in Sacramento County if price, quality, service and other factors are equal.

d. Preference to Local or Small Business Enterprises - A 5% price preference may be granted to self-certified local businesses and a 2% preference to State-certified micro-business enterprises as specified in the County's Procurement Opportunities Program Policy for contract executed by the Purchasing Agent. For details and limitations of the program, see Sacramento County Code Section 2.56, Article 4.

e. Personal Property – With respect to acquisitions of title to personal property or the use of personal property by rental, lease or otherwise, the best proposal shall, as to products which equally satisfy intended uses, be the one submitted by a responsible bidder at the lowest price. When two or more proposals for the sale, rental, or lease of personal property are the same, the Purchasing Agent shall give preference to the lowest responsible bidder within Sacramento County who offers to supply items raised, grown, manufactured, fabricated, processed or assembled in Sacramento County, if price, quality, service and other factors are equal.

8.03 CHARTER SECTION 71-J AND PURCHASING AGENT

Section 71-J applies to contracts for County services that are within the contracting authority of the Purchasing Agent. Thus, the Purchasing Agent's contractual authority, as well as any contracting authority delegated by the Purchasing Agent, is subject to the requirements of Section 71-J if the proposed contract is for County services.

If any of the provisions in Chapter 2.56 relating to the authority of the Purchasing Agent to contract for County services, conflict with the requirements of Section 71-J, Section 71-J governs. Thus, the Purchasing Agent and any department to which the Purchasing Agent has delegated authority must comply with the provisions of Section 71-J if the services purchased are County services, regardless of the monetary amount of such services.

8.04 PURCHASING PROCEDURES

1. Board Policy – Purchasing procedures are outlined in the purchasing procedure manual that was adopted by the Board on May 25, 1993.

2. Delegated Purchase Order (DPO) - Goods and non-professional services valued at \$5000 or less may be purchased through use of a DPO, and not by written contract, as long as such goods and services are not available on an existing contract and are not classified as a fixed asset or other items restricted by program. Orders may not be split and the DPO program is generally limited to single purchasing transactions for a specific commodity from a specific vendor.

TITLE III

CONTRACTING PROCESS

TABLE OF CONTENTS

	<u>Page</u>
CHAPTER 9 – INTRODUCTION	9-3
9.01 INTRODUCTION	9-3
9.02 IDENTIFICATION OF NEED	9-3
1. Important Factors	9-3
2. Decisions to be Made.....	9-3
9.03 DETERMINATION OF CIVIL SERVICE STATUS	9-3
9.04 DETERMINATION OF COST AND AVAILABILITY OF FUNDS	9-3
9.05 CONTRACTOR SELECTION METHOD	9-3
1. Important Factors	9-3
2. Decisions to be Made.....	9-3
9.06 COMPETITIVE SELECTION ISSUES	9-4
9.07 MONITORING AND PERFORMANCE MEASURES	9-4
1. Important Factors	9-4
2. Decisions to be Made.....	9-4
9.08 PROCESS REQUIREMENTS	9-4
1. Important Factors	9-4
2. Decisions to be Made.....	9-4
9.09 PAYMENT REQUIREMENTS	9-4

CHAPTER 9 – INTRODUCTION

9.01 INTRODUCTION

The following chapter gives a general overview of the contracting process. The process necessarily varies depending on the circumstances of the specific contract. This chapter is intended to assist departments in planning the contract process.

9.02 IDENTIFICATION OF NEED – The department should identify the need for good or service, whether the need is for a routine renewal of an existing essential service or the acquisition of new or unique services.

1. Important Factors – Nature of the service, type of service needed, necessity of service, when service needed, ongoing versus one time service, new or existing service, routine or extraordinary service.

2. Decisions To Be Made – Applicable internal procedures, possible or probable sources for goods or service, authority to approve.

9.03 DETERMINATION OF CIVIL SERVICE STATUS – The department should determine whether civil service employees must perform services. For a further discussion of the County's ability to contract for County services, see Chapters 4 and 5 of this Manual. If non-civil service employees may be used, either use the 71-J process or identify the services as a special service as defined in Government Code Section 31000.

9.04 DETERMINATION OF COST AND AVAILABILITY OF FUNDS – Departments should determine cost and availability of funds. Important factors to consider include: estimated costs of alternatives, funds available to pay for goods or services, best alternative available, authority to approve funding.

9.05 CONTRACTOR SELECTION METHOD – The department should determine which contractor selection method to use. The contractor selection method depends on the goods or services involved and/or the circumstances surrounding the contract. Different methods impose different requirements and procedures.

1. Important factors – The nature of the goods or services, when the goods or services are needed, whether it is an emergency situation, the estimated cost of the goods or services, availability of an already existing contracting source, and possible amendment of an existing contract.

2. Decisions to be made – Will the selection of the contractor be by formal competition (Request for Proposals, Invitation for Bid, Request for Qualifications), by informal competition (advertising, telephone bids, quotes) or by considering only one provider.

9.06 COMPETITIVE SELECTION ISSUES – If the department uses a competitive selection process, there are many factors and decisions involved. See Chapter 10 of this Manual for a further discussion of the competitive selection process.

9.07 MONITORING AND PERFORMANCE MEASURES – The department should build management mechanisms such as reports into the contract to facilitate measurement of achievement and measurement of contractor performance.

1. Important Factors – Identifying deliverables and ensuring satisfactory delivery, inclusion of a monitoring process in the contract, providing for audit, reviewing invoices for contract compliance, accuracy and prompt payment, identifying contract and contractor problems.

2. Decisions to Be Made – Did the contractor satisfactorily perform all required services? Should the contractor be paid or should the invoice be disputed? Is a formal evaluation needed or required? Should the services be continued or stopped? Should the contract be renewed or rebid? How can the contract or contracted services be improved?

9.08 PROCESS REQUIREMENTS – Once drafted, the department must process the contract for signature and approval.

1. Important Factors – Whether County Counsel or Risk Manager must review and approve the contract; the contractor must sign contract; either the Department head or the Board of Supervisors must approve the contract.

2. Decisions to be Made – Who approves the contract? Are special approvals required?

9.09 PAYMENT REQUIREMENTS

The contract should contain provisions detailing how the County will pay the contractor. It should delineate the manner of progress payments, whether and to what extent they will be allowed, and, if appropriate, known or estimated budgetary limitations on the contract price.

The contract should set forth how the amount of payment is determined. It should also provide the selected rate for reimbursement (fee for service units, cost reporting, project completion, etc.). Unless there is a requirement to report hours worked, it is preferable that the payment rate is in terms of benchmarks, e.g. product delivery. The maximum payment for the contract must be stated.

TABLE OF CONTENTS

	<u>Page</u>
CHAPTER 10 – COMPETITIVE SELECTION PROCESSES	10-3
10.01 INTRODUCTION	10-3
10.02 GENERAL REQUIREMENTS FOR COMPETITIVE SOLICITATIONS	10-3
10.03 TYPES OF COMPETITIVE PROCESSES.....	10-3
1. Requests for Bid.....	10-3
2. Requests for Proposal.....	10-3
3. Requests for Letters of Interest.....	10-3
4. Requests for Applications/Requests for Qualifications.....	10-4
5. Competitive Negotiations	10-4
6. Exceptions to Bidding.....	10-4
7. Sole Source Procurements	10-4
10.04 BOARD OF SUPERVISORS APPROVAL OF REQUEST FOR PROPOSAL (RFP).....	10-5
10.05 BOARD OF SUPERVISORS APPROVAL OF RFP CHANGES.....	10-5
10.06 APPEAL PROCEDURES	10-5
10.07 DISCLOSURE OF RESPONDERS PROPOSALS	10-5
1. Release of Responses	10-5
2. Evaluation Results	10-5
3. Proprietary Information.....	10-5
10.08 BOARD REQUIREMENTS RELATING TO SUPPORT OBLIGATIONS.....	10-6

1.	RFP Requirements.....	10-6
2.	Required Proposer Information	10-6
10.09	PURCHASING.....	10-7
10.10	CONTRACTS USING STATE OR FEDERAL FUNDS.....	10-7
10.11	SECTION 71-J CONTRACTS	10-7
1.	Publicized.....	10-7
2.	Type of Competitive Selection	10-7
10.12	CONTENT OF RFP	10-7
10.13	PROCEDURAL ISSUES	10-8
1.	Conducting the Competitive Process	10-8
2.	Reviewing Proposals and Making a Final Selection.....	10-9

CHAPTER 10 – COMPETITIVE SELECTION PROCESSES

10.01 INTRODUCTION

In general, a competitive selection process is always the preferred method to select County vendors and contractors. The Public Contract Code also requires competitive bidding for certain categories of procurement. The County charter requires a competitive selection process when the County considers contracting for services that have ever been provided by a County civil servant. Except as defined in SCC 2.56.250, if a competitive process is not used, a clearly articulated exception to bid form must be completed and signed by the contracting authority. A sample of the exception to bid form is attached at Appendix P.

10.02 GENERAL REQUIREMENTS FOR COMPETITIVE SOLICITATIONS

There are specific and detailed guidelines for how the County must procure construction and construction related services and materials as well as similar rules for procuring other products. There are similar guidelines for contracts subject to state or federal funding requirements and Section 71-J contracts, relating to service contracts. Considerable latitude exists in determining the type of competitive selection process to use for contracts that do not fall into these specific categories.

10.03 TYPES OF COMPETITIVE PROCESSES

There are a number of commonly followed procedures including the following:

1. Requests for Bid: Bids are infrequently used for service contracts. Bids are usually appropriate when the award can be made on price and price-related factors, where negotiations with the proposers are generally not necessary and when there is a reasonable likelihood of receiving multiple bids. When a bid is used, the lowest responsive and responsible bidder is awarded the contract.

2. Requests for Proposal: Requests for proposals are commonly used in selecting service contracts. The critical issue is whether the contractor will provide the "best value" services. Price is a factor, but not the ultimate factor. All relevant factors are evaluated, including responsiveness to the proposal requirements, qualifications of the proposer, the proposer's history in providing the service, and any other reasonably established factor necessary to determine what proposer will provide the best value to the County. In selecting the proposer, the guidelines/rules established within the request for proposal must be followed. The request for proposal should identify what factors will be considered when evaluating proposals and should provide the relative weight or importance of the specified factors.

3. Requests for Letters of Interest: Letters of Interest (LOI) are solicited when the County is not aware of the extent of available contractors to provide the desired services or products. An LOI that has a single response may be enough to

begin negotiations of a contract with that responder. However, if multiple responses are received, a competitive process, such as an RFP is required.

4. Requests for Applications/Requests for Qualifications: Requests for Applications (RFA) and Requests for Qualifications (RFQ) are competitive selection processes that can be used when the County seeks to contract with any qualified provider. Such circumstances may exist where there is a pooled source of funding to provide services and any qualified provider is eligible to draw from the pool if they provide the desired services.

5. Competitive Negotiations: A method in which a request for proposals (RFP) is sent only to qualified contractors or suppliers after responses to an LOI, RFA, or RFQ are received and reviewed. The RFP details the scope, specifications, and terms and conditions of the proposed contract and the criteria for evaluating the bids. Then separate negotiations are carried out with each bidder whose proposal falls within the preset competitive range. The process concludes with the award of contract to the bidder who offers most advantageous price, quality, and service combination.

6. Exceptions to Bidding: In certain circumstances, except as listed above where a competitive selection process is required by law, conditions may exist where open competition is not in the best interest of the county even though competition may exist. Such a process does not assure the public that the most qualified contractor has been selected. To provide maximum transparency, in circumstances where an exception to bidding is pursued, the department seeking such a contract (or reprocurement) must complete an exception to bid form (See Appendix P), and once signed by the contracting authority, it shall be a public record and part of the file with the contract. This form must articulate why the contract or reprocurement required the need not to openly compete the selection. Reasons that may justify a non-bid procurement or reprocurement may include, but are not limited to: specialized services (such as continuity of medical care/behavioral health treatment, or specialty care), limited service providers in a particular area, federally funded programs, or public safety.

7. Sole Source Procurements: In very limited, circumstances, usually due to patents, copyrights, etc., there is only one person or company that can provide the products and/or services needed, so any attempt to obtain bids would only result in that person or company bidding on it. To provide maximum transparency, in the rare circumstances where a sole source contract is pursued, the department seeking such a contract must complete an exception to bid form, which will be a public record and part of the file with the contract. This form must articulate why the contract required the need to sole source the selection. Reasons justifying a sole source procurement may include specialized services, copyright or patent limitations or limited service providers in a particular area.

10.04 BOARD OF SUPERVISORS APPROVAL OF REQUEST FOR PROPOSAL (RFP)

There is generally no legal requirement that an RFP be approved by the Board of Supervisors prior to its issuance. However, Board of Supervisors' approval of an RFP may be sought if, at the discretion of the County Executive, the RFP is for a controversial or unique project or for a project that is of particular interest to the Board of Supervisors or the public.

10.05 BOARD OF SUPERVISORS APPROVAL OF RFP CHANGES

The Board of Supervisors has adopted a policy that in those instances in which an RFP has been previously approved by the Board of Supervisors, **any** change in the scope of work, term of the agreement, or dollar amount, must be approved by the Board before acceptance of the responsive proposals. As a general rule, any significant change to an RFP that was previously approved by the Board should also be approved by the Board.

10.06 APPEAL PROCEDURES

It is recommended that the RFP should include an appeal process. The issuing Department should investigate, take appropriate action and respond to any appeals. If a Board of Supervisor's action is needed to finalize the contractor selection and provide authority for the contract, all proposers, as members of the public, may address the Board regarding any concerns they may have about the RFP process.

10.07 DISCLOSURE OF RESPONDERS PROPOSALS

1. Release of Responses – The responses submitted by bidders/proposers pursuant to an RFP are public record once a recommendation from the RFP review panel has been made to the County Board of Supervisors. (Rev. 9-12-11)

NOTE: If the proposed contract is subject to Section 71-J, the response of the recommended contractor may be released to affected employee organizations during the meet and confer process.

2. Evaluation Results – Unlike responses to RFPs, the conclusions and/or scoresheets of the evaluators are public records and should be released upon request. They are not entitled to any confidentiality prior to completion of the selection process.

3. Proprietary Information – RFPs may request information which is, in the opinion of the proposers, proprietary. Most often, this information is financial, but may also relate to trade secrets. Generally, an RFP should require proposers to identify any information that the proposer contends is confidential and must identify the legal basis for the proposer's claim of confidentiality. The RFP should further provide that in order for the County to assert the confidentiality of any such information if a Public Records Act is received, the proposer must request, execute and submit a County-prepared written agreement to defend and indemnify the County for any liability, costs and

expenses incurred in asserting such confidentiality as part of the proposal. A copy of that written agreement is attached as Appendix D. The RFP should indicate that the final determination as to whether or not the County will assert the claim of confidentiality on behalf of the proposer is in the sole discretion of the County.

10.08 BOARD REQUIREMENTS RELATING TO SUPPORT OBLIGATIONS

1. RFP Requirements – All County solicitation documents must advise new contractors that failure to submit the certification or affidavit described in Section 10.05(2) of this Manual shall be grounds for a finding that the bid, proposal or other offer is nonresponsive.

Exception: Documents relating to public works contracts which are subject to the Public Contract Code are excepted from this requirement.

2. Required Proposer Information - When a new contractor submits a bid, proposal or other offer to provide goods to or perform services for or on behalf of the County, the new contractor must submit a written certification or affidavit that:

a. each principal owner does not have any existing child support orders;

(i) **New Contractor** – A new contractor means any individual, partnership or other entity which has contracted with, is seeking to contract with, or is renewing or extending any contract with, the County to provide goods to or to perform services for or on behalf of the County.

(ii) **Principal owner** means any individual who owns an interest of 25% or more in a new contractor.

(iii) **Principal owner information** means a principal owner's name and title, last known residence address, social security number, all earnings paid to or payable to such principal owner pursuant to any County contract, and whether dependent health insurance coverage is available to or provided to such principal owner.

b. the new contractor's principal owners are currently in substantial compliance with any court-ordered child, family and spousal support order, or, in the alternative has made a good faith effort to become current or arrange a payment schedule with the Department of Child Support Services or the court.

Exception: This requirement is not applicable to those contractors who provide services to the County under contracts for public works which are subject to the Public Contract Code.

10.09 PURCHASING

Chapter 2.56 of the Sacramento County Code requires competitive bidding for purchases made by the County Purchasing Agent. However, 2.56.250 does provide for purchases to be made without competitive bidding under certain circumstances. See Chapter 8 of this Manual for a further discussion of the requirement of competitive bidding by the Purchasing Agent.

10.10 CONTRACTS USING STATE OR FEDERAL FUNDS

State and Federal competitive bidding requirements often apply to agreements using state or federal funds. Where state or federal funding is involved, state and federal regulations must be consulted for competitive bidding requirements.

10.11 SECTION 71-J CONTRACTS

A Section 71-J contract must be awarded through a publicized, competitive selection process.

- 1. Publicized** – "Publicized" means the advertisement of the proposed contract, using such methods as are reasonably calculated to generate competition among potential contractors.

- 2. Type of Competitive Selection** – Such a competitive process includes, but is not limited to, a request for bids, a request for proposals or an interview process. The nature of the County services to be contracted and the circumstances that will trigger such proposals may vary from department to department. State and federal regulations may be applicable to certain types of contracts.

10.12 CONTENT OF RFP

As a general rule, an RFP should include at a minimum the following: Description of the scope of work, methodology to be used to accomplish the scope of work or an inquiry as to what methodology the contractor would use, the process to be used in reviewing the proposals, including identification of selection criteria, time frames and deadlines; any relevant information that would affect the performance or cost of the work, required contract terms, a statement regarding the County's right to reject all proposals and not to enter into any contract for the services described in the RFP, and an appeal process.

What to include in an RFP:

- 1. The statement of work should include:**
 - a. A clear, precise description of the work to be performed, services to be provided, problem to be solved, or the goals and objectives to be met.**

- b. An explanation of what the proposer is expected to accomplish including any desired approach to the problem and the specific functions, tasks or activities that must be performed, in their order of importance and probable sequence.
 - c. Practical and policy information, technological requirements or specifications, and legal limitations, if any.
 - d. Specific questions to be answered or issues to be addressed.
 - e. Performance timelines or completion dates.
 - f. Required quality control or performance standards to be met, if applicable.
 - g. A description of the items, products or results to be delivered.
 - h. The format and number of copies of the completed progress reports and final report, if applicable.
2. Proposal instructions should contain a description of the format that proposals must follow and the elements they must contain. Factors to be used in proposal evaluation and contractor selection may not be changed or added after the RFP has been distributed, without notice to all potential proposers through an addendum.
3. Notice of payment terms or restrictions including whether and to what extent progress payments will be allowed, whether payments are subject to payment withholds, and known or estimated budgetary limitations on the contract price, if applicable.
4. Applicable contract provisions including actual or sample contract language or boilerplate contract provisions.
5. Requirements that prospective proposers must address or include in their proposal, such as a description of the proposer's qualifications, list of similar types of contracts that were successfully concluded, description of the lead personnel and anticipated supporting personnel to be performing the work, identification of project coordinator, if applicable, overall description of the techniques, approaches and methods to be used in performing the services, total cost of the project, identification of services provided on a flat fee, lump sum or unit rate basis.

10.13 PROCEDURAL ISSUES

- 1. Conducting the Competitive Process:** When conducting a competitive process, departments should be careful of the following:

- a. The scope of work should be in writing to ensure that all contractors receive the same information.
- b. It is important that the scope of work does not favor or knowingly disfavor any one contractor.
- c. Consideration should be given as to the most appropriate method of communicating to prospective contractors.
- d. All prospective contractors must be treated equitably. A deadline should be set for responses and all contractors must be held to that deadline.
- e. Do not provide any potential provider with information not provided to the other providers. If any provider asks a question, it is recommended that the department respond in writing and distribute both the inquiry and the response in writing to all providers. Do not inform any potential provider about who also has submitted a proposal. Do not give a provider information about what a competing contractor has submitted.
- f. If an employee is related to any potential contractor, it is important that someone else handle that particular contract process.

2. Reviewing Proposals and Making a Final Selection: Any rating criteria should be specific enough to clearly delineate the proposal that can best perform the necessary work/service and clearly identify those proposals which do not adequately demonstrate the qualifications and background needed to successfully perform the services specified. The review criteria should also provide a method to ensure that any mandated qualifications are present. The criteria for choosing a contractor should include whatever particular criteria are important and appropriate to the project, as well as the following, if applicable:

- a. Experience of firm and specific staff assigned to complete the work, including description of experience with similar projects
- b. References
- c. Contractor's proposed methodology, work plan and time line to complete the scope of work
- d. Proposed cost to complete the work/service
- e. Is the approach to the problem, recommended method and procedure reasonable and feasible?
- f. Does the proposer have the organization, management capability and competency, fiscal and personal resources and experience to perform the desired services?

g. Has the proposer addressed all the goals, objectives, service demands and required deliverables specified in the RFP?

TABLE OF CONTENTS

	<u>Page</u>
CHAPTER 11 – APPROVAL AND COMMENCEMENT OF WORK.....	11-2
11.01 BASIC POLICY	11-2
11.02 RETROACTIVE CONTRACTS.....	11-2
1. Retroactive Contracts Prohibited.....	11-2
2. Ratification of Retroactive Contracts.....	11-3
3. Limitation on Ratification	11-3

CHAPTER 11 – APPROVAL AND COMMENCEMENT OF WORK

11.01 BASIC POLICY

It is a violation of the California State Constitution (Article XI, Section 10) to contract on a retroactive basis. The Auditor cannot make payment for services performed which are not within the effective dates stated in the contract.

No contractor shall start work until a contract has been formally approved. If the contract or any amendment is not approved and the contractor has begun providing goods or services, the contractor may be considered to be a volunteer or the contractor may have to pursue a claim for payment by filing with the Board of Supervisors. The County has no legal obligation unless and until the contract is approved.

Contracts are not valid unless and until approved by the Board of Supervisors or that County officer or employee to whom contract authority has been delegated pursuant to Chapter 2.61 of the Sacramento County Code. Amendments must be executed and approved by the same level of authority as executed the original contract.

If an amendment results in a total contract amount in excess of the delegated authority, the Board must approve the amendment.

11.02 RETROACTIVE CONTRACTS

1. Retroactive Contracts Prohibited – Article 11, Section 10 of the California Constitution prohibits the County from granting extra compensation to a public employee or contractor after services have been rendered or after a contract has been entered into and performed in whole or in part.

NOTE: Contracts authorized by the Board of Supervisors are not prohibited retroactive contracts even if the contracts are actually executed several weeks/months after the authorization. So long as the Board has affirmatively approved or authorized a department to execute a specific contract, delayed execution of such contract does not make the contract retroactive in character. Unless Chapter 2.61 provides otherwise, merely budgeting for specific services does not constitute Board authorization for a contract.

CAUTION: Provision of services after authorization to contract has been granted, but prior to a fully executed contract subjects the County to potential liability. So long as issues relating to insurance coverage, indemnification, scope of services and similar issues have not been finalized, the County is exposed to substantial liability if services are not performed or are performed negligently or inadequately.

2. Ratification of Retroactive Contracts – Only the Board of Supervisors may ratify a contract to pay for work done or services performed before approval of the contract.

3. Limitation on Ratification – Unless a contract is authorized by statute or Charter, it is void and unenforceable as being in excess of the County's power. The Board cannot ratify: a) contracts that are beyond the powers of the County; b) contracts in which some prescribed formality has irrevocably been disregarded (i.e. competitive selection); or, c) contracts where the parties have not reached agreement on essential terms at the time services were provided.

If the County has no authority to enter into a particular type of contract, it lacks power to ratify it after performance. If a contract is one which by law requires the formality of a competitive selection process and it is let without compliance with that requirement, ratification of the contract will not cure the deficiency because the manner of entering into it has been irrevocably disregarded. If the parties have not agreed on essential contract terms before services have been provided, there is no meeting of the minds that can be subsequently ratified.

TABLE OF CONTENTS

	<u>Page</u>
CHAPTER 12 – ADVANCE PAYMENTS	12-2
12.01 DISFAVORED PROVISION	12-2
12.02 LIMITATIONS FOR CBOS	12-2

CHAPTER 12 - ADVANCE PAYMENTS

12.01 DISFAVORED PROVISION – Advance payments by the County are disfavored and should be authorized only when it is determined that an advance payment is essential for the effective implementation of a program. Contracts or agreements containing provisions for advance payments by the County should preferably provide for small periodic payments rather than the total contract price or lump-sum advances.

12.02 LIMITATIONS FOR COMMUNITY BASED ORGANIZATIONS – To the extent funds are available, and not more than once each fiscal year, the County may advance to a community based nonprofit agency with which it has contracted, pursuant to any federal or state law, for the delivery of services, in an amount not to exceed twenty-five percent (25%) of the annual allocation to be made pursuant to contract and those laws, during a fiscal year. (Gov. Code § 11019.)

TABLE OF CONTENTS

	<u>Page</u>
CHAPTER 13 – AMENDMENTS TO CONTRACTS	13-2
13.01 OVERVIEW	13-2
13.02 CONTRACTS AWARDED BY COMPETITIVE SELECTION	13-2
13.03 SECTION 71-J.....	13-2
13.04 SPECIFIC CONSIDERATIONS.....	13-2
1. Approval by Board of Supervisors.....	13-2
2. Strikeouts	13-2
3. Contract Amount	13-2
4. Effective Date.....	13-2

CHAPTER 13 – AMENDMENTS TO CONTRACTS

13.01 OVERVIEW

An amendment is a formal modification to a contract. It includes any written alteration in the specifications, delivery point, rate of delivery, contract period, price, quantity or other contract provision of an existing contract. An amendment should contain the same degree of specificity for changes that the original contract contained for the same item. Amendments must be entered into before the expiration of the original contract.

13.02 CONTRACTS AWARDED BY COMPETITIVE SELECTION

Contracts awarded on the basis of a law requiring competitive selection may be modified or amended only if the contract so provides or if so authorized by the law requiring competitive selection. (See Pub. Contract Code § 10366 and Gov. Code § 11010.5.)

13.03 SECTION 71-J

Amendments to Section 71-J contracts must comply with the requirements of Section 71-J. See Chapter 5 for further discussion of this issue. Amendments that alter the terms, funding levels or scope of services are subject to Section 71-J requirements.

13.04 SPECIFIC CONSIDERATIONS

1. **Approval by Board of Supervisors** – If the amendment, when added to the original contract and any other amendments, exceeds a department's delegated approval authority, the amendment must be submitted to the Board of Supervisors for approval.
2. **Strikeouts** – When an amendment changes or corrects contract terms by "striking" out contract terms, both parties signing the agreement must initial the "strikeout."
3. **Contract Amount** – When an amendment changes the contract amount, the amount changed by the amendment must be stated, along with the new total contract amount. For example, the amendment should state "This amendment adds \$1000 to the contract. The total amount of the contract will not exceed \$ (new contract total)."
4. **Effective Date** – An amendment should not use such wording as "This contract is effective from (amendment date) to ending date." Such terminology has the legal effect of moving the starting date of the entire contract up to the amendment date. Attached as Appendix E is an example of a standard amendment.

TITLE IV

CONTRACT TERMS AND REQUIREMENTS

TABLE OF CONTENTS

	<u>Page</u>
CHAPTER 14 – SCOPE OF SERVICES AND BASIS OF PAYMENT	14-3
14.01 OVERVIEW	14-3
14.02 DESCRIPTION OF SERVICES	14-3
14.03 SCOPE DEFINED USING RFP	14-4
14.04 BASIS OF PAYMENT	14-4

CHAPTER 14 – SCOPE OF SERVICES AND BASIS OF PAYMENT

14.01 OVERVIEW

Every contract must contain a clear description of the work to be done or the problem to be solved. If a problem cannot be clearly delineated, the department must consider whether the problem is sufficiently understood or is not deserving of attention. The contract must specifically identify in realistic terms what the contract is to accomplish, including any desired approach to the problem; practical, policy, technological, and legal limitations; specific questions to be answered; the manner in which the work is to be done; a description of the items to be delivered; the format and number of copies to be made of the completed reports; and the extent and nature of the assistance and cooperation that will be available to the consultant from the County.

14.02 DESCRIPTION OF SERVICES

The scope of service should describe exactly what the contractor is expected to do and/or what deliverables the contractor is expected to provide to the County. The contract must contain specific standards and expectations by which the parties can measure performance and can determine whether the contractor is in compliance. The contract must identify with sufficient particularity the work, service or product to be performed, rendered or provided. It should identify the task, desired output and the associated performance standard or acceptance criteria.

The scope of service is intended to describe the activity or services to be performed, coordination and consultation roles, phasing of the project, delineation of standards of service provision, performance indicators, monitoring and reporting requirements and description of deliverables.

It is important that the scope of service identify **minimum requirements**. It should not rely exclusively upon goals and objectives, i.e., "nice to have" do not establish minimum requirements that can be enforced.

A scope of service should answer the following questions:

- What - Tasks, deliverables expected.
- When - Time for performance
- Where - Location, access.
- How - specific method or standard of performance.
- Why - Goal of the services sought.
- Who - Qualifications required to perform the services.

The contract should specifically identify in realistic terms what the contractor must accomplish. The contract should identify, as appropriate, the following:

1. technical specifications and requirements
2. list of responsibilities to be performed by the contractor
3. major tasks and sub-tasks to be performed
4. results or list of deliverables
5. personnel/staffing
6. coordination
7. time deadlines/schedules, including dates for commencement of performance and submission of progress reports, if any, dates of completion, and place of performance (**Note:** If delivery or completion dates are used, specify either calendar days or work days and be consistent throughout the contract).
8. evaluation/acceptance.

There are, for example, various approaches that can be taken.

1. The contract can be drafted from a monitoring perspective. In other words, it can identify the areas to be assessed or completed by specific dates. For example, the contract may identify milestones for the performance of certain activities ("By December 31, 2002, all training will be completed" or "a quarterly report describing progress to date will be submitted by December 31, 2002").

2. The contract can include performance standards that must be met, such as the number of clients to be served or numbers of classes conducted.

3. The contract can require the creation and/or delivery of specific products or deliverables. ("Contractor shall prepare a report identifying procedures for converting from a telephone-based reservation system to an internet-based reservation system.")

14.03 SCOPE DEFINED USING RFP

If the contract incorporates the description of services included in a response to an RFP, the contract should expressly provide that in the event of conflict, the provisions of the contract govern.

14.04 BASIS OF PAYMENT

The contract should include the basis of payment. There should generally be a ceiling for total payment to the contractor. The contractor should also identify

whether payment is based on an hourly rate, flat rate based on completion or acceptance of deliverables, The contract should also indicate whether there are reimbursable items such as travel, meals, etc.

The contract should specify the basis of payment for services and/or deliverables in order to define the points in time at which the contractor shall be paid and the work for which the contraction will be paid. For example, the contract may establish payment milestones. A payment milestone might be the culmination of a series of deliverables, or a single deliverable.

TABLE OF CONTENTS

	<u>Page</u>
CHAPTER 15 – TAX TREATMENT OF SERVICE PROVIDERS	15-2
15.01 INTRODUCTION	15-2
15.02 THE COUNTY POLICY	15-2
1. The Five Employee Rule	15-2
2. Other Service Providers.....	15-2
3. Personal Service Corporations	15-2
4. Waiver Requests	15-3
5. Excluded Service Providers.....	15-4
15.03 DETERMINING TAX STATUS	15-4
1. The Basic Rule and the IRS 20 Factors.....	15-4
2. List of 20 Factors	15-5
3. Explaining the 20 IRS Factors	15-5
15.04 SPECIAL TAX RULE FOR OUT OF STATE CONTRACTORS	15-6
1. General Rule.....	15-6
2. FTB Waiver.....	15-7
15.05 EMPLOYMENT DEVELOPMENT DEPARTMENT REQUIREMENTS	15-7

CHAPTER 15 – TAX TREATMENT OF SERVICE PROVIDERS

15.01 INTRODUCTION

In any contract for services, under federal and state employment tax law, the County must resolve the basic question of whether to treat the service provider as an employee or as an independent contractor.

The service provider's status (employee vs. contractor) determines how the County will report to other government agencies about the payments made to the service provider. These government agencies include the Internal Revenue Service (IRS), the Franchise Tax Board (FTB), and the Employment Development Department (EDD).

The status of the service provider also determines whether or not the County must withhold income from the service provider for direct payment to the IRS and FTB and whether the County must pay additional employment taxes such as FICA and Medicare contributions.

The failure to identify correctly the tax status of the service provider can result in the imposition of taxes and penalties on the County that otherwise would not arise. (Rev. & Tax. Code §§ 6720-6724.)

15.02 THE COUNTY POLICY

In 1989, the County implemented an official policy designed to simplify the process of resolving difficult tax status determinations as required under IRS rules. This policy was revised in 2001. It is a risk adverse policy. In brief, when in doubt, treat the service provider as an employee for tax purposes.

1. The Five Employee Rule – If the service provider has five or more full time employees, the service provider shall be treated as an independent contractor. Use the language in Appendix F, except in the case of a nonresident contractor. If the contractor is not a resident of California, see the discussion below.

2. Other Service Providers – If the service provider has fewer than five employees, then the service provider must be treated as an employee for tax purposes unless the department requests and obtains a waiver from the County Counsel. If no request is made, no further analysis is required. Use the language in Appendix G.

3. Personal Service Corporations – A personal service corporation may be considered an independent contractor if: a) the service provider is the employee of the corporation and, as such, the corporation has the right to control the service provider in some meaningful sense; and, b) there is a contract

between the corporation and the service recipient (i.e., the County), recognizing the corporation's controlling position. If these two factors are met for professionals (doctors, lawyers, architects, etc.) who have incorporated, then the contractor should be treated as an independent contractors unless the 20 IRS factors establish an overwhelming indicator of control on the part of the County.

4. Waiver Requests

The contracting department shall request a waiver prior to execution of a contract whenever the department believes that a service provider *clearly* meets the criteria for treatment as an independent contractor. A waiver may be requested whenever the department is not sure of the tax status of the service provider. County Counsel should approve the waiver only if independent contractor status is reasonably clear based upon the review of the written contract and any other relevant documented information the department may provide.

The waiver request will be evaluated using the criteria set out in Section 15.03 of this Chapter.

NOTE: If a waiver is requested, the contract itself is subject to the review and approval of the County Counsel.

Particular attention should be paid to defining the scope of services clearly, completely, and accurately. Although the description of the scope of services helps in evaluation of the tax status of a service provider, it is the actual practice or services that is most important in the determination of tax status. If independent contractor status is desired, the contract should avoid provisions that allow the County unilaterally to revise, redirect, or redefine the scope of services or that leave the nature of the work uncertain or obscure.

NOTE: The written contract should reflect the true intentions of the parties, and no language should be changed or reworded in order to achieve a particular tax status if the revision is inconsistent with the parties' intent or the true working relationship of the parties. Such conduct would raise the question of tax evasion, for which there are severe civil and criminal penalties.

The County will rely upon a written IRS determination of independent contractor status, if that determination is based on the specific contract. IRS Form SS8 should be utilized to request this determination.

If County Counsel disapproves the waiver, use the language in Appendix G. If a waiver is approved, use the language in Appendix F except in the case of a nonresident contractor, in which case use the language in Appendices F and H. See Section 13.04 of this Chapter for contractors not residing in California.

5. Excluded Service Providers – There are presently five categories of independent contractors that are excluded from the waiver process entirely. These contractors are always to be treated as independent contractors: a) psychiatrists working for the Department of Health and Human Services at the Sacramento Mental Health Treatment Center; b) court interpreters; c) attorneys and other service providers working under the auspices of the Indigent Defense Program; d) contractors hired through the public bidding process under the Public Contract Code; and, e) other governmental entities.

15.03 DETERMINING TAX STATUS

1. The Basic Rule and the IRS 20 Factors

a. Basic Rule – The basic rule is that the service provider should be treated as an employee if the County has the right to direct and control the manner and means by which the work is performed. This is true even though the County does not actually exercise that “right of control” during the performance of the contract. This is the common law test for employment, and it is applicable to determining employment status generally, not just tax status.

b. 20 Factors – The IRS has published 20 factors to consider in ascertaining whether the principal to a contract exercises sufficient control to warrant finding an employment relationship. No one of these factors is necessarily conclusive. Rather the factors probe the nature of the relationship between the principal and the service provider in order to inform the judgment to be made—whether the principal could or does control the means and methods of performing the work. The complete Revenue Ruling setting forth these factors and their purposes is included in Appendix I. Ultimately, the determination of the status of the service provider is to be made by weighing these factors according to the facts and circumstances related to the particular contract and applying sensible judgment accordingly.

c. Contractual Relationship as Evidence of Tax Status – The contractual relationship between the County and the service provider is evidentiary indicia of the provider's tax status. However, the terms of the contract do not control if the actual practice and/or services differ from the contract terms. Where the written contract is at odds with the actual facts “on the ground,” the real relationship between the County and the service provider is what counts. For example, the contract may say explicitly that the service provider is an “independent contractor” who receives no direction about the manner or means for accomplishing the work. Yet, if the County actually does provide such direction, or, if it is understood that the County could provide such direction, the service provider should be treated as an employee for tax purposes regardless of the contract language to the contrary.

2. List of 20 Factors – The following list is an abbreviated form of the IRS' 20 factors that are indicia of employee status. These factors should always be considered and evaluated in determining a contractor's tax status. The questionnaire provided in Appendix J provides guidance in evaluating these factors.

- a. Must comply with the principal's instructions about the work.
- b. Receives training from or at the direction of the principal.
- c. Provides services that are integrated into the business.
- d. Provides services that must be rendered personally.
- e. Hires, supervises, or pays assistants for the principal.
- f. Has a continuing working relationship with the principal.
- g. Follows set hours of work.
- h. Works full time for the principal.
- i. Must do their work on the principal's premises.
- j. Must do their work in a sequence set by the principal.
- k. Must submit regular reports to the principal.
- l. Receives payment of regular amounts at set intervals.
- m. Receives payment for business and/or traveling expenses.
- n. Relies on principal to furnish tools and materials.
- o. Lacks a major investment in facilities used to perform the service.
- p. Cannot make a profit or suffer a loss in performing the services.
- q. Works for one principal at a time.
- r. Does not offer their services to the general public.
- s. Can be fired by the principal.
- t. May quit the work anytime without incurring liability.

3. Explaining the 20 IRS Factors – Many of the foregoing 20 IRS factors are self-explanatory. The following constitutes an explanation of the most important and most difficult to understand of the IRS 20 factors.

a. Instructions – The principal confusion arising with this factor concerns the right to give instructions versus actually giving the instructions. In many instances, the County may not give any instructions at all to a service provider. While that fact may be indicative of independent contractor status, it is not determinative. The real question is whether or not, under the contract's terms, the County *could* instruct the service provider.

b. Integrated Services – This factor asks whether or not the services being performed are part of the regular business performed by the County. Is this work that must be conducted routinely in order for the County to carry out its mission? If it is, then the work should normally be considered an integral part of the County's business.

NOTE: If there are integrated services, Section 71-J may be applicable.

c. Services Must Be Rendered Personally – This factor asks a simple question often misunderstood: does the contract require the contractor to do the work or is the contractor free to assign the contract or subcontract the work? If the contract requires the contractor to get permission from the County to subcontract or to assign the contract, the services are being rendered personally.

d. Continuing Relationship – This factor looks at whether or not the service provider has established an ongoing relationship with the County. It examines the historical record. How many times has the contractor entered into contracts with the County? How frequently? Even intermittent contracting can form grounds for finding a continuing relationship. The fact that the County may not have a legal obligation to contract with the service provider at the end of the contract may be of little or no importance.

e. Making a Profit or a Loss – It is often assumed that this question looks at the business of the service provider as a whole. While consideration should be given to overhead expenses, this factor also requires an examination of the contractual relationship between the County and the service provider. If the contract poses no risk of loss to the service provider, this factor will weigh in favor of finding an employment relationship. For example, if the County provides the service facilities, pays for all of the materials, expenses, and costs of the service provider to attend and perform the work, and pays the provider an hourly rate for the services, the risk of loss to the service provider may be no greater than the risk a County employee experiences. The risk is small or non-existent. On the other hand, for example, if the County hired a trainer who was paid a per pupil rate or a lump sum, who had to cover all expenses and costs, and who had to provide the training facilities, then there would clearly be a much greater risk of a loss or potential for making a profit.

f. Firing and Quitting – If the contract contains explicit provisions authorizing either party to terminate the contract without cause and without liability to either party, the contract mirrors an employment contract. This result is ameliorated somewhat by having to give prior notice before the termination. However, many County contracts require the County to pay the contractor on a pro-rata basis for any work completed whether the County or the contractor terminate the agreement prematurely. Where the contract contains such provisions plus a notice requirement that is less than 30 days, the provisions should be weighted in favor of employment status. As the notice shrinks to less than 3 days, the weight should be increased significantly.

15.04 SPECIAL TAX RULE FOR OUT OF STATE CONTRACTORS

1. General Rule – Recent state legislation requires the County to withhold seven percent (7%) of all income paid to certain independent contractors who do not reside in California. (Rev. & Tax. Code §18662; Cal.Admin. Code §§18662-1-18662-14.) This provision does not apply if the total

amount paid for services in a given year is less than \$1,500. It also does not apply if: a) the contractor is a corporation with a principal place of business in California; b) a partnership with a permanent place of business in California, or, c) a corporation qualified through the Secretary of State to do business in California.

2. FTB Waiver – The contractor or the County can apply to the FTB for a waiver from this withholding requirement. An FTB waiver will generally be granted when the nonresident contractor has a current history of filing California tax returns and/or is currently making estimated tax payments to the FTB. An FTB waiver request is made on FTB Form 588, which can be faxed to the FTB at (916) 845-4831. If the contracting department does not obtain an FTB waiver, use the language in Appendix H in addition to the language in Appendix F. If the contractor will be treated as an employee for tax purposes, use the language in Appendix G only; this nonresident withholding will not apply.

15.05 EMPLOYMENT DEVELOPMENT DEPARTMENT REQUIREMENTS

As of January 1, 2001, the County must report to the EDD certain information about payments made to independent contractors. In order to comply with this mandate, it will be necessary for departments to provide their contracts to the County Auditor after execution of the contracts. The contracting department must also obtain the social security number of the contractor if the contractor is an individual or a sole proprietorship. (Unempl. Ins. Code §1088.8.) All applicable contracts shall include language in their contracts that acknowledges this mandate.

TABLE OF CONTENTS

	<u>Page</u>
CHAPTER 16 – INSURANCE AND INDEMNIFICATION	16-2
16.01 INDEMNIFICATION GENERALLY	16-2
1. Types of Indemnification Provisions	16-2
2. Guidelines for Use	16-2
16.02 INSURANCE REQUIREMENTS	16-4
1. Standard Insurance Requirements	16-4
2. Non-Standard Insurance Requirements	16-4

CHAPTER 16 – INSURANCE AND INDEMNIFICATION

16.01 INDEMNIFICATION GENERALLY

Contractual indemnification is a means by which parties to a contract may allocate the risks of liability and loss between themselves. An indemnification provision also usually requires the indemnifying party to provide a legal defense against third party claims arising out of the agreement.

1. Types of Indemnification Provisions – There are two basic types of indemnification provisions, unilateral and mutual.

a. Unilateral indemnification means one of the parties agrees to indemnify the other party to the agreement.

b. Mutual indemnification means each party will indemnify the other party, usually for the claims resulting from the indemnifying party's own conduct.

c. There are numerous variations on the two basic indemnification provisions. This Manual discusses four indemnification provisions, the first three of which are set forth in Appendix K. Their language has been approved by the County Risk Manager, but their use must follow the guidelines below.

2. Guidelines For Use – Some general guidelines follow for the appropriate use of the County indemnification provisions attached in Appendix K. The various types of indemnification provisions are listed below in order of preference, according to the degree of protection they afford the County, as well as the degree of risk they impose on the County. The provision that provides the greatest protection and the least risk to the County is listed first:

a. Standard Unilateral Indemnification – This provision is used in the Standard Form Agreement attached as Appendix L. The standard indemnification provision is a unilateral provision that indemnifies the County for its entire loss arising out of the performance of the agreement, regardless of whether the County's negligence contributed to the loss. This provision **must** be used in County contracts unless the County Risk Manager has approved use of another indemnification provision. However, each contract must be examined for the appropriateness of its use for that contract, and the Risk Manager consulted if there is doubt. Whenever appropriate and possible, this provision **should** be used in County contracts because it affords the County the greatest degree of protection. The following are examples of types of contractors for which the Risk Manager will generally expect the standard provision to be used and generally will not approve use of another provision:

(i) Service providers, such as security guards, professionals, consultants, trainers, etc.

(ii) Vendors and manufacturers of software, equipment, and other products.

(iii) Tenants leasing County buildings or space.

b. Unilateral Indemnification with Professional Liability – This provision is utilized in architectural and engineering contracts or consulting contracts that required professional liability.

c. Limited Unilateral Indemnification – The limited unilateral indemnification provision indemnifies the County for loss arising out of the performance of the agreement. If the County's conduct contributed to the loss, indemnification of the County will be reduced accordingly. The County does not obligate itself to indemnify the other party. Approval by the County Risk Manager to use this provision in an agreement is necessary. The following are examples of typical situations in which the limited unilateral indemnification provision's use may be appropriate:

(i) Non-profit or Social Service providers of important medical and/or social services to County, such as homeless shelters, drug and alcohol programs, etc.

(ii) Private providers of critical medical and/or social services to County, such as private hospitals, clinics, care homes, etc.

(iii) The County, where it is the provider of services or property to another governmental entity for the County's benefit.

d. Mutual Indemnification – Under this mutual indemnification provision, each party agrees to indemnify the other party for the loss caused by the indemnifying party's conduct. If both parties are partly responsible for the loss, then each party will indemnify the other based upon its degree of fault. This type of provision is sometimes referred to as "comparative" mutual indemnification. The County should attempt to negotiate use of the limited unilateral indemnification provision or other more favorable provision before agreeing to mutual indemnification because it imposes on the County risk of liability to the other party. The following are examples of typical situations in which the mutual indemnification provision's use may be appropriate. Approval by the County Risk Manager to use this provision in an agreement is necessary.

(i) Other governmental entities, where the agreement is for the mutual benefit of each or where the County receives a major benefit.

(ii) County provides police or other services to other governmental entities, such as police services for RT trains and stations.

(iii) Non-profit entities providing unique and/or important services which are difficult to obtain from other sources.

(iv) Commercial contractors, where the product or service is unique and critical to the County and unobtainable from other sources.

e. Unilateral Indemnification By County – Under this indemnification provision, the County agrees to indemnify the Contractor, but the Contractor does not agree to indemnify the County. These provisions are often used by commercial landlords where the County leases buildings or space. The County should attempt to secure more advantageous indemnification terms whenever possible. These provisions should rarely be used in situations other than commercial leases. Approval by the County Risk Manager to use this provision in an agreement is necessary.

16.02 INSURANCE REQUIREMENTS

The following are guidelines for the types and amounts of insurance coverage required in County contracts, for the protection of the County.

1. Standard Insurance Requirements

The standard insurance requirements are geared towards service providers, including building contractors. The standard insurance requirements must be used unless the County Risk Manager has approved changes. They may be modified with the approval of Risk Manager to accommodate tenants, personal service providers, permittees, and others.

The standard insurance requirements **should not** be used for the situations described in Subsections (2)(a) or (2)(b) of this Section below without prior Risk Manager approval. The only **exception** to this is contracts for professional services because the standard insurance provision already addresses professional errors and omissions insurance coverage.

2. Non-Standard Insurance Requirements

There are four main types of possible changes to the standard insurance requirements, either based upon the type of contractor or type of operation involved: a) higher limits of insurance due to higher hazard or size of exposures; b) different or specialized insurance coverages due to type of exposures; c) self-insurance; and d) reduced or waived insurance coverage. **They may not be used without prior County Risk Manager approval.** Whenever any of the types of operations identified in (a.) or (b.) below appear to be involved, the draft contract should be forwarded to the County Risk Manager for evaluation as to the appropriate insurance requirements. The types of operations in the list below are

not all inclusive. When there are other unusual operations or circumstances, or any other questions, the County Risk Manager should be contacted.

a. Higher Hazard and Size Exposures (by department)

The following are types of operations which generally require increased limits of coverage:

Airports: Airlines, Commuter Service, Air Cargo Transport or Support, Fuelers, Fixed Base Operators, Flight Training, Shuttle or Livery Services, Ground Services/Air side, Air Charter and Ambulance services, Autos on Ramp at International Airport.

Dept. of Health and Human Services: Managed Care Homes and Services, selected Medical and Mental Health Services (outside providers).

Dept. of Human Assistance: Selected Social Services (outside providers).

Medical Systems: Selected Medical Services (outside providers.)

Military Base Conversion (McClellan): Fixed Base Operators, Fuelers.

Public Works Agency: General Contractors, road work, Airport construction, underground construction, bridge construction, sewer or water main construction, construction involving structural changes, work near a railroad, operation of heavy vehicles or mobile equipment.

Sheriffs Department: Prisoner transport, search and rescue.

b. Specialized Insurance (by type)

The following types of specialized insurance are generally required for the operations listed below.

Aircraft Liability: Airlines, airport contractors utilizing aircraft in their work.

Non-owned Aircraft Liability: Airport contractors that have cause to fly others' aircraft and do not maintain an Aircraft Liability policy.

Cargo Legal Liability: Air transport.

Hangar Keepers' Legal Liability: Airport contractors who have aircraft of others in their care, custody and control to perform service on those aircraft.

Course of Construction/Builder's Risk Insurance: Contractors erecting new buildings or additions or remodels.

Liquor Liability: Restaurants, bars and other tenants of the County who sell liquor as part of their business operation.

Railroad Protective Liability: Any Contractor working adjacent or under railroad property, rights of way, tracks or crossings.

Pesticide or Herbicide Applicator Coverage: Use for contractors applying chemicals.

U.S.L.&H. and/or Jones Act Worker's Compensation Coverage: Use for contractors who work at, on or adjacent to waterways.

Environmental Impairment/Pollution Insurance: Use for contractors working with chemicals or substances known as pollution hazards (gasoline, oil, toxic chemicals, asbestos, etc.).

Watercraft Liability Insurance: Use for contractors utilizing watercraft in their work for the County.

Professional or Errors & Omissions Insurance: Consultants, advertising, publishing, software development, systems integration, attorneys, doctors, other medical personnel, designers, architects, accountants, financial analysts, therapists, psychologists, data surveys.

Abuse and Molestation Coverage: Children's daycare centers, children's group homes, women and/or children's residential psychiatric treatment facilities, and women and/or children's residential shelters.

c. Self-Insurance

Self-insurance for governmental entities or agencies such as cities, counties, and the University of California may be sufficient if approved by the County Risk Manager. The self-insurance provision is contained in Appendix K and should be used in conjunction with a mutual indemnification provision.

d. Reduced or No Insurance

On occasion reduction or waiver of insurance requirements will be appropriate, such as for individuals providing personal services under certain circumstances. Reduction or waiver of insurance is solely at the discretion of the County Risk Manager.

TABLE OF CONTENTS

	<u>Page</u>
CHAPTER 17 – REPORTING AND MISCELLANEOUS REQUIREMENTS.....	17-2
17.01 REPORTING TO THE AUDITOR.....	17-2
17.02 EMPLOYMENT DEVELOPMENT DEPARTMENT – CHILD/FAMILY SUPPORT OBLIGATIONS	17-2
17.03 DEPARTMENT OF CHILD SUPPORT SERVICES-CHILD/ FAMILY SUPPORT OBLIGATIONS	17-3
1. General.....	17-3
2. Exception to Reporting Requirement.....	17-3
3. Information to be Reported	17-3
4. New Contractor Requirements.....	17-4
5. Required Contract Provisions	17-4
6. Department of Child Support Services Reporting Requirements	17-4
17.04 CONTRACTS WITH LOCAL GOVERNMENT	17-4
17.05 RETIRED COUNTY EMPLOYEES REPORTING	17-4

CHAPTER 17 – REPORTING AND MISCELLANEOUS REQUIREMENTS

17.01 REPORTING TO THE AUDITOR

Sacramento County Code section 2.61.012 provides that any contract approved pursuant to Chapter 2.61 must be filed with the Auditor prior to payment on the contract. Additionally, all officers and employees to whom the Board of Supervisors has delegated contracting authority must make semi-annual reports to the Board of Supervisors regarding all contracts approved in any semi-annual period. Lastly, the County Code provides that the County Auditor-Controller may conduct a periodic audit of the method and manner that each Agency or Department has used and administered the contract authority granted pursuant to Chapter 2.61.

17.02 EMPLOYMENT DEVELOPMENT DEPARTMENT - CHILD/FAMILY SUPPORT OBLIGATIONS

The County is required to file with Economic Development Department (“EDD”) certain information regarding payments made to a service provider. Service provider means an individual (i.e. sole proprietor) who is not a County employee and who received compensation or executes a contract for services performed for the County within or without the State of California. The following information must be provided:

1. Name of County;
2. Contractor's name, business name, address, telephone number and social security number;
3. County's federal and state (EDD California account number) employer identification number;
4. Date of execution of the contract, or if no contract, the date payments in the aggregate first equal or exceed \$600;
5. Total dollar amount of the contract, if any;
6. The contract expiration date.

The County must report this information within twenty (20) days of the earlier of first making payments that in the aggregate equal or exceed \$600 in any year or entering into a contract/contracts with a service provider providing payments that in the aggregate equal/exceed \$600 in any year. In order for the Auditor to carry out this reporting responsibility, departments must provide the Auditor with the contract and the above-referenced information.

NOTE: The Auditor utilizes the County's on-line financial system (COMPASS) to process this information. Therefore, contracts must be entered in COMPASS in a timely manner.

17.03 DEPARTMENT OF CHILD SUPPORT SERVICES-CHILD/FAMILY SUPPORT OBLIGATIONS

1. General: In addition to state requirements, the Board of Supervisors requires that, upon execution of a new contract exceeding \$600 or upon contract renewal, all County Departments and Agencies report certain contractor information to the Department of Child Support Services.

2. Exception to Reporting Requirement

a. This reporting requirement does not apply to contracts with entities that do not have a principal owner. A principal owner means an individual who owns an interest of 25% or more in a contractor.

b. It does not apply to contracts with non-profit agencies and governmental entities.

c. It does not apply to County limited purchase orders or department field orders that are utilized in accordance with the County purchasing policy.

3. Information to be Reported: The following information must be reported to the Department of Child Support Services:

a. New contractor's name;

b. Contractor's last known business address;

c. Taxpayer identification number;

d. All earnings paid or payable to such contractor for goods provided to or services performed for or on behalf of the County;

e. Whether dependent health insurance coverage is available to such contractor.

All Departments and Agencies must report this information for "new contractors." Such contractors are "any individual, partnership, or other entity which has contracted with, is seeking to contract with, or is renewing or extending any contract with, the County to provide goods to or perform services for or on behalf of the County.

4. New Contractor Requirements: Every new contractor must certify the following:

a. The new contractor has fully complied with all applicable state and federal reporting requirements relating to employment reporting for its employees; and

b. The new contractor has fully complied with all lawfully served wage and earnings assignment orders and notices of assignment and will continue to maintain compliance.

5. Required Contract Provisions: All County contracts must expressly provide that:

a. Failure to comply with state and federal reporting requirements regarding a contractor's employees or failure to implement lawfully served wage and earnings assignment orders or notices of assignment constitutes a default under the contract; and

b. Failure to cure the default within 90 days of notice by the County shall be grounds for termination of the contract.

6. Department of Child Support Services Reporting Requirements: The Department of Child Support Services is required to annually report to the Board of Supervisors concerning the effectiveness of these requirements.

17.04 CONTRACTS WITH LOCAL GOVERNMENT

When one of the contracting parties is a county, city, district, or other local public body, the contract shall be accompanied by a copy of the resolution, order, motion, ordinance, or other source of authority of the local governing body which by law has authority to enter into the proposed contract, authorizing execution of the agreement.

17.05 RETIRED COUNTY EMPLOYEES REPORTING

Pursuant to Government Code section 7522.56 contractor shall provide county a report, no less than semi-annually (by January 31 and July 31 of each year), disclosing the names of the retired SCERS members who have been employed by contractor providing direct services to the county, their hours worked, and their duration of service. This report shall be forwarded to where Notice is sent pursuant to Roman numeral III of this Agreement.

TABLE OF CONTENTS

	<u>Page</u>
CHAPTER 18 – STANDARD PROVISIONS	18-3
18.01 STANDARD CONTRACT FORM.....	18-3
18.02 SPECIALIZED STANDARD CONTRACT FORMS.....	18-3
18.03 MANDATORY STANDARD CONTRACT PROVISIONS.....	18-3
1. Status of Contractor.....	18-3
2. Unilateral Indemnification Provision.....	18-3
3. Standard Insurance Provision and Minimum Limits of Insurance.....	18-3
4. IT Warranty Provision	18-4
5. Legal Training Provision	18-4
6. Benefits Waiver Provision.....	18-4
7. Retirement Benefits/Status	18-4
8. Contractor Identification Provision	18-4
9. Compliance with Support Reporting Obligations.....	18-4
10. Miscellaneous Standard Provisions	18-4
18.04 GOOD NEIGHBOR POLICY	18-5
18.05 HIPAA BUSINESS ASSOCIATES.....	18-5
1. General.....	18-5
2. Covered Health Care Providers.....	18-5
3. HIPAA Requirements.....	18-5
4. Business Associates.....	18-6

18.06 PUBLIC WORKS CONSTRUCTION CONTRACTS	18-7
18.07 WEB ACCESSIBILITY PROVISIONS.....	18-7
18.08 SOFTWARE AS A SERVICE CONTRACTS	18-7

CHAPTER 18 – STANDARD PROVISIONS

18.01 STANDARD CONTRACT FORM

The standard contract form must be used for those contracts that are not reviewed by County Counsel. See County Code section 2.61.012(f) and Chapter 2.01 of this Manual. The standard contract form is attached as Appendix L.

NOTE: The standard contract form may not be appropriate for use in all cases. Additional provisions may be required by applicable state or federal laws or regulations, as well as the subject matter of the agreement.

18.02 SPECIALIZED STANDARD CONTRACT FORMS

At the request of a Department, County Counsel may approve specialized standard form agreements that may be used in lieu of the form attached as Appendix L. Prior to their use, the specialized form agreements must be approved in writing by County Counsel and be filed with the Auditor. Once so approved and filed, they may be used for contracts not otherwise subject to County Counsel review. When an approved specialized standard form becomes outdated, replaced, or disapproved for use, the Department shall give written notification to the County Auditor and use of the form shall cease. The contracts attached as Appendix M are some of the contracts that have been approved by County Counsel for use in lieu of the form attached as Appendix M. (Rev. 5/1/09)

18.03 MANDATORY STANDARD CONTRACT PROVISIONS

Use of the following standard provisions contained in Appendix L is mandatory for all County contracts, unless waived or amended as indicated below. If a department proposes to modify these terms, County Counsel must be notified. (Rev. 5/1/09)

1. Status of Contractor – Independent contractor provision (Chapter 15 of this Manual and Appendices F, G and H) identify the correct Status of Contractor provision to use. The standard language must be used and cannot be changed without either County Counsel's or the Board of Supervisor's approval, as applicable per formal County policy.

2. Unilateral Indemnification Provision – Unless the County Risk Manager and County Counsel have approved use of another indemnification provision, the contract must contain the standard unilateral indemnification provision. A more detailed discussion of Indemnification provisions is found in Chapter 16 of this Manual.

3. Standard Insurance Provision and Minimum Limits of Insurance – Unless waived by the County Risk Manager, every contract must

contain the standard insurance provisions and minimum limits of insurance. A more detailed discussion of insurance provisions is found in Chapter 16 of this Manual.

4. IT Warranty Provision – All contracts involving use or provision of computer services or materials must contain the standard Information Technology provision, unless waived by County Counsel.

5. Legal Training Provision – All contracts for training or instruction of County personnel where the services being provided involve explanation or instruction on legal standards, principles or requirements, must contain this provision.

6. Benefits Waiver Provision – All contracts with individuals, sole proprietorships, partnerships and other unincorporated associations shall include the Benefits Waiver Provision.

7. Retirement Benefits/Status - Any contract with a retired County employee shall include the Retirement Benefits/Status provision.

8. Contractor Identification Provision – All contracts shall include the Contractor Identification provision.

9. Compliance with Support Reporting Obligations - All contracts shall include a provision that expressly provides that: a) failure to comply with state and federal reporting requirements regarding a contractor's employees or failure to implement lawfully served wage and earnings assignment orders or notices of assignment constitutes a default under the contract; and, b) failure to cure the default within 90-days of notice by the County shall be grounds for termination of the contract.

NOTE: This requirement does not apply to contractors who provide services under contracts for public works which are subject to the Public Contract Code.

10. Miscellaneous Standard Provisions – All contracts must contain the following sections of the Standard Contract Form attached as Appendix L, unless waived by County Counsel: Scope of Services; Term; Notice; Compliance With Laws; Governing Law and Jurisdiction; Performance Standards; Licenses and Permits; Ownership of Work Product; Conflict of Interest; Use of Funds; Non-discrimination; Compensation and Payment; Subcontracts and Assignments; Amendment and Waiver; Successors; Time; Interpretation; Director; Disputes; Termination; Reports; Audits and Records; Prior Agreements; Duplicate Counterparts; Survival of Terms, Authority to Execute; and Force Majeure.

18.04 GOOD NEIGHBOR POLICY

The Good Neighbor Policy should be included in all contracts for County owned and leased facilities and all contracts with County providers if the facilities provide a direct service to County constituents and have a potential impact on neighborhoods through increased traffic, noise, trash, parking, people congregating and/or create security risks to neighborhoods and program participants. The contract provision relating to the Good Neighbor Policy is included in the standard form agreement, (See Exhibit L).

18.05 HIPAA BUSINESS ASSOCIATES

1. General – The 1996 Health Insurance Portability and Accountability Act (HIPAA) imposes a comprehensive approach to ensuring the privacy of protected health information (PHI). The Privacy Rule implements HIPAA. It applies to all health plans, health clearinghouses and all health care providers who electronically transmit PHI in connection with a HIPAA transaction. The County is designating certain departments, programs and/or functions as “covered” by HIPAA. Only those departments, programs and/or functions that are “covered” are required to comply with the HIPAA Privacy Rule.

2. Covered Health Care Providers

a. General – A “health care provider” is 1) any person or organization who furnishes, bills or is paid for health care in the normal course of business; 2) a provider of services as defined in section 1861(u) of the Social Security Act, 42 USC 1395x(u); and 3) a provider of medical or health services as defined in section 1861(s) of the Social Security Act, 42 USC B85x(s).

b. Definition of Health Care – Health care is defined very broadly to mean care, services or supplies related to the health of an individual. It includes, but is not limited to, preventive, diagnostic, therapeutic, rehabilitative, maintenance or palliative care and counseling, service, assessment or procedure with respect to the physical or mental condition, or functional status of an individual or that affects the structure or function of the body. It also includes the sale or dispensing of a drug, device, equipment or other item in accordance with a prescription.

3. HIPAA Requirements – All individually identifiable health information that is used or disclosed by covered entities, regardless of whether it is in electronic, paper or oral form, is protected by the HIPAA Privacy Rule. Covered entities are required to inform patients in writing regarding the privacy protection employed when storing, using and disclosing health information. Patients must be allowed to view and receive copies of their health records. They must be able to request amendments to their records and to receive a history of disclosures of their health information.

4. Business Associates – HIPAA requires that contracts with business associates of a covered entity (those County departments, programs and/or functions that have been determined to be “covered”) contain certain provisions so as to ensure the privacy of PHI. The business associate contracts must establish how patient information will be used and disclosed and must provide assurance that the County’s business associate will protect PHI. The business associate agreement binds the County’s business associate to comply with the County’s privacy practices and to provide protection for any individually identifiable health information it receives from the County.

a. Definition of Business Associate – A business associate is defined as a person who performs services involving the use or disclosure of PHI for or on behalf of a covered entity. A member of the covered entity’s workforce is not considered a business associate.

i. A business associate relationship may arise when a person or organization performs a function or activity on behalf of a covered entity involving the use or disclosure of PHI, such as claims processing or administration, data analysis, processing or administration, utilization review, quality assurance, billing, benefit management, practice management, repricing, or any other function or activity regulated by HIPAA. 45 CFR §160.103.

ii. A business associate may also include any individual or entity that receives PHI from a covered entity in the course of providing legal, actuarial, accounting, consulting, data aggregation, management, accreditation or financial services. 45 CFR §160.103.

b. Effective Date for Inclusion of Business Associate Provisions in Contracts

1. General Rule – If a contract requiring a business associate agreement is entered into or amended after October 15, 2002, then a business associate agreement must be in place by April 14, 2003, or when the contract is entered into or amended, and in no event, not later than April 14, 2004. Evergreen contract amendments do not trigger the need to include a business associate agreement. All contracts requiring a business associate agreement must have that agreement in place no later than April 14, 2004.

2. Examples – a) Contracts entered into or amended after October 15, 2002, and on or before April 14, 2003, must include a business associate agreement on or before April 14, 2003. b) Contracts entered into or amended before October 15, 2002, and that terminate without being amended before April 14, 2004, do not require a business associate agreement. c) Contracts entered into or amended before October 15, 2002, and that will be amended between

April 14, 2003 and April 14, 2004, require a business associate agreement when the contract is amended between April 14, 2003 and April 14, 2004. d) Contracts entered into or amended before October 15, 2002, and that will be amended after April 14, 2004, require a business associate agreement on or before April 14, 2004.

c. County Contract Language – A new contract section dealing with HIPAA and the business associate provisions are attached as Appendix N.

d. County Counsel Review – Any business associate provisions that the County is being asked to sign as a health care provider for another person or entity should be reviewed and approved by County Counsel.

18.06 PUBLIC WORKS CONSTRUCTION CONTRACTS

Public contracting statutes, particularly the Public Contract Code and Labor Code, require public works contracts to contain numerous terms and conditions. These provisions include a hazardous materials and unforeseen conditions provision, resolution of construction claims provision, license requirement, workers compensation certificate, prevailing wage, payment bond, working hours restrictions, payroll records, trench shoring, utility relocation, substitution of securities for retention and antitrust claim assignment provision. Additionally, the public contracting statutes prohibit certain contract clauses. Such provisions include a full release or indemnification provision, provisions giving the agency the absolute power to decide disputes, requirements of waiver of claims, responsibility of waiver of claims, tidal wave and earthquake liability and specification of brands and proprietary specifications.

18.07 WEB ACCESSIBILITY PROVISIONS

The Board of Supervisors policy adopted on February 18, 2003 requires that websites be compliant with certain accessibility requirements. Therefore, any contract relating to web sites and web applications should include the provision in Section XX of the standard contract which is attached as Appendix L.

18.08 SOFTWARE AS A SERVICE CONTRACT

In a Software as a Service (“SaaS”) contract, the County obtains a subscription license to use the contractor’s software applications running on a cloud infrastructure managed and controlled by the contractor, including storage of County data. SaaS contracts presents unique service delivery and data security issues requiring specific contract terms. Therefore, any contract involving SaaS should include the Exhibit “Software as a Service Supplemental Terms and Conditions.” The Exhibit may also be adapted for use with, but not limited to, contracts involving other forms of cloud computing such as Infrastructure as a

Service or Platform as a Service, after consultation with the Department of Technology and County Counsel. (5/29/19)

TABLE OF CONTENTS

	<u>Page</u>
CHAPTER 19 – TERMINATION OF CONTRACTS	19-2
19.01 OVERVIEW	19-2
19.02 TERMINATION WITHOUT CAUSE	19-2
1. Notice of Termination.....	19-2
2. Duties of Contractor after Receipt of Notice of Termination.....	19-3
19.03 TERMINATION FOR CAUSE	19-3
19.04 PROCEDURE FOR TERMINATION FOR CAUSE	19-3
19.05 AUTHORITY TO TERMINATE.....	19-4

CHAPTER 19 – TERMINATION OF CONTRACTS

19.01 OVERVIEW

This section discusses the procedures relating to the complete or partial termination of contracts by the County both "with cause" and "without cause." "With cause" is defined in Section 19.03 of this Chapter. A contract may be terminated for cause when the contractor's performance is materially unsatisfactory or other significant contract terms have not been satisfied. "Without cause" means the contract may be terminated for any reason. This section also includes procedures for determining whether termination is appropriate. Departments should carefully consider the types of termination clauses to be used in each contract.

All contracts should include a provision allowing the County to terminate without cause with advanced written notice provided to the contractor. As a general rule, the County should include only unilateral termination without cause by the County in the contract. Whether or not to provide the same right to the contractor (mutual termination) must be given careful consideration in that the County may have expended considerable effort and funds in establishing the contract. It is not recommended that mutual termination, without cause, be included in the contract. Exceptions to this general rule may occur with concurrence by County Counsel.

19.02 TERMINATION WITHOUT CAUSE

The right of the County to terminate the contract without cause depends on a proper termination clause. The power of a contracting entity to issue a termination notice does not depend on the existence of a termination without cause clause. In the absence of such a clause, such action normally constitutes breach of contract which may subject the County to liability for damages.

1. Notice of Termination – The County may terminate a contract without cause only by a written notice to the contractor stating that: a) the contract is being terminated without cause and citing the appropriate contract clause, if any, authorizing such termination; b) the effective date of the termination; c) the extent of the termination; and, d) any special instructions. The County should also send a copy of the notice of termination to each known assignee, guarantor, or surety of the contractor. The notice should generally require that the contractor:

- a) Stop work on the terminated portion of the contract;
- b) Terminate all subcontracts related to the terminated portion of the prime contract;

- c) Immediately advise the contracting officer of any special circumstances precluding the stoppage of work;
- d) Take such action as may be necessary to protect and preserve County property in the possession of the contractor and deliver such property to the County;
- e) Promptly notify the County in writing of any legal proceedings against the contractor growing out of the contract or any commitment related to the terminated portion of the contract;
- f) Settle all outstanding liabilities and claims arising out of termination of subcontracts; g) promptly submit a final claim, supported by appropriate schedules; and h) dispose of any termination inventory, as directed by the County.

2. Duties of Contractor after Receipt of Notice of Termination –
After receipt of the notice of termination, the contractor must comply with the termination clause of the contract and the notice of termination, except as otherwise directed by County staff under the authority of the termination clause.

19.03 TERMINATION FOR CAUSE

Termination for cause involves the exercise of a legal right of the County to terminate, in whole or in part, the contractor's right to proceed by reason of the contractor's failure, actual or anticipatory, to perform its obligations under the contract. If the contract provides for termination without cause and if, after issuance of a notice of termination for cause, it is determined that the contractor was not in default or that the default was excusable, both the termination clauses should provide that the notice of termination is deemed issued under the termination without cause provisions of the contract.

Under a termination for cause, the County is not liable for contractor's costs on undelivered services or goods, and it is entitled to repayment of any advance payment and of any progress payments, applicable to such services or goods. The County must generally pay the contractor the contract price for any completed services or supplies.

19.04 PROCEDURE FOR TERMINATION FOR CAUSE

A contract may be terminated for cause when the contractor's performance is materially unsatisfactory or other significant contract terms have not been satisfied. Problems concerning the contractor's performance must be fully documented in writing and made a part of the contract manager's contract file. When work under a contract is unsatisfactory, a contract manager should: a) Notify the contractor in writing by certified mail; b) Explain why the work is not

satisfactory and what corrective action is expected; and, c) Give a specified period of time in which to satisfactorily perform the work.

In addition, the letter should inform the contractor that if the problems are not corrected or performance does not satisfactorily improve by a certain date, the agency will terminate the contract; have the work finished by another contractor; and hold the original contractor liable for any additional costs, including the costs of administration and rebidding of the work.

If the contract manager and the contract officer are uncertain of sufficient cause to terminate the contract and assess damages, they should request a legal opinion from County Counsel. County Counsel will review the case and make recommendations for an appropriate course of action and outline the necessary steps to be taken.

19.05 AUTHORITY TO TERMINATE

If an agreement was authorized or executed by the Board of Supervisors, it can only be terminated by the Board of Supervisors unless that authority has been specifically delegated by the Board of Supervisors. That authority may be expressly conferred in the agreement or it may be delegated by the Board of Supervisors when the agreement is authorized by the Board of Supervisors. The staff report should expressly indicate whether such authority to terminate is being conferred.

If an agreement was executed pursuant to delegated contract authority, the person having the authority to enter into the contract has authority to terminate the agreement.

APPENDIX

Page

APPENDIX A

SECTION 71-J FLOWCHART	A-1
BLANK 71-J FORM.....	A-3
COUNTY COUNSEL TRANSMITTAL FORM	A-4
71-J EVALUATION FORM	A-6

APPENDIX B

BOARD OF SUPERVISORS RESOLUTION FOR 71-J FINDINGS	B-1
------------------------------------------------------------	-----

APPENDIX C

SACRAMENTO COUNTY CODE SECTION 2.61.....	C-1
------------------------------------------	-----

APPENDIX D

WRITTEN AGREEMENT TO INDEMNIFY FOR RELEASE OF PROPRIETARY INFORMATION	D-1
--------------------------------------------------------------------------------	-----

APPENDIX E

STANDARD AMENDMENT PROVISION.....	E-1
-----------------------------------	-----

APPENDIX F

INDEPENDENT CONTRACTOR LANGUAGE -- WAIVER APPROVED	F-1
-------------------------------------------------------------	-----

APPENDIX G

INDEPENDENT CONTRACTOR LANGUAGE -- WAIVER NOT APPROVED.....	G-1
----------------------------------------------------------------	-----

APPENDIX H

OUT OF STATE CONTRACTORS	H-1
--------------------------------	-----

APPENDIX I

IRS REVENUE RULING 87-41	I-1
--------------------------------	-----

APPENDIX (CON'T)

Page

APPENDIX J

QUESTIONNAIRE FOR EVALUATING 20 FACTORS	J-1
COUNTY COUNSEL TRANSMITTAL FORM	J-5
TAX WAIVER SUBMITTAL FORM	J-7
20 IRS FACTORS FORM.....	J-8

APPENDIX K

INDEMNIFICATION PROVISIONS	K-1
----------------------------------	-----

APPENDIX L

STANDARD FORM AGREEMENT	L-1
-------------------------------	-----

APPENDIX M

ALTERNATIVE STANDARD FORM CONTRACTS	M-1
-------------------------------------------	-----

APPENDIX N

CONTRACT BOILERPLATE HIPAA PROVISION	N-1
HIPAA BUSINESS ASSOCIATE EXHIBIT	N-1

APPENDIX O

EXAMPLE OF DEBARMENT EXHIBIT	O-1
------------------------------------	-----

APPENDIX P

EXCEPTION TO BID FORM	P-1
-----------------------------	-----

APPENDIX Q

SOFTWARE AS A SERVICE SUPPLEMENT TERMS AND CONDITIONS	Q-1
----------------------------------------------------------	-----

APPENDIX A SECTION 71-J FLOWCHART

(Revised 5/16/12)

Purpose: This Worksheet is designed to assist the Departments to uniformly navigate the 71-J Contracting Process. The information developed as a result of the questions on this worksheet should assist the Departments in preparing appropriate justifications for Board approval.

✓	Process Steps	
	1. Department determines the service to be provided.	
	2. Department decides if Section 71-J applies. TM Is contract for County services?	If no, proceed to develop contract per administrative procedures.
	If yes. ↓	
	3. Department decides if County employees will be displaced. TM	If Yes, Department may <u>not</u> contract out.
	If no. ↓	
	4. Department provides informal notice to Employee Relations or unions for represented groups.	Date notified:
	5. Department conducts publicized competitive selection process.	Advertising Method(s):
	↓	Selection Method:
	6. Department decides if the proposed contract is economic AND efficient. TM	Basis for decision: If no. Department may not contract out.
	If yes. ↓	
	7. Department documents economy and efficiency.	Provide documentation with the contract, as part of the Final Approval Package.

	8. Department obtains appropriate approvals.	Date approved:
	9. Department prepares justification.	
	10. Department or Department of Employee Relations conducts formal "meet and confer" with represented groups.	Date conducted:
	<div style="text-align: center;">↓</div> 11. Contract is submitted to Board of Supervisors for approval.	

**Department of Health and Human Services
71-J Evaluation Form**

Purpose: This worksheet is intended to analyze, evaluate and provide concurrence in determining the level of 71-J action required.

Instructions: Program Staff completes this form for approval by the Department. This completed, signed form shall be attached to every contract approved by the Department.

Division Information

Division:
Program:
Division Contract Analyst:

Date:
Cost Center:
Order No.:

Contract Information

Contractor Name/Title:
Type of Service:
Contract No.:

Exemptions

#	Code	Exemption Type
I		County employees have never performed this type of service.
II		County employees are not currently performing this type of service.
III		Specific Federal, State or funding source requirements. - Cite authorizing code, law, etc in the Code column. (Explain below, or attach a separate page.)
IV	GC 31000	Special Services - Must meet requirements in 1, 2 and 3 below. Explain how this contract meets 1, 2 and 3 below, or attach a separate page.
		1) Type of Service (circle applicable): Therapeutic Medical Administrative Financial Linen/Laundry Maintenance/Custodial Legal Accounting Economic and
		2a) Expert or Consultant (not ordinarily available in the County's workforce) OR 2b) Independence from the County is required AND, Service is 3a) Intermittent OR 3b) Limited in term or scope OR 3c) Unrelated to the ongoing provision of direct service to County residents

Justification / Comments

This contract is not subject to 71-J Requirements due to exemption # _____ above.
This contract is subject to 71-J Requirements for the reasons below.

Program Monitor

Date

Program Manager

Date

Reviewed by County Counsel

Date

Contract is **NOT** subject to 71-J

Contract **IS** subject to 71-J

Municipal Services Agency
ACCOUNTING & FISCAL SERVICES DIVISION
CONTRACT SERVICES SECTION

March 29, 2022

To: _____, Deputy County Counsel

From: Mike Miller, ASO 2 (874-7034)

Subject: **TRANSMITTAL OF AGREEMENT FOR REVIEW AND APPROVAL**

CONTRACT NUMBER:		AGREEMENT
AGREEMENT FOR:		
CONTRACTING ENTITY: COUNTY OF SACRAMENTO		
CONSULTANT:		
PROJECT MANAGER:	PHONE:	REQUESTING DEPARTMENT: N/A

One complete copy of the referenced agreement with an signature page is attached for your review and approval.

71-J COMPLIANCE:

The services to be performed under this agreement represent services not provided by County employees.

The services to be performed under this agreement represent services provided by County employees.

Not applicable to contracting entity (see table above).

See attached Determination of Legal Authority completed by requesting Department.

TERM: Until all services are completed, estimated to be _____.
Date certain expiration on _____.
Director is given authority to extend term.

INDEPENDENT CONTRACTOR STATUS:

Consultant employs five (5) or more full-time employees.

Taxes will not be withheld from payments.

DELETE THE NEXT TWO SENTENCES IF A WAIVER OF TAX WITHHOLDING IS NOT APPLICABLE:

A request for waiver of tax withholding requirement is requested. County Contract Manual Appendix J "Questionnaire for Evaluating 20 Factors" is attached. Please indicate whether this request is approved or denied in the space provided at the end of this transmittal.

BASIC SCOPE OF SERVICES:

COMPENSATION:

Time and expenses not to exceed
Fixed fee of
Lump sum of
Cost plus fixed fee not to exceed
Plus contingency of
Maximum total payment amount of _____

NON-STANDARD TEXT AND COMMENTS:

Please advise me if you have any questions or concerns. If this agreement meets with your approval, please sign all signature pages and notify me that they are available for collection from your reception staff. Thank you!

.....

Request for Waiver of Tax Withholding is ☐Approved ☐Denied

By: _____ Date: _____
Deputy County Counsel

Department of Human Assistance

71-J Evaluation Form

Purpose: This worksheet is intended to analyze, evaluate and provide concurrence in determining the level of 71-J action required.

Instructions: The Program Staff completes this form in conjunction with the Department Contracts Analyst for approval by the Department. This completed, signed form shall be attached to every contract approved by the Department.

Division Information	
Contract type:	Date:
Program Contact:	Fund Center:
Contract Analyst:	G/L Acct:
Contract Information	
Contractor Name / Title:	
Type of Service:	
Contract Number (if applicable):	

EXEMPTIONS			
✓	#	Code	Exemption Type
	I	CC 2.07.040	County employees have never performed this type of service.
	II	CC 2.07.040	County employees are not currently performing this type of service.
	III		Specific Federal, State or funding source requirements. – Cite authorizing code, law, etc in the Code column. (Explain below, or attach a separate page.)
X	IV	OTHER	Explain below

EVALUATION ACTIONS TAKEN

Information Gathered

JUSTIFICATION / COMMENTS

	This contract is exempt from 71-J Requirements due to exemption type _____ above.
	This contract is not exempt from 71-J Requirements for the reasons below. Continue the Contracting Process beginning with Process Step 3 on the reverse side of this page.

Administration Contract Analyst (Date)	Administration Concurrence (Date)
----------------------------------------	-----------------------------------

**APPENDIX B
SAMPLE BOARD OF SUPERVISORS RESOLUTION
FOR 71-J FINDINGS**

RESOLUTION NO. _____

**RESOLUTION OF THE BOARD OF SUPERVISORS OF
SACRAMENTO COUNTY RELATING TO AGREEMENT FOR _____**

WHEREAS, the County has identified certain services that it requires to.

WHEREAS, the provisions of Section 71-J of the Sacramento County Charter are applicable to the contract for _____ services, because County civil service employees are currently providing those types of services.

WHEREAS, Section 71-J permits the County to contract for County services for reasons of economy and efficiency if displacement of current civil service employees does not occur and if such contracts are awarded through a competitive selection process, and the County has met and conferred with any organization that represents County employees who perform the type of services to be contracted.

BE IT RESOLVED by the Board of Supervisors of the County of Sacramento, State of California, that this Board finds as follows:

1. No displacement of civil service employees will occur as a result of the proposed contracts for _____ services;
2. On _____, the Department of _____ released a Request for Proposals (RFP) [or other specified type of document seeking proposals for services], soliciting proposals for _____ services;

3. Following review of the _____ proposals submitted, the evaluation committee [or other reviewing entity/person] recommended that _____ [Contractor name] be awarded a contract for _____ services.

4. The provision of _____ services can best be provided through other public and/or private agencies/providers because _____.

5. [Given current staffing levels and facility constraints, [department's] current capacity to provide _____ services is limited and it does not currently have the capacity to provide those services s.

6. If the County were to provide the _____ services with County civil service employees, it would be necessary to hire an additional _____ new workers. The annualized cost of providing those services with such additional employees would be \$_____ or \$_____ more than the annualized cost of the contractor.

7. Because of the cost savings, the Board of Supervisors concludes that the proposed contract for _____ services are necessary for reasons of economy and efficiency;

8. The Board of Supervisors further finds that the contracts involve the following efficiencies and benefits: _____.

9. There have been _____ meet and confer sessions with [union] representatives.

10. No agreement was reached during those meet and confer sessions despite a full and frank exchange of information. There is a fundamental and unresolvable difference of opinion as to the manner in which the services should be provided.

11. Therefore, the County has complied with its meet and confer obligation and there remains a fundamental and unresolvable difference of opinion as to the manner in which _____ services should be provided;

12. Given the administrative and operational efficiencies gained by contracting for the _____ services as well as the County's estimated cost savings, economy and efficiency will be served by contracting with non-County employees/providers for those services.

BE IT THEREFORE RESOLVED that the Board of Supervisors authorizes the award of contract to _____ for the _____ services;

BE IT FURTHER RESOLVED that the Board of Supervisors authorizes _____ to execute agreement with _____ in an amount not to exceed _____;

On a motion by Supervisor _____, seconded by Supervisor _____, the foregoing Resolution was passed and adopted by the Board of Supervisors of the County of Sacramento, State of California, this _____ day of _____ 200__, with the following vote:

AYES: Supervisors

NOES: Supervisors

ABSENT: Supervisors

ABSTAIN: Supervisors,

Chair of the Board of Supervisors
of Sacramento County, California

(SEAL)

ATTEST: _____
Clerk, Board of Supervisors

APPENDIX C
SACRAMENTO COUNTY CODE SECTION 2.61*
CONTRACTING AUTHORITY OF COUNTY OFFICERS

*Refer to the Sacramento County Code at <http://qcode.us/codes/sacramentocounty/> for the most recent version of Ch. 2.61.

APPENDIX D
WRITTEN AGREEMENT TO INDEMNIFY FOR
RELEASE OF PROPRIETARY INFORMATION

PROPRIETARY INFORMATION AGREEMENT
BETWEEN
THE COUNTY OF SACRAMENTO
AND

(Contractor)

Contractor _____ has provided the County of Sacramento (hereinafter referred to as "County") with certain information claimed by the Contractor to be proprietary and/or confidential information (hereinafter referred to as "Proprietary Data"). Submittal of Proprietary Data by Contractor to County is, in Contractor's opinion, necessary to fully respond to a Request for Proposal issued by County. Contractor and County agree for a period of ____ years as follows:

1. The Proprietary Data is submitted to County based on the understanding that the County will not disclose such data to others outside the County, nor reproduce the contents of said Proprietary Data or provide copies thereof to others outside the County without authorization from Contractor or as otherwise required by law. Contractor claims proprietary/confidential rights in the contents of the Proprietary Data as a basis for preventing disclosure of the contents thereof to others.

2. The County may make such disclosure or reproduction of the Proprietary Data as is reasonably necessary or convenient to evaluate the response to the Request for Proposal and/or to provide, monitor and evaluate the services subject to the Request for Proposal.

3. Except as provided in Paragraph 2 above, if any person serves a subpoena or makes a Public Records Act request to review, or to be provided with, copies of the Proprietary Data or any part thereof, immediately upon notification thereof, Contractor agrees to defend and indemnify the County and its officers, agents and employees against any action resulting from the County asserting the confidentiality of such Proprietary Data.

4. Contractor shall defend, indemnify and hold harmless County, its Board of Supervisors, officers, directors, agents, employees, and volunteers from and against any and all demands, claims, actions, liabilities, losses, damages, and costs, including reasonable attorneys' fees, arising out of or resulting from the performance of this Agreement, regardless of whether caused by a party indemnified hereunder.

5. If Contractor fails to execute this Agreement, the County, its officers, agents, and employees shall be free to grant a Public Records Act request relating to such Proprietary Data.

6. Notwithstanding this Agreement, the County reserves the right to determine, in its sole discretion, whether or not it will assert the claim of confidentiality on behalf of the Contractor.

EXECUTED on this _____ day of _____ 200_, in _____.

By: _____
Contractor

Title: _____

**APPENDIX E
STANDARD AMENDMENT PROVISION**

COUNTY OF SACRAMENTO

**[NUMBER] AMENDMENT TO AGREEMENT FOR
[TITLE OF PROJECT]**

THIS (NUMBER) AMENDMENT is made and entered into this _____ day of _____ 200_, by and between the COUNTY OF SACRAMENTO, a political subdivision of the State of California, hereinafter referred to as "COUNTY", and [NAME OF CONTRACTOR and nature of business, such as sole proprietor, a California corporation, etc.], hereinafter referred to as "CONTRACTOR".

RECITALS

WHEREAS, the COUNTY and CONTRACTOR have previously entered into an agreement on [date] to provide for [description of services] (hereinafter "Agreement"); and

[WHEREAS, the original Agreement was amended on **(date)**; and]

WHEREAS, COUNTY and CONTRACTOR desire to formally amend said Agreement to [e.g., change the scope of services and compensation for the services to be provided herein and to add an Information Technology Assurance provisions];

NOW, THEREFORE, the Agreement is amended as follows:

I. SCOPE OF SERVICES

The Scope of Services is amended to include those services specified in CONTRACTOR'S Proposal dated _____ attached as Exhibit "A". This proposal is hereby attached as Exhibit ___ and made a part of this Agreement. All services in Exhibit ___ shall be provided by the CONTRACTOR for the compensation described herein.

II. COMPENSATION

The compensation for additional work specified by this amendment shall be on a time and expense basis and shall not exceed \$_____. The hourly rates shall remain as stated in the original Agreement. The total Agreement Price Ceiling is revised from \$_____ to \$_____. Total compensation, including fees, expenses, and profits, for services rendered by CONTRACTOR shall not exceed this revised Agreement Price Ceiling.

--OR--

Exhibit "C" attached to the Agreement, is hereby amended as reflected by Exhibit "C" to this Amendment.

III. INFORMATION TECHNOLOGY ASSURANCE

A new section ____, which reads as follows is added to the Agreement:

CONTRACTOR shall take all reasonable precautions to ensure that any hardware, software, and/or embedded chip devices used by CONTRACTOR in the performance of services under this Agreement, other than those owned or provided by COUNTY, shall be free from viruses. Nothing in this provision shall be construed to limit any rights or remedies otherwise available to COUNTY under this Agreement.

IV. REAFFIRMATION

In all other respects, the above referenced Agreement, as amended, remains in full force and effect.

V. ENTIRE AGREEMENT

This Agreement, as amended, and any attachments hereto, constitute the entire understanding between the COUNTY and CONTRACTOR concerning the subject matter contained herein.

VI. EFFECTIVE DATE

This Amendment shall be deemed effective as of the date and date first written above.

(SIGNATURE PAGE FOLLOWS)

IN WITNESS WHEREOF, the parties hereto have executed this [Number] Amendment to the Agreement as of the day and year first written above.

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

By _____
Chair of the Board of Supervisors
of Sacramento County, California

"COUNTY"

(SEAL)

ATTEST: _____
Clerk, Board of Supervisors

Reviewed and approved by County Counsel:

Deputy County Counsel

[NAME OF CONTRACTOR and nature of
business]

By _____

Title _____

"CONTRACTOR"

APPENDIX F INDEPENDENT CONTRACTOR LANGUAGE – WAIVER APPROVED

a. It is understood and agreed that Contractor (including contractor's employees) is an independent contractor and that no relationship of employer-employee exists between the parties hereto. Contractor's assigned personnel shall not be entitled to any benefits payable to employees of County. County is not required to make any deductions or withholdings from the compensation payable to Contractor under the provisions of this Agreement; and as an independent contractor, Contractor hereby indemnifies and holds County harmless from any and all claims that may be made against County based upon any contention by any third party that an employer-employee relationship exists by reason of this Agreement.

b. It is further understood and agreed by the parties hereto that Contractor in the performance of its obligation hereunder is subject to the control or direction of County as to the designation of tasks to be performed, the results to be accomplished by the services hereunder agreed to be rendered and performed, and not the means, methods, or sequence used by Contractor for accomplishing the results.

c. If, in the performance of this Agreement, any third persons are employed by Contractor, such person shall be entirely and exclusively under the direction, supervision, and control of Contractor. All terms of employment, including hours, wages, working conditions, discipline, hiring, and discharging, or any other terms of employment or requirements of law, shall be determined by Contractor, and the County shall have no right or authority over such persons or the terms of such employment.

d. It is further understood and agreed that as an independent contractor and not an employee of County, neither the Contractor nor Contractor's assigned personnel shall have any entitlement as a County employee, right to act on behalf of County in any capacity whatsoever as agent, nor to bind County to any obligation whatsoever. Contractor shall not be covered by worker's compensation; nor shall Contractor be entitled to compensated sick leave, vacation leave, retirement entitlement, participation in group health, dental, life and other insurance programs, or entitled to other fringe benefits payable by the County to employees of the County.

e. It is further understood and agreed that Contractor must issue W-2 and 941 Forms for income and employment tax purposes, for all of contractors assigned personnel under the terms and conditions of this Agreement.

APPENDIX G INDEPENDENT CONTRACTOR LANGUAGE – WAIVER NOT APPROVED

a. It is understood and agreed that Contractor (including contractor's employees) is an independent contractor and that no relationship of employer-employee exists between the parties hereto. Contractor's assigned personnel shall not be entitled to any benefits payable to employees of County as an independent contractor, Contractor hereby indemnifies and holds County harmless from any and all claims that may be made against County based upon any contention by any third party that an employer-employee relationship exists by reason of this agreement.

b. It is further understood and agreed by the parties hereto that Contractor in the performance of its obligation hereunder is subject to the control or direction of County as to the designation of tasks to be performed, the results to be accomplished by the services hereunder agreed to be rendered and performed, and not the means, methods, or sequence used by Contractor for accomplishing the results.

c. If, in the performance of this agreement, any third persons are employed by Contractor, such person shall be entirely and exclusively under the direction, supervision, and control of Contractor. All terms of employment, including hours, wages, working conditions, discipline, hiring, and discharging, or any other terms of employment or requirements of law, shall be determined by Contractor, and the County shall have no right or authority over such persons or the terms of such employment.

d. It is further understood and agreed that as an independent contractor and not an employee of County, neither the Contractor nor Contractor's assigned personnel shall have any entitlement as a County employee, right to act on behalf of County in any capacity whatsoever as agent, nor to bind County to any obligation whatsoever. Contractor shall not be covered by worker's compensation; nor shall Contractor be entitled to compensated sick leave, vacation leave, retirement entitlement, participation in group health, dental, life and other insurance programs, or entitled to other fringe benefits payable by the County to employees of the County.

e. Notwithstanding Contractor's status as an independent contractor, County shall withhold from payments made to Contractor such sums as are required to be withheld from employees by the Federal Internal Revenue Code; the Federal Insurance Compensation Act; the State Personal Income Tax Law and the State Unemployment Insurance Code; provided, however, that said withholding is for the purpose of avoiding County's liability under said laws and does not abrogate Contractor's status as an independent contractor as described in this contract. Further, Contractor is not included in any group covered by County's present agreement with the federal Social Security Administration.

APPENDIX H OUT OF STATE CONTRACTORS

Notwithstanding subparagraphs (a) and (e), it is further understood and agreed that County shall withhold seven percent (7%) of all income paid to Contractor under this Agreement for payment and reporting to the California Franchise Tax Board because Contractor does not qualify as (1) a corporation with its principal place of business in California, (2) a partnership with a permanent place of business in California, (3) a corporation qualified to do business in California by the Secretary of State, or (4) an individual with a permanent residence in the State of California.

APPENDIX I

IRS REVENUE RULING 87-41

1987-1 C.B. 296, 1987 WL 419174 (IRS RRU)

Internal Revenue Service (I.R.S.)

Revenue Ruling

EMPLOYMENT STATUS UNDER SECTION 530(D) OF THE REVENUE ACT OF 1978

Published: 1987

Section 3121.- Definitions, 26 CFR 31.3121(d)-1: Who are employees.

(Also Sections 3306, 3401; 31.3306(i)-1, 31.3401(c)-1.)

Employment status under section 530(d) of the Revenue Act of 1978. Guidelines are set forth for determining the employment status of a taxpayer (technical service specialist) affected by section 530(d) of the Revenue Act of 1978, as added by section 1706 of the Tax Reform Act of 1986. The specialists are to be classified as employees under generally applicable common law standards.

ISSUE

In the situations described below, are the individuals employees under the common law rules for purposes of the Federal Insurance Contributions Act (FICA), the Federal Unemployment Tax Act (FUTA), and the Collection of Income Tax at Source on Wages (chapters 21, 23, and 24 respectively, subtitle C, Internal Revenue Code)? These situations illustrate the application of section 530(d) of the Revenue Act of 1978, 1978-3 (Vol. 1) C.B. xi, 119 (the 1978 Act), which was added by section 1706(a) of the Tax Reform Act of 1986, 1986-3 (Vol. 1) C.B. ____ (the 1986 Act) (generally effective for services performed and remuneration paid after December 31, 1986).

FACTS

In each factual situation, an individual worker (Individual), pursuant to an arrangement between one person (Firm) and another person (Client), provides services for the Client as an engineer, designer, drafter, computer programmer, systems analyst, or other similarly skilled worker engaged in a similar line of work.

SITUATION 1

The Firm is engaged in the business of providing temporary technical services to its clients. The Firm maintains a roster of workers who are available to provide technical services to prospective clients. The Firm does not train the workers but determines the services that the workers are qualified to perform based on information submitted by the workers.

The Firm has entered into a contract with the Client. The contract states that the Firm is to provide the Client with workers to perform computer programming services meeting specified qualifications for a particular project. The Individual, a computer programmer, enters into a contract with the Firm to perform services as a computer programmer for the Client's project, which is expected to last less than one year. The Individual is one of several programmers provided by the Firm to the Client. The Individual has not been an employee of or performed services for the Client (or any predecessor or affiliated corporation of the Client) at any time preceding the time at which the Individual begins performing services for the Client. Also, the Individual has not been an employee of or performed services for or on behalf of the Firm at any time preceding the time at which the Individual begins performing services for the Client. The Individual's contract with the Firm states that the Individual is an independent contractor with respect to services performed on behalf of the Firm for the Client.

The Individual and the other programmers perform the services under the Firm's contract with the Client. During the time the Individual is performing services for the Client, even though the Individual retains the right to perform services for other persons, substantially all of the Individual's working time is devoted to performing services for the Client. A significant portion of the services are performed on the Client's premises. The Individual reports to the Firm by accounting for time worked and describing the progress of the work. The Firm pays the Individual and regularly charges the Client for the services performed by the Individual. The Firm generally does not pay individuals who perform services for the Client unless the Firm provided such individuals to the Client.

The work of the Individual and other programmers is regularly reviewed by the Firm. The review is based primarily on reports by the Client about the performance of these workers. Under the contract between the Individual and the Firm, the Firm may terminate its relationship with the Individual if the review shows that he or she is failing to perform the services contracted for by the Client. Also, the Firm will replace the Individual with another worker if the Individual's services are unacceptable to the Client. In such a case, however, the Individual will nevertheless receive his or her hourly pay for the work completed.

Finally, under the contract between the Individual and the Firm, the Individual is prohibited from performing services directly for the Client and, under the contract between the Firm and the Client, the Client is prohibited from receiving services from the Individual for a period of three months following the termination or services by the Individual for the Client on behalf of the Firm.

SITUATION 2

The Firm is a technical services firm that supplies clients with technical personnel. The Client requires the services of a systems analyst to complete a project and contacts the Firm to obtain such an analyst. The Firm maintains a roster of analysts and refers such an analyst, the Individual, to the Client. The Individual is not restricted by the Client or the Firm from providing services to the general public while performing services for the Client and in fact does perform substantial services for other persons during the period the Individual is working for the Client. Neither the Firm nor the Client has priority on the services of the Individual. The Individual does not report, directly or indirectly, to the Firm after the beginning of the assignment to the Client concerning (1) hours worked by the Individual, (2) progress on the job, or (3) expenses incurred by the Individual in performing services for the Client. No reports (including reports of time worked or progress on the job) made by the Individual to the Client are provided by the Client to the Firm.

If the Individual ceases providing services for the Client prior to completion of the project or if the Individual's work product is otherwise unsatisfactory, the Client may seek damages from the Individual. However, in such circumstances, the Client may not seek damages from the Firm, and the Firm is not required to replace the Individual. The Firm may not terminate the services of the Individual while he or she is performing services for the Client and may not otherwise affect the relationship between the Client and the Individual. Neither the Individual nor the Client is prohibited for any period after termination of the Individual's services on this job from contracting directly with the other. For referring the Individual to the Client, the Firm receives a flat fee that is fixed prior to the Individual's commencement of services for the Client and is unrelated to the number of hours and quality of work performed by the Individual. The Individual is not paid by the Firm either directly or indirectly. No payment made by the Client to the Individual reduces the amount of the fee that the Client is otherwise required to pay the Firm. The Individual is performing services that can be accomplished without the Individual's receiving direction or control as to hours, place of work, sequence, or details of work.

SITUATION 3

The Firm, a company engaged in furnishing client firms with technical personnel, is contacted by the Client, who is in need of the services of a drafter for a particular project, which is expected to last less than one year. The Firm recruits the Individual to perform the drafting services for the Client. The Individual performs substantially all of the services for the Client at the office of the Client, using materials and equipment of

the Client. The services are performed under the supervision of employees of the Client. The Individual reports to the Client on a regular basis. The Individual is paid by the Firm based on the number of hours the Individual has worked for the Client, as reported to the Firm by the Client or as reported by the Individual and confirmed by the Client. The Firm has no obligation to pay the Individual if the Firm does not receive payment for the Individual's services from the Client. For recruiting the Individual for the Client, the Firm receives a flat fee that is fixed prior to the Individual's commencement of services for the Client and is unrelated to the number of hours and quality of work performed by the Individual. However, the Firm does receive a reasonable fee for performing the payroll function. The Firm may not direct the work of the Individual and has no responsibility for the work performed by the Individual. The Firm may not terminate the services of the Individual. The Client may terminate the services of the Individual without liability to either the Individual or the Firm. The Individual is permitted to work for another firm while performing services for the Client, but does in fact work for the Client on a substantially full-time basis.

LAW AND ANALYSIS

This ruling provides guidance concerning the factors that are used to determine whether an employment relationship exists between the Individual and the Firm for federal employment tax purposes and applies those factors to the given factual situations to determine whether the Individual is an employee of the Firm for such purposes. The ruling does not reach any conclusions concerning whether an employment relationship for federal employment tax purposes exists between the Individual and the Client in any of the factual situations.

Analysis of the preceding three fact situations requires an examination of the common law rules for determining whether the Individual is an employee with respect to either the Firm or the Client, a determination of whether the Firm or the Client qualifies for employment tax relief under section 530(a) of the 1978 Act, and a determination of whether any such relief is denied the Firm under section 530(d) of the 1978 Act (added by Section 1706 of the 1986 Act).

An individual is an employee for federal employment tax purposes if the individual has the status of an employee under the usual common law rules applicable in determining the employer-employee relationship. Guides for determining that status are found in the following three substantially similar sections of the Employment Tax Regulations: sections 31.3121(d)-1(c); 31.3306(i)-1; and 31.3401(c)-1.

These sections provide that generally the relationship of employer and employee exists when the person or persons for whom the services are performed have the right to control and direct the individual who performs the services, not only as to the result to be accomplished by the work but also as to the details and means by which that result is accomplished. That is, an employee is subject to the will and control of the employer not only as to what shall be done but as to how it shall be done. In this connection, it is not necessary that the employer actually direct or control the manner in which the services are performed; it is sufficient if the employer has the right to do so.

Conversely, these sections provide, in part, that individuals (such as physicians, lawyers, dentists, contractors, and subcontractors) who follow an independent trade,

business, or profession, in which they offer their services to the public, generally are not employees.

Finally, if the relationship of employer and employee exists, the designation or description of the relationship by the parties as anything other than that of employer and employee is immaterial. Thus, if such a relationship exists, it is of no consequence that the employee is designated as a partner, coadventurer, agent, independent contractor, or the like.

As an aid to determining whether an individual is an employee under the common law rules, twenty factors or elements have been identified as indicating whether sufficient control is present to establish an employer-employee relationship. The twenty factors have been developed based on an examination of cases and rulings considering whether an individual is an employee. The degree of importance of each factor varies depending on the occupation and the factual context in which the services are performed. The twenty factors are designed only as guides for determining whether an individual is an employee; special scrutiny is required in applying the twenty factors to assure that formalistic aspects of an arrangement designed to achieve a particular status do not obscure the substance of the arrangement (that is, whether the person or persons for whom the services are performed exercise sufficient control over the individual for the individual to be classified as an employee). The twenty factors are described below:

1. **INSTRUCTIONS.** A worker who is required to comply with other persons' instructions about when, where, and how he or she is to work is ordinarily an employee. This control factor is present if the person or persons for whom the services are performed have the RIGHT to require compliance with instructions.

See, for example, Rev. Rul. 68-598, 1968-2 C.B. 464, and Rev. Rul. 66- 381, 1966-2 C.B. 449.

2. **TRAINING.** Training a worker by requiring an experienced employee to work with the worker, by corresponding with the worker, by requiring the worker to attend meetings, or by using other methods, indicates that the person or persons for whom the services are performed want the services performed in a particular method or manner. See Rev. Rul. 70-630, 1970-2 C.B. 229.

3. **INTEGRATION.** Integration of the worker's services into the business operations generally shows that the worker is subject to direction and control. When the success or continuation of a business depends to an appreciable degree upon the performance of certain services, the workers who perform those services must necessarily be subject to a certain amount of control by the owner of the business. See *United States v. Silk*, 331 U.S. 704 (1947), 1947-2 C.B. 167.

4. **SERVICES RENDERED PERSONALLY.** If the Services must be rendered personally, presumably the person or persons for whom the services are performed are interested in the methods used to accomplish the work as well as in the results. See Rev. Rul. 55-695, 1955-2 C.B. 410.

5. **HIRING, SUPERVISING, AND PAYING ASSISTANTS.** If the person or persons for whom the services are performed hire, supervise, and pay assistants, that factor generally shows control over the workers on the job. However, if one worker hires, supervises, and pays the other assistants pursuant to a contract under which the worker agrees to provide materials and labor and under which the worker is responsible

only for the attainment of a result, this factor indicates an independent contractor status. Compare Rev. Rul. 63-115, 1963-1 C.B. 178, with Rev. Rul. 55-593 1955-2 C.B. 610.

6. CONTINUING RELATIONSHIP. A continuing relationship between the worker and the person or persons for whom the services are performed indicates that an employer-employee relationship exists. A continuing relationship may exist where work is performed at frequently recurring although irregular intervals. See *United States v. Silk*.

7. SET HOURS OF WORK. The establishment of set hours of work by the person or persons for whom the services are performed is a factor indicating control. See Rev. Rul. 73-591, 1973-2 C.B. 337.

8. FULL TIME REQUIRED. If the worker must devote substantially full time to the business of the person or persons for whom the services are performed, such person or persons have control over the amount of time the worker spends working and impliedly restrict the worker from doing other gainful work. An independent contractor on the other hand, is free to work when and for whom he or she chooses. See Rev. Rul. 56-694, 1956-2 C.B. 694.

9. DOING WORK ON EMPLOYER'S PREMISES. If the work is performed on the premises of the person or persons for whom the services are performed, that factor suggests control over the worker, especially if the work could be done elsewhere. Rev. Rul. 56-660, 1956-2 C.B. 693. Work done off the premises of the person or persons receiving the services, such as at the office of the worker, indicates some freedom from control. However, this fact by itself does not mean that the worker is not an employee. The importance of this factor depends on the nature of the service involved and the extent to which an employer generally would require that employees perform such services on the employer's premises. Control over the place of work is indicated when the person or persons for whom the services are performed have the right to compel the worker to travel a designated route, to canvass a territory within a certain time, or to work at specific places as required. See Rev. Rul. 56-694. 10. ORDER OR SEQUENCE SET. If a worker must perform services in the order or sequence set by the person or persons for whom the services are performed, that factor shows that the worker is not free to follow the worker's own pattern of work but must follow the established routines and schedules of the person or persons for whom the services are performed. Often, because of the nature of an occupation, the person or persons for whom the services are performed do not set the order of the services or set the order infrequently. It is sufficient to show control, however, if such person or persons retain the right to do so. See Rev. Rul. 56-694.

11. ORAL OR WRITTEN REPORTS. A requirement that the worker submit regular or written reports to the person or persons for whom the services are performed indicates a degree of control. See Rev. Rul. 70-309, 1970-1 C.B. 199, and Rev. Rul. 68-248, 1968-1 C.B. 431.

12. PAYMENT BY HOUR, WEEK, MONTH. Payment by the hour, week, or month generally points to an employer-employee relationship, provided that this method of payment is not just a convenient way of paying a lump sum agreed upon as the cost of a job. Payment made by the job or on a straight commission generally indicates that the worker is an independent contractor. See Rev. Rul. 74-389, 1974-2 C.B. 330.

13. **PAYMENT OF BUSINESS AND/OR TRAVELING EXPENSES.** If the person or persons for whom the services are performed ordinarily pay the worker's business and/or traveling expenses, the worker is ordinarily an employee. An employer, to be able to control expenses, generally retains the right to regulate and direct the worker's business activities. See Rev. Rul. 55-144, 1955-1 C.B. 483.

14. **FURNISHING OF TOOLS AND MATERIALS.** The fact that the person or persons for whom the services are performed furnish significant tools, materials, and other equipment tends to show the existence of an employer-employee relationship. See Rev. Rul. 71-524, 1971-2 C.B. 346.

15. **SIGNIFICANT INVESTMENT.** If the worker invests in facilities that are used by the worker in performing services and are not typically maintained by employees (such as the maintenance of an office rented at fair value from an unrelated party), that factor tends to indicate that the worker is an independent contractor. On the other hand, lack of investment in facilities indicates dependence on the person or persons for whom the services are performed for such facilities and, accordingly, the existence of an employer- employee relationship. See Rev. Rul. 71-524. Special scrutiny is required with respect to certain types of facilities, such as home offices.

16. **REALIZATION OF PROFIT OR LOSS.** A worker who can realize a profit or suffer a loss as a result of the worker's services (in addition to the profit or loss ordinarily realized by employees) is generally an independent contractor, but the worker who cannot is an employee. See Rev. Rul. 70-309. For example, if the worker is subject to a real risk of economic loss due to significant investments or a bona fide liability for expenses, such as salary payments to unrelated employees, that factor indicates that the worker is an independent contractor. The risk that a worker will not receive payment for his or her services, however, is common to both independent contractors and employees and thus does not constitute a sufficient economic risk to support treatment as an independent contractor.

17. **WORKING FOR MORE THAN ONE FIRM AT A TIME.** If a worker performs more than de minimis services for a multiple of unrelated persons or firms at the same time, that factor generally indicates that the worker is an independent contractor. See Rev. Rul. 70-572, 1970-2 C.B. 221. However, a worker who performs services for more than one person may be an employee of each of the persons, especially where such persons are part of the same service arrangement.

18. **MAKING SERVICE AVAILABLE TO GENERAL PUBLIC.** The fact that a worker makes his or her services available to the general public on a regular and consistent basis indicates an independent contractor relationship. See Rev. Rul. 56-660.

19. **RIGHT TO DISCHARGE.** The right to discharge a worker is a factor indicating that the worker is an employee and the person possessing the right is an employer. An employer exercises control through the threat of dismissal, which causes the worker to obey the employer's instructions. An independent contractor, on the other hand, cannot be fired so long as the independent contractor produces a result that meets the contract specifications. Rev. Rul. 75-41, 1975-1 C.B. 323.

20. **RIGHT TO TERMINATE.** If the worker has the right to end his or her relationship with the person for whom the services are performed at any time he or she wishes without incurring liability, that factor indicates an employer- employee

relationship. See Rev. Rul. 70-309. Rev. Rul. 75-41 considers the employment tax status of individuals performing services for a physician's professional service corporation. The corporation is in the business of providing a variety of services to professional people and firms (subscribers), including the services of secretaries, nurses, dental hygienists, and other similarly trained personnel. The individuals who are to perform the services are recruited by the corporation, paid by the corporation, assigned to jobs, and provided with employee benefits by the corporation. Individuals who enter into contracts with the corporation agree they will not contract directly with any subscriber to which they are assigned for at least three months after cessation of their contracts with the corporation. The corporation assigns the individual to the subscriber to work on the subscriber's premises with the subscriber's equipment. Subscribers have the right to require that an individual furnished by the corporation cease providing services to them, and they have the further right to have such individual replaced by the corporation within a reasonable period of time, but the subscribers have no right to affect the contract between the individual and the corporation. The corporation retains the right to discharge the individuals at any time. Rev. Rul. 75-41 concludes that the individuals are employees of the corporation for federal employment tax purposes.

Rev. Rul. 70-309 considers the employment tax status of certain individuals who perform services as oil well pumpers for a corporation under contracts that characterize such individuals as independent contractors. Even though the pumpers perform their services away from the headquarters of the corporation and are not given day-to-day directions and instructions, the ruling concludes that the pumpers are employees of the corporation because the pumpers perform their services pursuant to an arrangement that gives the corporation the right to exercise whatever control is necessary to assure proper performance of the services; the pumpers' services are both necessary and incident to the business conducted by the corporation; and the pumpers are not engaged in an independent enterprise in which they assume the usual business risks, but rather work in the course of the corporation's trade or business. See also Rev. Rul. 70-630, 1970-2 C.B. 229, which considers the employment tax status of sales clerks furnished by an employee service company to a retail store to perform temporary services for the store.

Section 530(a) of the 1978 Act, as amended by section 269(c) of the Tax Equity and Fiscal Responsibility Act of 1982, 1982-2 C.B. 462, 536, provides, for purposes of the employment taxes under subtitle C of the Code, that if a taxpayer did not treat an individual as an employee for any period, then the individual shall be deemed not to be an employee, unless the taxpayer had no reasonable basis for not treating the individual as an employee. For any period after December 31, 1978, this relief applies only if both of the following consistency rules are satisfied: (1) all federal tax returns (including information returns) required to be filed by the taxpayer with respect to the individual for the period are filed on a basis consistent with the taxpayer's treatment of the individual as not being an employee ('reporting consistency rule'), and (2) the taxpayer (and any predecessor) has not treated any individual holding a substantially similar position as an employee for purposes of the employment taxes for periods beginning after December 31, 1977 ('substantive consistency rule').

The determination of whether any individual who is treated as an employee holds a position substantially similar to the position held by an individual whom the taxpayer would otherwise be permitted to treat as other than an employee for employment tax purposes under section 530(a) of the 1978 Act requires an examination of all the facts and circumstances, including particularly the activities and functions performed by the individuals. Differences in the positions held by the respective individuals that result from the taxpayer's treatment of one individual as an employee and the other individual as other than an employee (for example, that the former individual is a participant in the taxpayer's qualified pension plan or health plan and the latter individual is not a participant in either) are to be disregarded in determining whether the individuals hold substantially similar positions.

Section 1706(a) of the 1986 Act added to section 530 of the 1978 Act a new subsection (d), which provides an exception with respect to the treatment of certain workers. Section 530(d) provides that section 530 shall not apply in the case of an individual who, pursuant to an arrangement between the taxpayer and another person, provides services for such other person as an engineer, designer, drafter, computer programmer, systems analyst, or other similarly skilled worker engaged in a similar line of work. Section 530(d) of the 1978 Act does not affect the determination of whether such workers are employees under the common law rules. Rather, it merely eliminates the employment tax relief under section 530(a) of the 1978 Act that would otherwise be available to a taxpayer with respect to those workers who are determined to be employees of the taxpayer under the usual common law rules. Section 530(d) applies to remuneration paid and services rendered after December 31, 1986.

The Conference Report on the 1986 Act discusses the effect of section 530(d) as follows:

The Senate amendment applies whether the services of [technical service workers] are provided by the firm to only one client during the year or to more than one client, and whether or not such individuals have been designated or treated by the technical services firm as independent contractors, sole proprietors, partners, or employees of a personal service corporation controlled by such individual. The effect of the provision cannot be avoided by claims that such technical service personnel are employees of personal service corporations controlled by such personnel. For example, an engineer retained by a technical services firm to provide services to a manufacturer cannot avoid the effect of this provision by organizing a corporation that he or she controls and then claiming to provide services as an employee of that corporation.

* * * [T]he provision does not apply with respect to individuals who are classified, under the generally applicable common law standards, as employees of a business that is a client of the technical services firm.

2 H. R. Rep. No. 99-841 (Conf. Rep.), 99th Cong., 2d Sess. II-834 to 835 (1986).

Under the facts of Situation 1 the legal relationship is between the Firm and the Individual, and the Firm retains the right of control to insure that the services are performed in a satisfactory fashion. The fact that the Client may also exercise some degree of control over the Individual does not indicate that the Individual is not an employee. Therefore, in Situation 1, the Individual is an employee of the Firm under the common law rules. The facts in Situation 1 involve an arrangement among the

Individual, Firm, and Client, and the services provided by the Individual are technical services. Accordingly, the Firm is denied section 530 relief under section 530(d) of the 1978 Act (as added by section 1706 of the 1986 Act), and no relief is available with respect to any employment tax liability incurred in Situation 1. The analysis would not differ if the acts of Situation 1 were changed to state that the Individual provided the technical services through a personal service corporation owned by the Individual.

In Situation 2, the Firm does not retain any right to control the performance of the services by the Individual and, thus, no employment relationship exists between the Individual and the Firm.

In Situation 3, the Firm does not control the performance of the services of the Individual, and the Firm has no right to affect the relationship between the Client and the Individual. Consequently, no employment relationship exists between the Firm and the Individual.

HOLDINGS

SITUATION 1. The Individual is an employee of the Firm under the common law rules. Relief under section 530 of the 1978 Act is not available to the Firm because of the provisions of section 530(d).

SITUATION 2. The Individual is not an employee of the Firm under the common law rules.

SITUATION 3. The Individual is not an employee of the Firm under the common law rules.

Because of the application of section 530(b) of the 1978 Act, no inference should be drawn with respect to whether the Individual in Situations 2 and 3 is an employee of the Client for federal employment tax purposes.

Rev. Rul. 87-41, 1987-1 C.B. 296, 1987 WL 419174 (IRS RRU)

APPENDIX J
QUESTIONNAIRE FOR EVALUATING 20 FACTORS
(Revised 5/16/12)

The following is an alternative way to assist in the determination of the tax status of a service provider. It employs a programmatic or “workbook” method. Thus, it may be used whenever the IRS 20 factors appear difficult to apply. This programmatic approach is based on the IRS 20 factors. It is important to ensure the accuracy of the factual information applied. Consistent with the County’s policy, it is designed to find independent contractor status only in reasonably clear cases.

Part A

If the following question is answered in the affirmative and the contractor is a corporation, the service provider may be treated as an independent contractor for tax purposes; otherwise go on to Part B.

QUESTION

Under the express terms of the contract, does the contractor have the right to assign the contract and subcontract the work without obtaining permission from the County?

YES () NO ()

Part B

If none of the following questions are answered affirmatively, the service provider may be treated as an independent contractor.

If question number 1 is answered affirmatively and any other question is answered affirmatively, the service provider should generally be treated as an employee for tax purposes.

If three or more questions are answered in the affirmative, the service provider should generally be treated as an employee for tax purposes.

If only one of any of the following questions is answered in the affirmative, continue to Part C.

If only two of any of the following questions are answered in the affirmative (excluding question number 1), continue to Part C.

QUESTIONS

1. Does the County, including any officer or employee of the County, have discretion to provide instructions to the service provider beyond those outlined in the scope of services provision in the contract; i.e., if the County, through an officer or employee, made recommendations or suggestions to the service provider about how to carry out some part of the work, would the service provider run a substantial risk of loss (e.g., contract termination) if the service provider ignored the suggestion or recommendation?

YES () NO ()

2. Will the County provide the service provider with training directly related to the work to be performed under the contract?

YES () NO ()

3. Is the work being performed a regular part of the services the County provides to the community or are there County employees who perform the same or similar duties? For example, a physician who attends indigent persons legally entitled to publicly provided medical care at a County clinic is performing a County service.

YES () NO ()

4. Does the service provider work full time or primarily for the County?

YES () NO ()

5. Does the service provider supervise County employees or other persons hired to perform County services?

YES () NO ()

PART C

Subpart I

This subpart addresses certain professionals that the IRS has specifically recognized as independent contractors if certain criteria are met. These professionals are medical doctors, psychologists, lawyers, accountants, architects, engineers, real estate appraisers, dentists, veterinarians, building contractors and subcontractors, stenographers, and auctioneers. Even though there may have been two affirmative answers to PART B, any of these service providers may be treated as an independent contractor provided any of the following questions are answered affirmatively.

QUESTIONS

1. Does the service provider maintain his or her own office where most or all of the work will be performed?

YES () NO ()

2. Does the service provider offer his or her services to the general public and on average works fewer than 10 hours per week for the County?

YES () NO ()

3. Is the service provider maintaining his or her own office (not at home) and, under the contract, working to complete a specific project (as distinguished from being hired for a specific period of time) for a commission or lump sum (as distinguished from an hourly rate (unless *truly* capped))?

YES () NO ()

If none of these questions is answered affirmatively, go on to Subpart II and apply those factors to determine the service provider's tax status.

Subpart II

This portion relates to services not specifically included in Subpart I.

If there is one affirmative answer in Part B and there are two or more affirmative answers in this subpart, then the service provider should be treated as an employee for tax purposes.

If there are two affirmative answers in Part B and there is one or more affirmative answers in this subpart, then the service provider should be treated as an employee for tax purposes.

If there is only one affirmative answer in Part B and only one affirmative answer in this subpart, or, if there are no affirmative answers in this Subpart II:

(a) - the service provider may be treated as an independent contractor if he or she maintains his or her own office or facility (not at home) at which most or all of the work will be performed and only one question in Part B was answered affirmatively;

(b) - the service provider may be treated as an independent contractor if he or she maintains his or her own office or facility at which most or all of the work will be performed and he or she regularly retains one or more employees who assist in the work;

(c) - all cases not covered by (a) and (b) should be treated as employees for tax purposes.

QUESTIONS

1. Has the County contracted with this service provider on more than two previous occasions within the last four years for amounts in excess of \$10,000.00?
YES () NO ()
2. Is the service provider doing all or nearly all of the work on County premises or at County facilities?
YES () NO ()
3. Does the service provider work exclusively for the County?
YES () NO ()
4. Is the service provider relying on the County to furnish tools or material to accomplish the work?
YES () NO ()
5. Can the County terminate the contract without cause and without incurring liability for work not yet completed?
YES () NO ()
6. Can the service provider terminate the contract without cause and without incurring liability to the County for the work not yet completed?
YES () NO ()
7. Does the County pay the business or traveling expenses of the service provider incurred in the performance of the work?
YES () NO ()
8. Does the County pay the service provider based on an hourly rate?
YES () NO ()

Municipal Services Agency
ACCOUNTING & FISCAL SERVICES DIVISION
CONTRACT SERVICES SECTION

March 29, 2022

To: _____, Deputy County Counsel

From: Mike Miller, ASO 2 (874-7034)

Subject: **TRANSMITTAL OF AGREEMENT FOR REVIEW AND APPROVAL**

CONTRACT NUMBER:		AGREEMENT
AGREEMENT FOR:		
CONTRACTING ENTITY: COUNTY OF SACRAMENTO		
CONSULTANT:		
PROJECT MANAGER:	PHONE:	REQUESTING DEPARTMENT: N/A

One complete copy of the referenced agreement with an signature page is attached for your review and approval.

71-J COMPLIANCE:

The services to be performed under this agreement represent services not provided by County employees.

The services to be performed under this agreement represent services provided by County employees.

Not applicable to contracting entity (see table above).

See attached Determination of Legal Authority completed by requesting Department.

TERM: Until all services are completed, estimated to be _____.
Date certain expiration on _____.
Director is given authority to extend term.

INDEPENDENT CONTRACTOR STATUS:

Consultant employs five (5) or more full-time employees.

Taxes will not be withheld from payments.

DELETE THE NEXT TWO SENTENCES IF A WAIVER OF TAX WITHHOLDING IS NOT APPLICABLE:

A request for waiver of tax withholding requirement is requested. County Contract Manual Appendix J "Questionnaire for Evaluating 20 Factors" is attached. Please indicate whether this request is approved or denied in the space provided at the end of this transmittal.

BASIC SCOPE OF SERVICES:

COMPENSATION:

Time and expenses not to exceed
Fixed fee of _____
Lump sum of _____
Cost plus fixed fee not to exceed _____
Plus contingency of _____
Maximum total payment amount of _____

NON-STANDARD TEXT AND COMMENTS:

Please advise me if you have any questions or concerns. If this agreement meets with your approval, please sign all signature pages and notify me that they are available for collection from your reception staff. Thank you!

Request for Waiver of Tax Withholding is ☐ Approved ☐ Denied

By: _____ Date: _____
Deputy County Counsel

COUNTY OF SACRAMENTO
Department of Health & Human Services

Current Date

TO:

FROM: _____, Director
Department of

SUBJECT: Independent Contractor –Submission of Request for Waiver of Tax Withholding

The department is submitting its request for waiver of tax withholding for **Facility/Group/Individual Provider Name**. The basis for this waiver is based upon the answers to the twenty (20) questions below:

1. Instructions provided?
2. Training provided?
3. Contractor can hire others to do work.
4. Work essential to the County?
5. County-set work hours?
6. Continuing relationship with County?
7. Contractor can hire/fire at their discretion?
8. Contractor can pursue work elsewhere?
9. County control over work citing?
10. County sets order and sequence of work?
11. Interim reports required?
12. Payment based on time?
13. Contractor works for others?
14. Contractor pays for business expenses?
15. Contractor furnishes own tools?
16. Contractor needs County assistance to do job?
17. Services available to general public?
18. Possible profit or loss?
19. Can County discharge contractor?
20. Compensation dependent on completion?

Tax Withholding Waiver Granted:

County Counsel

By: _____ Date _____

Tax Withholding Waiver Denied:

County Counsel

By: _____ Date _____

CONTRACTOR _____

AGREEMENT NO. _____

**INDEPENDENT CONTRACTOR STATUS
20 IRS FACTORS**

FACTORS	YES	NO	COMMENT
Must comply with the principal's instructions about the work.			
Received training from or at the direction of the principal.			
Provides services that are integrated into the business.			
Provides services that must be rendered personally.			
Hires, supervises, or pays assistants for the principal.			
Has a continuing working relationship with the principal.			
Follows set hours of work.			
Works full time for the principal.			
Must do their work on the principal's premises.			
Must do their work in a sequence set by the principal.			
Must submit regular reports to the principal.			
Receives payment of regular amounts at set intervals.			
Receives payment for business and/or traveling expenses.			
Relies on principal to furnish tools and materials.			
Lacks a major investment in facilities used to perform the service.			
Cannot make a profit or suffer a loss in performing the service.			
Works for one principal at a time.			
Does not offer their services to the general public.			
Can be fired by the principal.			
May quit the work anytime without incurring liability.			

APPENDIX K INDEMNIFICATION AND SELF-INSURANCE PROVISIONS

STANDARD UNILATERAL INDEMNIFICATION

CONTRACTOR shall indemnify, defend, and hold harmless COUNTY, its Board of Supervisors, officers, directors, agents, employees and volunteers from and against any and all claims, demands, actions, losses, liabilities, damages, and costs, including reasonable attorneys' fees, arising out of or resulting from the performance of this Agreement, regardless of whether caused in part by a party indemnified hereunder.

UNILATERAL INDEMNIFICATION WITH PROFESSIONAL LIABILITY **(Utilize in Architectural and Engineering Contracts or Consulting Contracts that require Professional Liability)**

For work or services provided under this Agreement, which are not professional services, CONTRACTOR shall indemnify, defend, and hold harmless COUNTY, its Board of Supervisors, officers, directors, agents, employees and volunteers from and against any and all claims, demands, actions, losses, liabilities, damages, and costs, including reasonable attorneys' fees, arising out of or resulting from performance of this Agreement, regardless of whether caused in part by a party indemnified hereunder, except for loss caused by the sole negligence of COUNTY, its Board of Supervisors, officers, directors, agents, employees and volunteers.

For professional services provided under this Agreement, CONTRACTOR shall indemnify, defend, and hold harmless COUNTY, its Board of Supervisors, officers, directors, agents, employees and volunteers from and against any and all claims, demands, actions, losses, liabilities, damages, and costs, including reasonable attorneys' fees, arising out of or resulting from the negligent performance of the professional services provided under this Agreement.

LIMITED UNILATERAL INDEMNIFICATION **(Requires Risk Management Approval to Use)**

CONTRACTOR shall defend, indemnify and hold harmless COUNTY, its Board of Supervisors, officers, directors, agents, employees and volunteers from and against any and all demands, claims, actions, losses, liabilities, damages, and costs, including reasonable attorneys' fees, arising out of or resulting from the performance of this Agreement, except and in proportion to the extent caused by the negligence of COUNTY, its Board of Supervisors, officers, directors, employees, agents or volunteers.

MUTUAL INDEMNIFICATION **(Requires Risk Management Approval to Use)**

CONTRACTOR shall defend, indemnify and hold harmless COUNTY, its Board of Supervisors, officers, directors, agents, employees and volunteers from and against all

demands, claims, actions, liabilities, losses, damages, and costs, including reasonable attorneys' fees, arising out of or resulting from the performance of the Agreement, caused in whole or in part by the negligent or intentional acts or omissions of CONTRACTOR'S officers, directors, agents, employees, or subcontractors.

COUNTY shall defend, indemnify, and hold harmless CONTRACTOR, its officers, directors, agents, employees, and subcontractors from and against all demands, claims, actions, liabilities, losses, damages and costs, including reasonable attorneys' fees, arising out of or resulting from the performance of the Agreement, caused in whole or in part by the negligent or intentional acts or omissions of COUNTY'S Board of Supervisors, officers, directors, agents, employees, or volunteers.

It is the intention of COUNTY and CONTRACTOR that the provisions of this paragraph be interpreted to impose on each party responsibility to the other for the acts and omissions of their respective officers, directors, agents, employees, volunteers, COUNTY'S Board of Supervisors, and CONTRACTOR'S subcontractors. It is also the intention of COUNTY and CONTRACTOR that, where comparative fault is determined to have been contributory, principles of comparative fault will be followed and each party shall bear the proportionate cost of any damage attributable to the fault of that party, its officers, directors, agents, employees, volunteers, COUNTY'S Board of Supervisors and CONTRACTOR'S subcontractors.

SELF-INSURANCE

(Requires Risk Management Approval to use)

Self-insurance wording for public entity contracts where both the County and Contractor/Public Entity are self-insured. Use in conjunction with Mutual Indemnification language in the contract. This replaces the Insurance provision. Insert into the standard form contract under "Insurance or Self-Insurance" as a separate heading after "Indemnification." (NOTE-This provision assumes that Exhibit B to the standard contract will not be used.)

Insurance or Self-Insurance

Each party, at its sole cost and expense, shall carry insurance -or self-insure - its activities in connection with this Agreement, and obtain, keep in force and maintain, insurance or equivalent programs of self-insurance, for general liability, workers compensation, and business automobile liability adequate to cover its potential liabilities hereunder. Each party agrees to provide the other thirty (30) days' advance written notice of any cancellation, termination or lapse of any of the insurance or self-insurance coverages.

APPENDIX L
STANDARD FORM AGREEMENT
(Rev. 8/30/21)

AGREEMENT SUMMARY

TABLE OF CONTENTS

	<u>Page</u>
AGREEMENT	L-5
I. SCOPE OF SERVICES	L-5
II. TERM	L-5
III. NOTICE	L-6
IV. COMPLIANCE WITH LAWS.....	L-6
V. GOVERNING LAWS AND JURISDICTION	L-6
VI. LICENSES, PERMITS AND CONTRACTUAL GOOD STANDING	L-6
VII. PERFORMANCE STANDARDS.....	L-7
VIII. OWNERSHIP OF WORK PRODUCT.....	L-7
IX. STATUS OF CONTRACTOR	L-7
X. CONTRACTOR IDENTIFICATION.....	L-9
XI. COMPLIANCE WITH CHILD, FAMILY AND SPOUSAL SUPPORT OBLIGATIONS	L-10
XII. BENEFITS WAIVER.....	L-10
XIII. RETIREMENT BENEFITS/STATUS.....	L-10
XIV. CONFLICT OF INTEREST	L-10
XV. LOBBYING AND UNION ORGANIZATION ACTIVITIES	L-11
XVI. GOOD NEIGHBOR POLICY	L-11
XVII. NONDISCRIMINATION IN EMPLOYMENT, SERVICES, BENEFITS AND FACILITIES	L-12
XVIII. INDEMNIFICATION.....	L-13
XIX. INSURANCE	L-13

XX.	INFORMATION TECHNOLOGY ASSURANCES.....	L-13
XXI.	WEB ACCESSIBILITY	L-14
XXII.	COMPENSATION AND PAYMENT OFINVOICES LIMITATIONS.....	L-14
XXIII.	LEGAL TRAINING INFORMATION.....	L-14
XXIV.	HIPAA BUSINESS ASSOCIATE REQUIREMENTS	L-15
XXV.	SUBCONTRACTS, ASSIGNMENT	L-15
XXVI.	AMENDMENT AND WAIVER.....	L-15
XXVII.	SUCCESSORS	L-16
XXVIII.	TIME.....	L-16
XXIX.	INTERPRETATION	L-16
XXX.	DIRECTOR.....	L-16
XXXI.	DISPUTES	L-16
XXXII.	TERMINATION.....	L-16
XXXIII.	REPORTS	L-17
XXXIV.	AUDITS AND RECORDS.....	L-18
XXXV.	PRIOR AGREEMENTS	L-18
XXXVI.	SEVERABILITY	L-18
XXXVII.	FORCE MAJEURE.....	L-18
XXXVIII.	SURVIVAL OF TERMS	L-19
XXXVIX.	DUPLICATE COUNTERPARTS.....	L-19
XL.	AUTHORITY TO EXECUTE	L-19
	EXHIBIT A TO AGREEMENT	L-21
	EXHIBIT B TO AGREEMENT FOR GENERAL PERSONAL SERVICES CONTRACTS	L-22

EXHIBIT B TO AGREEMENT FOR INSURANCE PROVISIONS FOR CONSTRUCTION OR DESIGN FIRMS.....	L-27
EXHIBIT C TO AGREEMENT	L-32
EXHIBIT D TO AGREEMENT	L-33

AGREEMENT

THIS AGREEMENT is made and entered into as of this ____ day of _____ 2_____, by and between the COUNTY OF SACRAMENTO, a political subdivision of the State of California, hereinafter referred to as "COUNTY," and _____ [Name of contractor], a _____ [nature of business, such as individual, sole proprietorship, California corporation, partnership, etc.], hereinafter referred to as "CONTRACTOR."

RECITALS

WHEREAS, _____ [County's reasons for contracting]

WHEREAS, _____

WHEREAS, _____ [Contractor's reasons for contracting]

WHEREAS, _____

IF OPTIONAL AMENDMENT AUTHORITY IS INCLUDED

WHEREAS, pursuant to Sacramento County Code section 2.61.440, the department or agency which has authority to execute this Agreement on behalf of COUNTY has authority to amend this Agreement so as to increase the maximum payment amount, provided that such increase does not exceed the lesser of ten percent (10%) of the annual payment amount or \$25,000. (Rev. 11/25/13)

WHEREAS, COUNTY AND CONTRACTOR desire to enter into this Agreement on the terms and conditions set forth herein.

NOW, THEREFORE, in consideration of the mutual promises hereinafter set forth, COUNTY and CONTRACTOR agree as follows:

I. SCOPE OF SERVICES

CONTRACTOR shall provide services in the amount, type and manner described in Exhibit A, which is attached hereto and incorporated herein.

II. TERM

This Agreement shall be effective and commence as of the date first written above and shall end on _____.

III. NOTICE

Any notice, demand, request, consent, or approval that either party hereto may or is required to give the other pursuant to this Agreement shall be in writing and shall be either personally delivered or sent by mail, addressed as follows:

TO COUNTY

TO CONTRACTOR

DIRECTOR
Department name
Department Address

Name _____
Address _____

Either party may change the address to which subsequent notice and/or other communications can be sent by giving written notice designating a change of address to the other party, which shall be effective upon receipt.

IV. COMPLIANCE WITH LAWS

CONTRACTOR shall observe and comply with all applicable Federal, State, and County laws, regulations and ordinances.

V. GOVERNING LAWS AND JURISDICTION

This Agreement shall be deemed to have been executed and to be performed within the State of California and shall be construed and governed by the internal laws of the State of California. Any legal proceedings arising out of or relating to this Agreement shall be brought in Sacramento County, California.

VI. LICENSES, PERMITS AND CONTRACTUAL GOOD STANDING

- A. CONTRACTOR shall possess and maintain all necessary licenses, permits, certificates and credentials required by the laws of the United States, the State of California, County of Sacramento and all other appropriate governmental agencies, including any certification and credentials required by COUNTY. Failure to maintain the licenses, permits, certificates, and credentials shall be deemed a breach of this Agreement and constitutes grounds for the termination of this Agreement by COUNTY.
- B. CONTRACTOR further certifies to COUNTY that it and its principals are not debarred, suspended, or otherwise excluded from or ineligible for, participation in federal, State or county government contracts. Contractor certifies that it shall not contract with a Subcontractor that is so debarred or suspended.

VII. PERFORMANCE STANDARDS

CONTRACTOR shall perform its services under this Agreement in accordance with the industry and/or professional standards applicable to CONTRACTOR'S services.

VIII. OWNERSHIP OF WORK PRODUCT

All technical data, evaluations, plans, specifications, reports, documents, or other work products developed by CONTRACTOR hereunder shall be the exclusive property of COUNTY and shall be delivered to COUNTY upon completion of the services authorized hereunder. CONTRACTOR may retain copies thereof for its files and internal use. Publication of the information directly derived from work performed or data obtained in connection with services rendered under this Agreement must first be approved in writing by COUNTY. COUNTY recognizes that all technical data, evaluations, plans, specifications, reports, and other work products are instruments of CONTRACTOR'S services and are not designed for use other than what is intended by this Agreement.

IX. STATUS OF CONTRACTOR

[SEE COUNTY CONTRACTS MANUAL, CHAPTER 15, TAX TREATMENT OF SERVICE PROVIDERS FOR MORE DETAILED INSTRUCTIONS.]

[USE (A) FOR SERVICE PROVIDERS WITH FIVE OR MORE
EMPLOYEES OR WHEN A TAX WAIVER HAS BEEN OBTAINED
FROM COUNTY COUNSEL]

(A)

- A. It is understood and agreed that Contractor (including contractor's employees) is an independent contractor and that no relationship of employer-employee exists between the parties hereto. Contractor's assigned personnel shall not be entitled to any benefits payable to employees of County. County is not required to make any deductions or withholdings from the compensation payable to Contractor under the provisions of this agreement; and as an independent contractor, Contractor hereby indemnifies and holds County harmless from any and all claims that may be made against County based upon any contention by any third party that an employer-employee relationship exists by reason of this agreement.
- B. It is further understood and agreed by the parties hereto that Contractor in the performance of its obligation hereunder is subject to the control or direction of County as to the designation of tasks to be performed, the results to be accomplished by the services hereunder agreed to be rendered and performed, and not the means, methods, or sequence used by Contractor for accomplishing the results.

- C. If, in the performance of this agreement, any third persons are employed by Contractor, such person shall be entirely and exclusively under the direction, supervision, and control of Contractor. All terms of employment, including hours, wages, working conditions, discipline, hiring, and discharging, or any other terms of employment or requirements of law, shall be determined by Contractor, and the County shall have no right or authority over such persons or the terms of such employment.
- D. It is further understood and agreed that as an independent contractor and not an employee of County, neither the Contractor nor Contractor's assigned personnel shall have any entitlement as a County employee, right to act on behalf of County in any capacity whatsoever as agent, nor to bind County to any obligation whatsoever. Contractor shall not be covered by worker's compensation; nor shall Contractor be entitled to compensated sick leave, vacation leave, retirement entitlement, participation in group health, dental, life and other insurance programs, or entitled to other fringe benefits payable by the County to employees of the County.
- E. It is further understood and agreed that Contractor must issue W-2 and 941 Forms for income and employment tax purposes, for all of contractors assigned personnel under the terms and conditions of this agreement.

[USE (B) FOR ALL OTHER SERVICE PROVIDERS]

(B)

- A. It is understood and agreed that Contractor (including contractor's employees) is an independent contractor and that no relationship of employer-employee exists between the parties hereto. Contractor's assigned personnel shall not be entitled to any benefits payable to employees of County as an independent contractor, Contractor hereby indemnifies and holds County harmless from any and all claims that may be made against County based upon any contention by any third party that an employer-employee relationship exists by reason of this agreement.
- B. It is further understood and agreed by the parties hereto that Contractor in the performance of its obligation hereunder is subject to the control or direction of County as to the designation of tasks to be performed, the results to be accomplished by the services hereunder agreed to be rendered and performed, and not the means, methods, or sequence used by Contractor for accomplishing the results.
- C. If, in the performance of this agreement, any third persons are employed by Contractor, such person shall be entirely and exclusively under the direction, supervision, and control of Contractor. All terms of employment, including hours, wages, working conditions, discipline, hiring, and discharging, or any other terms

of employment or requirements of law, shall be determined by Contractor, and the County shall have no right or authority over such persons or the terms of such employment.

- D. It is further understood and agreed that as an independent contractor and not an employee of County, neither the Contractor nor Contractor's assigned personnel shall have a) any entitlement as a County employee; or b) except as otherwise provided by this Agreement, the right to act on behalf of County in any capacity whatsoever as agent, nor to bind County to any obligation whatsoever. Contractor shall not be covered by worker's compensation; nor shall Contractor be entitled to compensated sick leave, vacation leave, retirement entitlement, participation in group health, dental, life and other insurance programs, or entitled to other fringe benefits payable by the County to employees of the County.
- E. Notwithstanding Contractor's status as an independent contractor, County shall withhold from payments made to Contractor such sums as are required to be withheld from employees by the Federal Internal Revenue Code; the Federal Insurance Compensation Act; the State Personal Income Tax Law and the State Unemployment Insurance Code; provided, however, that said withholding is for the purpose of avoiding County's liability under said laws and does not abrogate Contractor's status as an independent contractor as described in this contract. Further, Contractor is not included in any group covered by County's present agreement with the federal Social Security Administration.

[USE (C) IN ADDITION TO (A) FOR OUT-OF-STATE SERVICE PROVIDERS. NEVER USE (C) IN ADDITION TO (B).]

(C)

Notwithstanding subparagraphs (A) and (E), it is further understood and agreed that County shall withhold seven percent (7%) of all income paid to Contractor under this agreement for payment and reporting to the California Franchise Tax Board because Contractor does not qualify as (1) a corporation with its principal place of business in California, (2) a partnership with a permanent place of business in California, (3) a corporation qualified to do business in California by the Secretary of State, or (4) an individual with a permanent residence in the State of California.

X. CONTRACTOR IDENTIFICATION

CONTRACTOR shall provide the COUNTY with the following information for the purpose of compliance with California Unemployment Insurance Code section 1088.8 and Sacramento County Code Chapter 2.160: CONTRACTOR'S name, address, telephone number, social security number, and whether dependent health insurance coverage is available to CONTRACTOR.

XI. COMPLIANCE WITH CHILD, FAMILY AND SPOUSAL SUPPORT REPORTING OBLIGATIONS

- A. CONTRACTOR's failure to comply with state and federal child, family and spousal support reporting requirements regarding a contractor's employees or failure to implement lawfully served wage and earnings assignment orders or notices of assignment relating to child, family and spousal support obligations shall constitute a default under this Agreement.
- B. CONTRACTOR's failure to cure such default within 90 days of notice by COUNTY shall be grounds for termination of this Agreement.

XII. BENEFITS WAIVER

If CONTRACTOR is unincorporated, CONTRACTOR acknowledges and agrees that CONTRACTOR is not entitled to receive the following benefits and/or compensation from COUNTY: medical, dental, vision and retirement benefits, life and disability insurance, sick leave, bereavement leave, jury duty leave, parental leave, or any other similar benefits or compensation otherwise provided to permanent civil service employees pursuant to the County Charter, the County Code, the Civil Service Rule, the Sacramento County Employees' Retirement System and/or any and all memoranda of understanding between COUNTY and its employee organizations. Should CONTRACTOR or any employee or agent of CONTRACTOR seek to obtain such benefits from COUNTY, CONTRACTOR agrees to indemnify and hold harmless COUNTY from any and all claims that may be made against COUNTY for such benefits.

XIII. RETIREMENT BENEFITS/STATUS

CONTRACTOR acknowledges and agrees that COUNTY has not made any representations regarding entitlement, eligibility for and/or right to receive ongoing Sacramento County Employee Retirement System (SCERS) retirement benefits during the term of this Agreement. By entering into this Agreement, CONTRACTOR assumes sole and exclusive responsibility for any consequences, impacts or action relating to such retirement benefits that is or will be occasioned as a result of the services provided by CONTRACTOR under this Agreement. CONTRACTOR waives any rights to proceed against COUNTY should SCERS modify or terminate retirement benefits based on CONTRACTOR's provision of services under this Agreement.

XIV. CONFLICT OF INTEREST

CONTRACTOR and CONTRACTOR's officers and employees shall not have a financial interest, or acquire any financial interest, direct or indirect, in any business, property or source of income which could be financially affected by or

otherwise conflict in any manner or degree with the performance of services required under this Agreement.

XV. LOBBYING AND UNION ORGANIZATION ACTIVITIES

- A. CONTRACTOR shall comply with all certification and disclosure requirements prescribed by Section 319, Public Law 101-121 (31 U.S.C. § 1352) and any implementing regulations.
- B. If services under this Agreement are funded with state funds granted to COUNTY, CONTRACTOR shall not utilize any such funds to assist, promote or deter union organization by employees performing work under this Agreement and shall comply with the provisions of Government Code Sections 16645 through 16649.

XVI. GOOD NEIGHBOR POLICY

- A. CONTRACTOR shall comply with COUNTY's Good Neighbor Policy. CONTRACTOR shall establish good neighbor practices for its facilities that include, but are not limited to, the following:
 - 1. Provision of parking adequate for the needs of its employees and service population;
 - 2. Provision of adequate waiting and visiting areas;
 - 3. Provision of adequate restroom facilities located inside the facility;
 - 4. Implementation of litter control services;
 - 5. Removal of graffiti within seventy-two hours;
 - 6. Provision for control of loitering and management of crowds;
 - 7. Maintenance of facility grounds, including landscaping, in a manner that is consistent with the neighborhood in which the facility is located;
 - 8. Participation in area crime prevention and nuisance abatement efforts; and
 - 9. Undertake such other good neighbor practices as determined appropriate by COUNTY, based on COUNTY's individualized assessment of CONTRACTOR's facility, services and actual impacts on the neighborhood in which such facility is located.

- B. CONTRACTOR shall identify, either by sign or other method as approved by the DIRECTOR, a named representative who shall be responsible for responding to any complaints relating to CONTRACTOR's compliance with the required good neighbor practices specified in this Section. CONTRACTOR shall post the name and telephone number of such contact person on the outside of the facility, unless otherwise advised by DIRECTOR.
- C. CONTRACTOR shall comply with all applicable public nuisance ordinances.
- D. CONTRACTOR shall establish an ongoing relationship with the surrounding businesses, law enforcement and neighborhood groups and shall be an active member of the neighborhood in which CONTRACTOR's site is located.
- E. If COUNTY finds that CONTRACTOR has failed to comply with the Good Neighbor Policy, COUNTY shall notify CONTRACTOR in writing that corrective action must be taken by CONTRACTOR within a specified time frame. If CONTRACTOR fails to take such corrective action, COUNTY shall take such actions as are necessary to implement the necessary corrective action. COUNTY shall deduct any actual costs incurred by COUNTY when implementing such corrective action from any amounts payable to CONTRACTOR under this Agreement.
- F. CONTRACTOR's continued non-compliance with the Good Neighbor Policy shall be grounds for termination of this Agreement and may also result in ineligibility for additional or future contracts with COUNTY.

XVII. NONDISCRIMINATION IN EMPLOYMENT, SERVICES, BENEFITS AND FACILITIES

- A. CONTRACTOR agrees and assures COUNTY that CONTRACTOR and any subcontractors shall comply with all applicable federal, state, and local Anti-discrimination laws, regulations, and ordinances and to not unlawfully discriminate, harass, or allow harassment against any employee, applicant for employment, employee or agent of COUNTY, or recipient of services contemplated to be provided or provided under this Agreement, because of race, ancestry, marital status, color, religious creed, political belief, national origin, ethnic group identification, sex, sexual orientation, age (over 40), medical condition (including HIV and AIDS), or physical or mental disability. CONTRACTOR shall ensure that the evaluation and treatment of its employees and applicants for employment, the treatment of COUNTY employees and agents, and recipients of services are free from such discrimination and harassment.
- B. CONTRACTOR represents that it is in compliance with and agrees that it will continue to comply with the Americans with Disabilities Act of 1990 (42 U.S.C. §

12101 et seq.), the Fair Employment and Housing Act (Gov. Code, §§ 12900 et seq.), and regulations and guidelines issued pursuant thereto.

- C. CONTRACTOR agrees to compile data, maintain records and submit reports to permit effective enforcement of all applicable antidiscrimination laws and this provision.
- D. CONTRACTOR shall include this nondiscrimination provision in all subcontracts related to this Agreement.

XVIII. INDEMNIFICATION

Contractor shall indemnify, defend, and hold harmless COUNTY, its Board of Supervisors, officers, directors, agents, employees and volunteers from and against any and all claims, demands, actions, losses, liabilities, damages, and costs, including reasonable attorneys' fees, arising out of or resulting from the performance of this Agreement, regardless of whether caused in part by a party indemnified hereunder.

XIX. INSURANCE

Without limiting CONTRACTOR'S indemnification, CONTRACTOR shall maintain in force at all times during the term of this Agreement and any extensions or modifications thereto, insurance as specified in Exhibit B. It is the responsibility of CONTRACTOR to notify its insurance advisor or insurance carrier(s) regarding coverage, limits, forms and other insurance requirements specified in Exhibit B. It is understood and agreed that COUNTY shall not pay any sum to CONTRACTOR under this Agreement unless and until COUNTY is satisfied that all insurance required by this Agreement is in force at the time services hereunder are rendered. Failure to maintain insurance as required in this agreement may be grounds for material breach of contract.

XX. INFORMATION TECHNOLOGY ASSURANCES

CONTRACTOR shall take all reasonable precautions to ensure that any hardware, software, and/or embedded chip devices used by CONTRACTOR in the performance of services under this Agreement, other than those owned or provided by COUNTY, shall be free from viruses. Nothing in this provision shall be construed to limit any rights or remedies otherwise available to COUNTY under this Agreement.

XXI. WEB ACCESSIBILITY

ONLY IF APPLICABLE

CONTRACTOR shall ensure that all web sites and web applications provided by CONTRACTOR pursuant to this Agreement shall comply with COUNTY's Web Accessibility Policy adopted by the Board of Supervisors on February 18, 2003, as well as any approved amendment thereto.

XXII. COMPENSATION AND PAYMENT OF INVOICES LIMITATIONS

- A. Compensation under this Agreement shall be limited to the Maximum Total Payment Amount set forth in Exhibit C, or Exhibit C as modified by COUNTY in accordance with express provisions in this Agreement.
- B. CONTRACTOR shall submit an invoice on the forms and in accordance with the procedures prescribed by COUNTY **[insert - on a monthly basis, upon completion of services, etc. as appropriate]**. Invoices shall be submitted to COUNTY no later than the fifteenth (15th) day of the month following the invoice period, and COUNTY shall pay CONTRACTOR within thirty (30) days after receipt of an appropriate and correct invoice.
- C. COUNTY operates on a July through June fiscal year. Invoices for services provided in any fiscal year must be submitted no later than July 31, one month after the end of the fiscal year. Invoices submitted after July 31 for the prior fiscal year shall not be honored by COUNTY unless CONTRACTOR has obtained prior written COUNTY approval to the contrary.
- D. CONTRACTOR shall maintain for four years following termination of this agreement full and complete documentation of all services and expenditures associated with performing the services covered under this Agreement. Expense documentation shall include: time sheets or payroll records for each employee; receipts for supplies; applicable subcontract expenditures; applicable overhead and indirect expenditures.
- E. In the event CONTRACTOR fails to comply with any provisions of this Agreement, COUNTY may withhold payment until such non-compliance has been corrected.

XXIII. LEGAL TRAINING INFORMATION

If under this Agreement CONTRACTOR is to provide training of County personnel on legal issues, then CONTRACTOR shall submit all training and program material for prior review and written approval by County Counsel. Only those materials approved by County Counsel shall be utilized to provide such training.

XXIV. BUSINESS ASSOCIATE REQUIREMENTS

[ONLY IF APPLICABLE]

Section _____. HIPAA BUSINESS ASSOCIATE PROVISIONS

If COUNTY has determined that under this Agreement CONTRACTOR is a "Business Associate" of COUNTY, as defined in the Health Insurance Portability and Accountability Act (42 CFR §160.03), then CONTRACTOR shall comply with the Business Associate provisions contained in Exhibit ____, which is attached hereto and incorporated by reference herein. (Provision is Appendix N to this Contract Manual)

XXV. SUBCONTRACTS, ASSIGNMENT

- A. CONTRACTOR shall obtain prior written approval from COUNTY before subcontracting any of the services delivered under this Agreement. CONTRACTOR remains legally responsible for the performance of all contract terms including work performed by third parties under subcontracts. Any subcontracting will be subject to all applicable provisions of this Agreement. CONTRACTOR shall be held responsible by COUNTY for the performance of any subcontractor whether approved by COUNTY or not.
- B. This Agreement is not assignable by CONTRACTOR in whole or in part, without the prior written consent of COUNTY.

XXVI. AMENDMENT AND WAIVER

Except as provided herein, no alteration, amendment, variation, or waiver of the terms of this Agreement shall be valid unless made in writing and signed by both parties. Waiver by either party of any default, breach or condition precedent shall not be construed as a waiver of any other default, breach or condition precedent, or any other right hereunder. No interpretation of any provision of this Agreement shall be binding upon COUNTY unless agreed in writing by DIRECTOR and counsel for COUNTY.

OPTIONAL PROVISION IF CONTRACT EXECUTED PURSUANT TO SCC 2.61 OR IF BOARD OF SUPERVISORS EXPRESSLY AUTHORIZES INCLUSION

This Agreement may be amended to increase the maximum payment amount; provided, however, that such increase shall not exceed the lesser of ten percent (10%) of the annual payment amount under this Agreement or \$25,000

XXVII. SUCCESSORS

This Agreement shall bind the successors of COUNTY and CONTRACTOR in the same manner as if they were expressly named.

XXVIII. TIME

Time is of the essence of this Agreement.

XXIX. INTERPRETATION

This Agreement shall be deemed to have been prepared equally by both of the parties, and the Agreement and its individual provisions shall not be construed or interpreted more favorably for one party on the basis that the other party prepared it.

XXX. DIRECTOR

As used in this Agreement, "DIRECTOR" shall mean the Director of the Department of _____, or his/her designee.

XXXI. DISPUTES

In the event of any dispute arising out of or relating to this Agreement, the parties shall attempt, in good faith, to promptly resolve the dispute mutually between themselves. Pending resolution of any such dispute, CONTRACTOR shall continue without delay to carry out all its responsibilities under this Agreement unless the Agreement is otherwise terminated in accordance with the Termination provisions herein. COUNTY shall not be required to make payments for any services that are the subject of this dispute resolution process until such dispute has been mutually resolved by the parties. If the dispute cannot be resolved within 15 calendar days of initiating such negotiations or such other time period as may be mutually agreed to by the parties in writing, either party may pursue its available legal and equitable remedies, pursuant to the laws of the State of California. Nothing in this Agreement or provision shall constitute a waiver of any of the government claim filing requirements set forth in Title 1, Division 3.6, of the California Government Code or as otherwise set forth in local, state and federal law.

XXXII. TERMINATION

- A. COUNTY may terminate this Agreement without cause upon thirty (30) days written notice to the other party. Notice shall be deemed served on the date of mailing. If notice of termination for cause is given by COUNTY to CONTRACTOR and it is later determined that CONTRACTOR was not in default

or the default was excusable, then the notice of termination shall be deemed to have been given without cause pursuant to this paragraph (A).

- B. COUNTY may terminate this Agreement for cause immediately upon giving written notice to CONTRACTOR should CONTRACTOR materially fail to perform any of the covenants contained in this Agreement in the time and/or manner specified. In the event of such termination, COUNTY may proceed with the work in any manner deemed proper by COUNTY. If notice of termination for cause is given by COUNTY to CONTRACTOR and it is later determined that CONTRACTOR was not in default or the default was excusable, then the notice of termination shall be deemed to have been given without cause pursuant to paragraph (A) above.
- C. COUNTY may terminate or amend this Agreement immediately upon giving written notice to CONTRACTOR, 1) if advised that funds are not available from external sources for this Agreement or any portion thereof, including if distribution of such funds to the County is suspended or delayed; 2) if funds for the services and/or programs provided pursuant to this Agreement are not appropriated by the State; 3) if funds in COUNTY's yearly proposed and/or final budget are not appropriated by COUNTY for this Agreement or any portion thereof; or 4) if funds that were previously appropriated for this Agreement are reduced, eliminated, and/or re-allocated by COUNTY as a result of mid-year budget reductions. (Rev. 5/1/09, 6/3/09)
- D. If this Agreement is terminated under paragraph A or C above, CONTRACTOR shall only be paid for any services completed and provided prior to notice of termination. In the event of termination under paragraph A or C above, CONTRACTOR shall be paid an amount which bears the same ratio to the total compensation authorized by the Agreement as the services actually performed bear to the total services of CONTRACTOR covered by this Agreement, less payments of compensation previously made. In no event, however, shall COUNTY pay CONTRACTOR an amount which exceeds a pro rata portion of the Agreement total based on the portion of the Agreement term that has elapsed on the effective date of the termination.
- E. CONTRACTOR shall not incur any expenses under this Agreement after notice of termination and shall cancel any outstanding expenses obligations to a third party that CONTRACTOR can legally cancel.

XXXIII. REPORTS

- A. CONTRACTOR shall, without additional compensation therefor, make fiscal, program evaluation, progress, and such other reports as may be reasonably required by DIRECTOR concerning CONTRACTOR's activities as they affect the contract duties and purposes herein. COUNTY shall explain procedures for reporting the required information.

- B. CONTRACTOR agrees that, pursuant to Government Code section 7522.56, CONTRACTOR shall make best efforts to determine if any of its employees or new hires providing direct services to the county are members of the Sacramento County Employees' Retirement System (SCERS). CONTRACTOR further agrees that it shall make a report bi-annually (due no later than January 31st and July 31st) to the COUNTY with a list of its employees that are members of SCERS along with the total number of hours worked during the previous 6 months. This report shall be forwarded to where Notice is sent pursuant to Roman numeral III of this Agreement.

XXXIV. AUDITS AND RECORDS

Upon COUNTY's request, COUNTY or its designee shall have the right at reasonable times and intervals to audit, at CONTRACTOR's premises, CONTRACTOR's financial and program records as COUNTY deems necessary to determine CONTRACTOR's compliance with legal and contractual requirements and the correctness of claims submitted by CONTRACTOR. CONTRACTOR shall maintain such records for a period of four years following termination of the Agreement, and shall make them available for copying upon COUNTY's request at COUNTY's expense. COUNTY shall have the right to withhold any payment under this Agreement until CONTRACTOR has provided access to CONTRACTOR's financial and program records related to this Agreement.

XXXV. PRIOR AGREEMENTS

This Agreement constitutes the entire contract between COUNTY and CONTRACTOR regarding the subject matter of this Agreement. Any prior agreements, whether oral or written, between COUNTY and CONTRACTOR regarding the subject matter of this Agreement are hereby terminated effective immediately upon full execution of this Agreement.

XXXVI. SEVERABILITY

If any term or condition of this Agreement or the application thereof to any person(s) or circumstance is held invalid or unenforceable, such invalidity or unenforceability shall not affect other terms, conditions, or applications which can be given effect without the invalid term, condition, or application; to this end the terms and conditions of this Agreement are declared severable.

XXXVII. FORCE MAJEURE

Neither CONTRACTOR nor COUNTY shall be liable or responsible for delays or failures in performance resulting from events beyond the reasonable control of such party and without fault or negligence of such party. Such events shall include but not be limited to acts of God, strikes, lockouts, riots, acts of war,

epidemics, acts of government, fire, power failures, nuclear accidents, earthquakes, unusually severe weather, acts of terrorism, or other disasters, whether or not similar to the foregoing, and acts or omissions or failure to cooperate of the other party or third parties (except as otherwise specifically provided herein).

XXXVIII. SURVIVAL OF TERMS

All services performed and deliverables provided pursuant to this Agreement are subject to all of the terms, conditions, price discounts and rates set forth herein, notwithstanding the expiration of the initial term of this Agreement or any extension thereof. Further, the terms, conditions and warranties contained in this Agreement that by their sense and context are intended to survive the completion of the performance, cancellation or termination of this Agreement shall so survive.

XXXIX. DUPLICATE COUNTERPARTS

This Agreement may be executed in duplicate counterparts. The Agreement shall be deemed executed when it has been signed by both parties.

Signatures scanned and transmitted electronically shall be deemed original signatures for purposes of this Agreement, with such scanned signatures having the same legal effect as original signatures. This Agreement may be executed through the use of an electronic signature and will be binding on each party as if it were physically executed.

XL. AUTHORITY TO EXECUTE

Each person executing this Agreement represents and warrants that he or she is duly authorized and has legal authority to execute and deliver this Agreement for or on behalf of the parties to this Agreement. Each party represents and warrants to the other that the execution and delivery of the Agreement and the performance of such party's obligations hereunder have been duly authorized.

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be duly executed as of the day and year first written above.

**COUNTY OF SACRAMENTO, a
political subdivision of the State
of California**

**[name of CONTRACTOR and type of
business]**

By _____ (name) By _____ (name)
(Title) (Title)

Date: _____ Date: _____

CONTRACT AND CONTRACTOR TAX STATUS
REVIEWED AND APPROVED BY COUNTY COUNSEL

By: _____ Date: _____

**EXHIBIT A to Agreement
between the COUNTY OF SACRAMENTO,
hereinafter referred to as "COUNTY," and
_____, hereinafter referred to as "CONTRACTOR"**

SCOPE OF SERVICES

I. SERVICE LOCATION(S)

Facility Name(s):
Street Address:
City and Zip Code:

II. DESCRIPTION OF SERVICES

[INSERT DESCRIPTION OF CONTRACTOR SERVICES HERE]

**THIS VERSION IS FOR GENERAL PERSONAL SERVICES CONTRACTS
(SEE PAGE L-26 FOR INSURANCE PROVISIONS FOR
CONSTRUCTION OR DESIGN FIRMS)**

**EXHIBIT B to Agreement
between the COUNTY OF SACRAMENTO,
hereinafter referred to as "COUNTY," and
_____, hereinafter referred
to as "CONTRACTOR"**

INSURANCE REQUIREMENTS FOR CONTRACTORS

Without limiting CONTRACTOR's indemnification, CONTRACTOR shall procure and maintain for the duration of the Agreement, insurance against claims for injuries to persons or damages to property which may arise from or in connection with the performance of the Agreement by the CONTRACTOR, its agents, representatives or employees. COUNTY shall retain the right at any time to review the coverage, form, and amount of the insurance required hereby. If in the opinion of the County Risk Manager, insurance provisions in these requirements do not provide adequate protection for COUNTY and for members of the public, COUNTY may require CONTRACTOR to obtain insurance sufficient in coverage, form and amount to provide adequate protection. COUNTY's requirements shall be reasonable but shall be imposed to assure protection from and against the kind and extent of risks that exist at the time a change in insurance is required.

I. VERIFICATION OF COVERAGE

CONTRACTOR shall furnish the COUNTY with certificates evidencing coverage required below. **Copies of required endorsements must be attached to provided certificates.** The County Risk Manager may approve self-insurance programs in lieu of required policies of insurance if, in the opinion of the Risk Manager, the interests of the COUNTY and the general public are adequately protected. All certificates, evidences of self-insurance, and additional insured endorsements are to be received and approved by the County before performance commences. The COUNTY reserves the right to require that CONTRACTOR provide complete, certified copies of any policy of insurance offered in compliance with these specifications.

II. MINIMUM SCOPE OF INSURANCE

Coverage shall be at least as broad as:

- A. GENERAL LIABILITY: Insurance Services Office's Commercial General Liability occurrence coverage form CG 0001. Including, but not limited to Premises/Operations, Products/Completed Operations, Contractual, and

Personal & Advertising Injury, without additional exclusions or limitations, unless approved by the County Risk Manager.

- B. AUTOMOBILE LIABILITY: Insurance Services Office's Commercial Automobile Liability coverage form CA 0001.
 - 1. Commercial Automobile Liability: auto coverage symbol "1" (any auto) for corporate/business owned vehicles. If there are no owned or leased vehicles, symbols 8 and 9 for non-owned and hired autos shall apply.
 - 2. Personal Lines automobile insurance shall apply if vehicles are individually owned.
- C. WORKERS' COMPENSATION: Statutory requirements of the State of California and Employer's Liability Insurance.
- D. PROFESSIONAL LIABILITY or Errors and Omissions Liability insurance appropriate to the CONTRACTOR's profession.
- E. UMBRELLA or Excess Liability policies are acceptable where the need for higher liability limits is noted in the Minimum Limits of Insurance and shall provide liability coverages that at least follow form over the underlying insurance requirements where necessary for Commercial General Liability, Commercial Automobile Liability, Employers' Liability, and any other liability coverage (other than Professional Liability) designated under the Minimum Scope of Insurance.

III. **MINIMUM LIMITS OF INSURANCE**

CONTRACTOR shall maintain limits no less than:

- A. General Liability shall be on an Occurrence basis (as opposed to Claims Made basis). Minimum limits and structure shall be:

Building Trades General Aggregate:	\$2,000,000
Products Comp/Op Aggregate:	\$2,000,000
Personal & Adv. Injury:	\$1,000,000
Each Occurrence:	\$1,000,000
Fire Damage:	\$ 100,000

Contractors and Contractors engaged in other projects of construction shall have their general liability Aggregate Limit of Insurance endorsed to apply separately to each job site or project, as provided for by Insurance Services Office form CG-2503 Amendment-Aggregate Limits of Insurance (Per Project).

- B. AUTOMOBILE LIABILITY:
 - 1. Commercial Automobile Liability for Corporate/business owned vehicles including non-owned and hired, \$1,000,000 Combined Single Limit.
 - 2. Personal Lines Automobile Liability for Individually owned vehicles, \$250,000 per person, \$500,000 each accident, \$100,000 property damage.
- C. WORKERS' COMPENSATION: Statutory.
- D. EMPLOYER'S LIABILITY: \$1,000,000 per accident for bodily injury or disease.
- E. PROFESSIONAL LIABILITY OR ERRORS AND OMISSIONS LIABILITY: \$1,000,000 per claim and aggregate.

IV. DEDUCTIBLES AND SELF-INSURED RETENTION

Any deductibles or self-insured retention that apply to any insurance required by this Agreement must be declared and approved by the COUNTY.

V. CLAIMS MADE PROFESSIONAL LIABILITY INSURANCE

If professional liability coverage is written on a Claims Made form:

- A. The "Retro Date" must be shown, and must be on or before the date of the Agreement or the beginning of Agreement performance by CONTRACTOR.
- B. Insurance must be maintained and evidence of insurance must be provided for at least one (1) year after completion of the Agreement.
- C. If coverage is cancelled or non-renewed, and not replaced with another claims made policy form with a "Retro Date" prior to the contract effective date, the CONTRACTOR must purchase "extended reporting" coverage for a minimum of one (1) year after completion of the Agreement.

VI. OTHER INSURANCE PROVISIONS

The insurance policies required in this Agreement are to contain, or be endorsed to contain, as applicable, the following provision:

- A. All Policies:
 - 1. ACCEPTABILITY OF INSURERS: Insurance is to be placed with insurers

with a current A.M. Best's rating of no less than A-VII. The County Risk Manager may waive or alter this requirement, or accept self-insurance in lieu of any required policy of insurance if, in the opinion of the Risk Manager, the interests of the COUNTY and the general public are adequately protected.

2. MAINTENANCE OF INSURANCE COVERAGE: The Contractor shall maintain all insurance coverages and limits in place at all times and provide the County with evidence of each policy's renewal ten (10) days in advance of its anniversary date.

Contractor is required by this Agreement to immediately notify County if they receive a communication from their insurance carrier or agent that any required insurance is to be canceled, non-renewed, reduced in scope or limits or otherwise materially changed. Contractor shall provide evidence that such cancelled or non-renewed or otherwise materially changed insurance has been replaced or its cancellation notice withdrawn without any interruption in coverage, scope or limits. Failure to maintain required insurance in force shall be considered a material breach of the Agreement.

VII. COMMERCIAL GENERAL LIABILITY AND/OR COMMERCIAL AUTOMOBILE LIABILITY

- A. ADDITIONAL INSURED STATUS: The COUNTY, its officers, directors, officials, employees, and volunteers are to be endorsed as additional insureds as respects: liability arising out of activities performed by or on behalf of the CONTRACTOR; products and completed operations of the CONTRACTOR; premises owned, occupied or used by the CONTRACTOR; or automobiles owned, leased, hired or borrowed by the CONTRACTOR. The coverage shall contain no endorsed limitations on the scope of protection afforded to the COUNTY, its officers, directors, officials, employees, or volunteers.
- B. CIVIL CODE PROVISION: Coverage shall not extend to any indemnity coverage for the active negligence of the additional insured in any case where an agreement to indemnify the additional insured would be invalid under Subdivision (b) of Section 2782 of the Civil Code.
- C. PRIMARY INSURANCE: For any claims related to this Agreement, the CONTRACTOR's insurance coverage shall be endorsed to be primary insurance as respects the COUNTY, its officers, officials, employees and volunteers. Any insurance or self-insurance maintained by the COUNTY, its officers, directors, officials, employees, or volunteers shall be excess of the CONTRACTOR's insurance and shall not contribute with it.

- D. SEVERABILITY OF INTEREST: The CONTRACTOR's insurance shall apply separately to each insured against whom claim is made or suit is brought, except with respect to the limits of the insurer's liability.
- E. SUBCONTRACTORS: CONTRACTOR shall be responsible for the acts and omissions of all its subcontractors and additional insured endorsements as provided by CONTRACTOR's subcontractor.

VIII. WORKERS' COMPENSATION

Workers' Compensation Waiver of Subrogation: The workers' compensation policy required hereunder shall be endorsed to state that the workers' compensation carrier waives its right of subrogation against the COUNTY, its officers, directors, officials, employees, agents or volunteers, which might arise by reason of payment under such policy in connection with performance under this Agreement by the CONTRACTOR. Should CONTRACTOR be self-insured for workers' compensation, CONTRACTOR hereby agrees to waive its right of subrogation against COUNTY, its officers, directors, officials, employees, agents or volunteers.

IX. PROPERTY

Course of Construction (COC) Waiver of Subrogation: Any Course of Construction (COC) policies maintained by the CONTRACTOR in performance of the Agreement shall contain the following provisions:

1. The COUNTY shall be named as loss payee.
2. The Insurer shall waive all rights of subrogation against the COUNTY.

Inland Marine Waiver of Subrogation: Any Inland Marine insurance policies maintained by the CONTRACTOR in performance of the Agreement shall be endorsed to state that the insurer shall waive all rights of subrogation against the COUNTY.

X. NOTIFICATION OF CLAIM

If any claim for damages is filed with CONTRACTOR or if any lawsuit is instituted against CONTRACTOR, that arise out of or are in any way connected with CONTRACTOR's performance under this Agreement and that in any way, directly or indirectly, contingently or otherwise, affect or might reasonably affect COUNTY, CONTRACTOR shall give prompt and timely notice thereof to COUNTY. Notice shall be prompt and timely if given within thirty (30) days following the date of receipt of a claim or ten (10) days following the date of service of process of a lawsuit.

**THIS VERSION IS FOR INSURANCE PROVISIONS FOR
CONSTRUCTION OR DESIGN FIRMS
SEE PAGE L-21 FOR GENERAL PERSONAL SERVICES CONTRACTS**

**EXHIBIT B to Agreement
between the COUNTY OF SACRAMENTO,
hereinafter referred to as "COUNTY," and
_____, hereinafter referred
to as "CONTRACTOR"**

INSURANCE REQUIREMENTS FOR CONSTRUCTION OR DESIGN FIRMS

I. INSURANCE

Without limiting CONTRACTOR'S indemnification, CONTRACTOR shall procure and maintain for the duration of the Agreement, insurance against claims for injuries to persons or damages to property which may arise from or in connection with the performance of the Agreement by CONTRACTOR, its agents, representatives or employees. COUNTY shall retain the right at any time to review the coverage, form, and amount of the insurance required hereby. If in the opinion of County Risk Manager, insurance provisions in these requirements do not provide adequate protection for COUNTY and for members of the public, COUNTY may require CONTRACTOR to obtain insurance sufficient in coverage, form and amount to provide adequate protection. COUNTY'S requirements shall be reasonable but shall be imposed to assure protection from and against the kind and extent of risks that exist at the time a change in insurance is required.

II. VERIFICATION OF COVERAGE

CONTRACTOR shall furnish COUNTY with certificates evidencing coverage required below. Copies of required endorsements must be attached to provided certificates. County Risk Manager may approve self-insurance programs in lieu of required policies of insurance if, in the opinion of the Risk Manager, the interests of COUNTY and the general public are adequately protected. All certificates, evidences of self-insurance, and additional insured endorsements are to be received and approved by COUNTY before performance commences. COUNTY reserves the right to require that CONTRACTOR provide complete, certified copies of any policy of insurance including endorsements offered in compliance with these specifications.

III. MINIMUM SCOPE OF INSURANCE

Coverage shall be at least as broad as:

- A. GENERAL LIABILITY: Insurance Services Office's Commercial General Liability occurrence coverage form CG 0001. Including, but not limited to Premises/Operations, Products/Completed Operations, Contractual, and

Personal & Advertising Injury, without additional exclusions or limitations, unless approved by County Risk Manager.

- B. AUTOMOBILE LIABILITY: Insurance Services Office's Commercial Automobile Liability coverage form CA 000.
 - 1. Commercial Automobile Liability: auto coverage symbol "1" (any auto) for corporate/business owned vehicles. If there are no owned or leased vehicles, symbols 8 and 9 for non-owned and hired autos shall apply.
 - 2. Personal Lines automobile insurance shall apply if vehicles are individually owned.
- C. WORKERS' COMPENSATION: Statutory requirements of the State of California and Employer's Liability Insurance.
- D. PROFESSIONAL LIABILITY: Professional Liability or Errors and Omissions Liability insurance appropriate to CONSULTANT'S profession.
- E. UMBRELLA: Umbrella or Excess Liability policies are acceptable where the need for higher liability limits is noted in the Minimum Limits of Insurance and shall provide liability coverages that at least follow form over the underlying insurance requirements where necessary for Commercial General Liability, Commercial Automobile Liability, Employers' Liability, and any other liability coverage (other than Professional Liability) designated under the Minimum Scope of Insurance.

IV. **MINIMUM LIMITS OF INSURANCE**

CONTRACTOR shall maintain limits no less than:

A. GENERAL LIABILITY:

General Liability shall be on an Occurrence basis (as opposed to Claims Made basis). Minimum limits and structure shall be:

General Aggregate:	\$2,000,000
Products Comp/Op Aggregate:	\$2,000,000
Personal & Adv. Injury:	\$1,000,000
Each Occurrence:	\$1,000,000
Fire Damage:	\$ 100,000

Building Trades CONTRACTORS and CONTRACTORS engaged in other projects of construction shall have their general liability Aggregate Limit of Insurance endorsed to apply separately to each job site or project, as provided for by Insurance Services Office form CG-2503 Amendment-Aggregate Limits of Insurance (Per Project).

B. AUTOMOBILE LIABILITY:

1. Commercial Automobile Liability for Corporate/business owned vehicles including non-owned and hired, \$1,000,000 Combined Single Limit.
2. Personal Lines Automobile Liability for Individually owned vehicles, \$250,000 per person, \$500,000 each accident, \$100,000 property damage.

C. WORKERS' COMPENSATION: Statutory.

D. EMPLOYER'S LIABILITY: \$1,000,000 per accident for bodily injury or disease.

E. PROFESSIONAL LIABILITY: Professional Liability or Errors and Omissions Liability: \$1,000,000 per claim and aggregate.

V. DEDUCTIBLES AND SELF-INSURED RETENTION

Any deductibles or self-insured retention that apply to any insurance required by this Agreement must be declared and approved by COUNTY.

VI. CLAIMS MADE PROFESSIONAL LIABILITY INSURANCE

If professional liability coverage is written on a Claims Made form:

- A. The "Retro Date" must be shown, and must be on or before the date of the Agreement or the beginning of Agreement performance by CONTRACTOR.
- B. Insurance must be maintained and evidence of insurance must be provided for at least one (1) year after completion of the Agreement.
- C. If coverage is cancelled or non-renewed, and not replaced with another claims made policy form with a "Retro Date" prior to the contract effective date, CONTRACTOR must purchase "extended reporting" coverage for a minimum of one (1) year after completion of the Agreement.

VII. OTHER INSURANCE PROVISIONS

The insurance policies required in this Agreement are to contain, or be endorsed to contain, as applicable, the following provisions:

A. ALL POLICIES:

ACCEPTABILITY OF INSURERS: Insurance is to be placed with insurers with a current A.M. Best's rating of no less than A-. VII. County Risk Manager may waive or alter this requirement, or accept self-insurance in lieu of any required policy of insurance if, in the opinion of the Risk

Manager, the interests of COUNTY and the general public are adequately protected.

MAINTENANCE OF INSURANCE COVERAGE: The Contractor shall maintain all insurance coverages and limits in place at all times and provide the County with evidence of each policy's renewal ten (10) days in advance of its anniversary date.

Contractor is required by this Agreement to immediately notify County if they receive a communication from their insurance carrier or agent that any required insurance is to be canceled, non-renewed, reduced in scope or limits or otherwise materially changed. Contractor shall provide evidence that such cancelled or non-renewed or otherwise materially changed insurance has been replaced or its cancellation notice withdrawn without any interruption in coverage, scope or limits. Failure to maintain required insurance in force shall be considered a material breach of the Agreement.

B. COMMERCIAL GENERAL LIABILITY AND/OR COMMERCIAL AUTOMOBILE LIABILITY:

1. **ADDITIONAL INSURED STATUS:** COUNTY, its officers, directors, officials, employees, and volunteers are to be endorsed as additional insureds as respects: liability arising out of activities performed by or on behalf of CONTRACTOR; products and completed operations of CONTRACTOR; premises owned, occupied or used by CONTRACTOR; or automobiles owned, leased, hired or borrowed by CONTRACTOR. The coverage shall contain no endorsed limitations on the scope of protection afforded to COUNTY, its officers, directors, officials, employees, or volunteers.
2. **CIVIL CODE PROVISION:** Coverage shall not extend to any indemnity coverage for the active negligence of the additional insured in any case where an agreement to indemnify the additional insured would be invalid under Subdivision (b) of Section 2782 of the Civil Code.
3. **PRIMARY INSURANCE:** For any claims related to this agreement, CONTRACTOR'S insurance coverage shall be endorsed to be primary insurance as respects COUNTY, its officers, officials, employees and volunteers. Any insurance or self-insurance maintained by COUNTY, its officers, directors, officials, employees, or volunteers shall be excess of CONTRACTOR'S insurance and shall not contribute with it.
4. **SEVERABILITY OF INTEREST:** CONTRACTOR'S insurance shall apply separately to each insured against whom claim is made or suit is brought, except with respect to the limits of the insurer's liability.

5. SUBCONTRACTORS: CONTRACTOR shall be responsible for the acts and omissions of all its subcontractors and additional insured endorsements as provided by CONTRACTOR'S subcontractor.
 6. PROFESSIONAL LIABILITY:
 7. PROFESSIONAL LIABILITY PROVISION: Any professional liability or errors and omissions policy required hereunder shall apply to any claims, losses, liabilities, or damages, demands and actions arising out of or resulting from professional services provided under this Agreement.
- C. WORKERS' COMPENSATION:
- WORKERS' COMPENSATION WAIVER OF SUBROGATION: The workers' compensation policy required hereunder shall be endorsed to state that the workers' compensation carrier waives its right of subrogation against COUNTY, its officers, directors, officials, employees, agents or volunteers, which might arise by reason of payment under such policy in connection with performance under this Agreement by CONTRACTOR.
- D. PROPERTY:
1. COURSE OF CONSTRUCTION (COC) WAIVER OF SUBROGATION: Any Course of Construction (COC) policies maintained by CONTRACTOR in performance of the Agreement shall contain the following provisions:
 - A. COUNTY shall be named as loss payee.
 - B. The insurer shall waive all rights of subrogation against COUNTY.
 2. INLAND MARINE WAIVER OF SUBROGATION: Any Inland Marine insurance policies maintained by CONTRACTOR in performance of the Agreement shall be endorsed to state that the insurer shall waive all rights of subrogation against COUNTY.
- E. NOTIFICATION OF CLAIM
- If any claim for damages is filed with CONTRACTOR or if any lawsuit is instituted against CONTRACTOR, that arise out of or are in any way connected with CONTRACTOR'S performance under this Agreement and that in any way, directly or indirectly, contingently or otherwise, affect or might reasonably affect COUNTY, CONTRACTOR shall give prompt and timely notice thereof to COUNTY. Notice shall be prompt and timely if given within thirty (30) days following the date of receipt of a claim or ten (10) days following the date of service of process of a lawsuit.

**EXHIBIT C to Agreement
between the COUNTY OF SACRAMENTO
hereinafter referred to as "COUNTY,"
and _____
hereinafter referred to as "CONTRACTOR"**

BUDGET REQUIREMENTS

I. MAXIMUM PAYMENT TO CONTRACTOR

The Maximum Total Payment Amount under this Agreement is: [\$_____]

II. BUDGET

The Budget for this Agreement is outlined on the following page(s).

**EXHIBIT D to Agreement
between the COUNTY OF SACRAMENTO
hereinafter referred to as "COUNTY,"
and _____
hereinafter referred to as "CONTRACTOR"**

Section __. HIPAA Business Associate Provisions (See language in Exhibit N of this Contract Manual)

APPENDIX M

ALTERNATIVE STANDARD FORM CONTRACTS

COUNTY COUNSEL APPROVED FORM AGREEMENTS BY DEPARTMENT

Enrolled Provider Agreement County Medically Indigent Services Program (CMISP)

Terms:

_____ (hereinafter, "PROVIDER") shall provide on an as needed and requested basis, the medical services that will be described in the Sacramento County Department of Medical Systems ("DMS") Procedure Authorization Form for each patient referred, unless PROVIDER declines to provide the services upon receipt of the form, and so notifies DMS. The Provider Authorization Form will be sent by DMS when DMS requests services for a patient. PROVIDER shall perform its services under this Agreement in accordance with the industry and/or professional standards applicable to PROVIDER'S services.

This Agreement shall commence on the date when signed by DMS and continue until terminated in writing by either party.

PROVIDER shall comply with all applicable Federal, State, and County of Sacramento laws, regulations, and ordinances, including confidentiality requirements. PROVIDER shall maintain in force at all times, all applicable licenses, permits, credentials, and certifications required for performance of services under this Agreement.

It is understood the PROVIDER is an independent contractor and agrees to the terms in the footnote below.*

If PROVIDER is unincorporated, PROVIDER agrees that it is not entitled to receive the following benefits and/or compensation from DMS: medical, dental, vision and retirement benefits, life and disability insurance, sick leave, bereavement leave, jury duty leave, parental leave, or any other similar benefits or compensation otherwise provided to permanent civil service employees.

PROVIDER shall comply with all applicable federal, state, and local anti-discrimination laws, regulations, and ordinances and agrees to not unlawfully discriminate, harass, or allow harassment against any employee, applicant for employment, employee or agent of DMS, or any recipient of services in connection with this Agreement, because of race, ancestry, marital status, color, religious creed, political belief, national origin, ethnic group identification, sex, sexual orientation, age (over 40), medical condition (including HIV and AIDS), or physical or mental disability. PROVIDER represents that it is in compliance with and agrees that it will continue to comply with the Americans with Disabilities Act of 1990 (42 U.S.C. § 12101 et seq.).

PROVIDER shall defend, indemnify, and hold harmless the County of Sacramento, its Board of Supervisors, officers, directors, agents, employees, and volunteers, from and

against all demands, claims, actions, liabilities, losses, damages, and costs, including payment of reasonable attorneys' fees, arising out of or resulting from the performance of this Agreement, except and in proportion to the extent caused by the negligence or willful misconduct of the County of Sacramento, its Board of Supervisors, officers, directors, employees, agents or volunteers.

PROVIDER shall maintain insurance limits in force at all times, no less than: general liability, \$500,000; professional liability, \$2,000,000; workers compensation/employer's liability. If individual provider of service will use an automobile in connection with services under this Agreement, then the following automobile liability coverage is required: \$250,000 bodily injury per individual, \$500,000 bodily injury per accident, and \$100,000 property damage.

PROVIDER agrees that all patient information and records, including the identity of any patient, made or kept by PROVIDER in connection with services provided under this Agreement are the property of DMS and are confidential and shall not be disclosed, except to DMS, without a written authorization for release of information signed by DMS or the patient.

PROVIDER hereby agrees to release and exchange information pertinent to this Agreement between the State Department of Health Services, Medi-Cal Provider Enrollment, the Medical Board of California, and DMS.

DMS agrees to pay, and PROVIDER agrees to accept, payment for services at rates not to exceed the maximum allowable under Medi-Cal regulations, unless a different amount is specified by DMS on DMS'S Procedure Authorization Form. PROVIDER shall submit an invoice on the forms and in accordance with the procedures prescribed by COUNTY. Invoices submitted more than one year after services are provided will not be paid. PROVIDER agrees to refund to DMS any monies paid by DMS if PROVIDER obtains payment from another responsible party, program, or funding source. PROVIDER agrees to retain records regarding payments claimed for a minimum of four years following the date of service and to furnish the records on request, to DMS or a duly authorized representative.

PROVIDER shall not have or acquire any interest, direct or indirect, which will conflict in any manner with performance of services under the Agreement.

Except as provided herein, no alteration, amendment, variation, or waiver of the terms of this Agreement shall be valid unless made in writing and signed by both parties.

DMS or PROVIDER may terminate this Agreement at any time with thirty (30) days written notification served upon the other party in person or by mail. Upon giving written notice, DMS may immediately terminate this Agreement for cause, if advised that funds are not available from external sources for this Agreement or for any portion hereof, or if funds in the County of Sacramento yearly proposed and final budget are not appropriated by the County of Sacramento for this Agreement or any portion hereof.

Department of Medical Systems

{PROVIDER Name}

Date: _____

Date: _____

By _____

Penelope Clarke, Administrator
Public Protection & Human Assistance
Agency

By _____

{Title}
Address:

Telephone:
Social Security Number:
(or Tax Identification Number)

***STATUS OF PROVIDER**

[Section **A** Use for service providers with 5 or more employees or when a tax waiver has been obtained from County Counsel.]

- A. It is understood and agreed that PROVIDER (including PROVIDER'S employees) is an independent contractor and that no relationship of employer-employee exists between the parties hereto. PROVIDER'S assigned personnel shall not be entitled to any benefits payable to employees of DMS. DMS is not required to make any deductions or withholdings from the compensation payable to PROVIDER under the provisions of this Agreement; and as an independent contractor, PROVIDER hereby indemnifies and holds DMS harmless from any and all claims that may be made against DMS based upon any contention by any third party that an employer-employee relationship exists by reason of this Agreement.
- B. It is further understood and agreed by the parties hereto that PROVIDER in the performance of its obligation hereunder is subject to the control or direction of DMS as to the designation of tasks to be performed, the results to be accomplished by the services hereunder agreed to be rendered and performed, and not the means, methods, and sequence used by PROVIDER for accomplishing the results.
- C. If, in the performance of this Agreement, any third persons are employed by PROVIDER, such person shall be entirely and exclusively under the direction, supervision, and control of PROVIDER. All terms of employment, including hours, wages, working conditions, discipline, hiring and discharging, or any other terms of employment or requirements of law, shall be determined by PROVIDER, and the DMS shall have no right or authority over such persons or the terms of

such employment.

- D. It is further understood and agreed that as an independent contractor and not an employee of DMS, neither the PROVIDER nor PROVIDER'S assigned personnel shall have any entitlement as a DMS employee, right to act on behalf of DMS to any obligation whatsoever, in any capacity whatsoever as agent, or to bind DMS to any obligation whatsoever. PROVIDER shall not be covered by workers' compensation; nor shall PROVIDER be entitled to compensated sick leave, vacation leave, retirement entitlement, participation in group health, dental, life and other insurance programs, or entitled to other fringe benefits payable by DMS to employees of the DMS.
- E. It is further understood and agreed that PROVIDER must issue W-2 and 941 Forms for income and employment tax purposes for all of PROVIDER'S assigned personnel under the terms and conditions of this Agreement.

[Section B Use for all other service providers]

- A. It is understood and agreed that PROVIDER (including PROVIDER'S employees) is an independent contractor and that no relationship of employer-employee exists between the parties hereto. PROVIDER'S assigned personnel shall not be entitled to any benefits payable to employees of DMS. As an independent contractor, PROVIDER hereby indemnifies and holds DMS harmless from any and all claims that may be made against DMS based upon any contention by any third party that an employer-employee relationship exists by reason of this Agreement.
- B. It is further understood and agreed by the parties hereto that PROVIDER in the performance of its obligation hereunder is subject to the control or direction of DMS as to the designation of tasks to be performed, the results to be accomplished by the services hereunder agreed to be rendered and performed, and not the means, methods, and sequence used by PROVIDER for accomplishing the results.
- C. If, in the performance of this Agreement, any third persons are employed by PROVIDER, such person shall be entirely and exclusively under the direction, supervision, and control of PROVIDER. All terms of employment, including hours, wages, working conditions, discipline, hiring and discharging, or any other terms of employment or requirements of law, shall be determined by PROVIDER, and the DMS shall have no right or authority over such persons or the terms of such employment.
- D. It is further understood and agreed that as an independent contractor and not an employee of DMS, neither the PROVIDER nor PROVIDER's assigned personnel shall have any entitlement as a DMS employee, right to act on behalf of DMS to any obligation whatsoever. in any capacity whatsoever as agent, or to bind DMS

to any obligation whatsoever. PROVIDER shall not be covered by workers' compensation; nor shall PROVIDER be entitled to compensated sick leave, vacation leave, retirement entitlement, participation in group health, dental, life and other insurance programs, or entitled to other fringe benefits payable by DMS to employees of the DMS.

- E. Notwithstanding PROVIDER'S status as an independent contractor, DMS shall withhold from payments made to PROVIDER such sums as are required to be withheld from employees by the Federal Internal Revenue Code; the Federal Insurance Compensation Act; the State Personal Income Tax Law and the State Unemployment Insurance Code; provided, however, that said withholding is for the purpose of avoiding DMS'S liability under said laws and does not abrogate PROVIDER'S status as an independent PROVIDER as described in this Agreement. Further, PROVIDER is not included in any group covered by DMS'S present agreement with the federal Social Security Administration.

[Use in addition to "A" for out-of-state service providers. Never use in addition to "B."]

- F. Notwithstanding subparagraphs (a) and (e), it is further understood and agreed that DMS shall withhold seven percent (7%) of all income paid to PROVIDER under this agreement for payment and reporting to the California Franchise Tax Board because PROVIDER does not qualify as (1) a corporation with its principal place of business in California, (2) a partnership with a permanent place of business in California, (3) a corporation qualified to do business in California by the Secretary of State, or (4) an individual with a permanent residence in the State of California.

Enrolled Provider Agreement County Medically Indigent Services Program (CMISP)

Terms:

_____ (hereinafter, "PROVIDER") shall provide on an as needed and requested basis, the medical services that will be described in the Sacramento County Department of Medical Systems ("DMS") Procedure Authorization Form for each patient referred, unless PROVIDER declines to provide the services upon receipt of the form, and so notifies DMS. The Provider Authorization Form will be sent by DMS when DMS requests services for a patient. PROVIDER shall perform its services under this Agreement in accordance with the industry and/or professional standards applicable to PROVIDER'S services.

This Agreement shall commence on the date when signed by DMS and continue until terminated in writing by either party.

PROVIDER shall comply with all applicable Federal, State, and County of Sacramento laws, regulations, and ordinances, including confidentiality requirements. PROVIDER shall maintain in force at all times, all applicable licenses, permits, credentials, and certifications required for performance of services under this Agreement.

It is understood the PROVIDER is an independent contractor and agrees to the terms in the footnote below.*

If PROVIDER is unincorporated, PROVIDER agrees that it is not entitled to receive the following benefits and/or compensation from DMS: medical, dental, vision and retirement benefits, life and disability insurance, sick leave, bereavement leave, jury duty leave, parental leave, or any other similar benefits or compensation otherwise provided to permanent civil service employees.

PROVIDER shall comply with all applicable federal, state, and local anti-discrimination laws, regulations, and ordinances and agrees to not unlawfully discriminate, harass, or allow harassment against any employee, applicant for employment, employee or agent of DMS, or any recipient of services in connection with this Agreement, because of race, ancestry, marital status, color, religious creed, political belief, national origin, ethnic group identification, sex, sexual orientation, age (over 40), medical condition (including HIV and AIDS), or physical or mental disability. PROVIDER represents that it is in compliance with and agrees that it will continue to comply with the Americans with Disabilities Act of 1990 (42 U.S.C. § 12101 et seq.).

PROVIDER shall defend, indemnify, and hold harmless the County of Sacramento, its Board of Supervisors, officers, directors, agents, employees, and volunteers, from and against all demands, claims, actions, liabilities, losses, damages, and costs, including payment of reasonable attorneys' fees, arising out of or resulting from the performance of this Agreement, except and in proportion to the extent caused by the negligence or willful misconduct of the County of Sacramento, its Board of Supervisors, officers, directors, employees, agents or volunteers.

PROVIDER shall maintain insurance limits in force at all times, no less than: general liability, \$500,000; professional liability, \$2,000,000; workers compensation/employer's liability. If individual provider of service will use an automobile in connection with services under this Agreement, then the following automobile liability coverage is required: \$250,000 bodily injury per individual, \$500,000 bodily injury per accident, and \$100,000 property damage.

PROVIDER agrees that all patient information and records, including the identity of any patient, made or kept by PROVIDER in connection with services provided under this Agreement are the property of DMS and are confidential and shall not be disclosed, except to DMS, without a written authorization for release of information signed by DMS or the patient.

PROVIDER hereby agrees to release and exchange information pertinent to this Agreement between the State Department of Health Services, Medi-Cal Provider Enrollment, the Medical Board of California, and DMS.

DMS agrees to pay, and PROVIDER agrees to accept, payment for services at rates not to exceed the maximum allowable under Medi-Cal regulations, unless a different amount is specified by DMS on DMS'S Procedure Authorization Form. PROVIDER shall submit an invoice on the forms and in accordance with the procedures prescribed by COUNTY. Invoices submitted more than one year after services are provided will not be paid. PROVIDER agrees to refund to DMS any monies paid by DMS if PROVIDER obtains payment from another responsible party, program, or funding source. PROVIDER agrees to retain records regarding payments claimed for a minimum of four years following the date of service and to furnish the records on request, to DMS or a duly authorized representative.

PROVIDER shall not have or acquire any interest, direct or indirect, which will conflict in any manner with performance of services under the Agreement.

Except as provided herein, no alteration, amendment, variation, or waiver of the terms of this Agreement shall be valid unless made in writing and signed by both parties.

DMS or PROVIDER may terminate this Agreement at any time with thirty (30) days written notification served upon the other party in person or by mail. Upon giving written notice, DMS may immediately terminate this Agreement for cause, if advised that funds are not available from external sources for this Agreement or for any portion hereof, or if funds in the County of Sacramento yearly proposed and final budget are not appropriated by the County of Sacramento for this Agreement or any portion hereof.

Department of Medical Systems

{PROVIDER Name}

Date: _____

Date: _____

By _____

Penelope Clarke, Administrator
Public Protection & Human Assistance
Agency

By _____

{Title}
Address:

Telephone:
Social Security Number:
(or Tax Identification Number)

STATUS OF PROVIDER

[Section **A** Use for service providers with 5 or more employees or when a tax waiver has been obtained from County Counsel.]

- A. It is understood and agreed that PROVIDER (including PROVIDER'S employees) is an independent contractor and that no relationship of employer-employee exists between the parties hereto. PROVIDER'S assigned personnel shall not be entitled to any benefits payable to employees of DMS. DMS is not required to make any deductions or withholdings from the compensation payable to PROVIDER under the provisions of this Agreement; and as an independent contractor, PROVIDER hereby indemnifies and holds DMS harmless from any and all claims that may be made against DMS based upon any contention by any third party that an employer-employee relationship exists by reason of this Agreement.
- B. It is further understood and agreed by the parties hereto that PROVIDER in the performance of its obligation hereunder is subject to the control or direction of DMS as to the designation of tasks to be performed, the results to be accomplished by the services hereunder agreed to be rendered and performed, and not the means, methods, and sequence used by PROVIDER for accomplishing the results.
- C. If, in the performance of this Agreement, any third persons are employed by PROVIDER, such person shall be entirely and exclusively under the direction, supervision, and control of PROVIDER. All terms of employment, including hours, wages, working conditions, discipline, hiring and discharging, or any other terms of employment or requirements of law, shall be determined by PROVIDER, and the DMS shall have no right or authority over such persons or the terms of such employment.
- D. It is further understood and agreed that as an independent contractor and not an employee of DMS, neither the PROVIDER nor PROVIDER'S assigned personnel shall have any entitlement as a DMS employee, right to act on behalf of DMS to any obligation whatsoever, in any capacity whatsoever as agent, or to bind DMS to any obligation whatsoever. PROVIDER shall not be covered by workers' compensation; nor shall PROVIDER be entitled to compensated sick leave, vacation leave, retirement entitlement, participation in group health, dental, life and other insurance programs, or entitled to other fringe benefits payable by DMS to employees of the DMS.
- E. It is further understood and agreed that PROVIDER must issue W-2 and 941 Forms for income and employment tax purposes for all of PROVIDER'S assigned personnel under the terms and conditions of this Agreement.

[Section **B** Use for all other service providers]

- A. It is understood and agreed that PROVIDER (including PROVIDER'S employees) is an independent contractor and that no relationship of employer-employee exists between the parties hereto. PROVIDER'S assigned personnel shall not be entitled to any benefits payable to employees of DMS. As an independent contractor, PROVIDER hereby indemnifies and holds DMS harmless from any and all claims that may be made against DMS based upon any contention by any third party that an employer-employee relationship exists by reason of this Agreement.
- B. It is further understood and agreed by the parties hereto that PROVIDER in the performance of its obligation hereunder is subject to the control or direction of DMS as to the designation of tasks to be performed, the results to be accomplished by the services hereunder agreed to be rendered and performed, and not the means, methods, and sequence used by PROVIDER for accomplishing the results.
- C. If, in the performance of this Agreement, any third persons are employed by PROVIDER, such person shall be entirely and exclusively under the direction, supervision, and control of PROVIDER. All terms of employment, including hours, wages, working conditions, discipline, hiring and discharging, or any other terms of employment or requirements of law, shall be determined by PROVIDER, and the DMS shall have no right or authority over such persons or the terms of such employment.
- D. It is further understood and agreed that as an independent contractor and not an employee of DMS, neither the PROVIDER nor PROVIDER's assigned personnel shall have any entitlement as a DMS employee, right to act on behalf of DMS to any obligation whatsoever. in any capacity whatsoever as agent, or to bind DMS to any obligation whatsoever. PROVIDER shall not be covered by workers' compensation; nor shall PROVIDER be entitled to compensated sick leave, vacation leave, retirement entitlement, participation in group health, dental, life and other insurance programs, or entitled to other fringe benefits payable by DMS to employees of the DMS.
- E. Notwithstanding PROVIDER's status as an independent contractor, DMS shall withhold from payments made to PROVIDER such sums as are required to be withheld from employees by the Federal Internal Revenue Code; the Federal Insurance Compensation Act; the State Personal Income Tax Law and the State Unemployment Insurance Code; provided, however, that said withholding is for the purpose of avoiding DMS'S liability under said laws and does not abrogate PROVIDER's status as an independent PROVIDER as described in this Agreement. Further, PROVIDER is not included in any group covered by DMS'S present agreement with the federal Social Security Administration.

[Use in addition to "A" for out-of-state service providers. Never use in addition to "B."]

- F. Notwithstanding subparagraphs (a) and (e), it is further understood and agreed that DMS shall withhold seven percent (7%) of all income paid to PROVIDER under this agreement for payment and reporting to the California Franchise Tax Board because PROVIDER does not qualify as (1) a corporation with its principal place of business in California, (2) a partnership with a permanent place of business in California, (3) a corporation qualified to do business in California by the Secretary of State, or (4) an individual with a permanent residence in the State of California.

APPENDIX N

Contract Boilerplate HIPAA Provision

**EXHIBIT D to Agreement
between the COUNTY OF SACRAMENTO,
hereinafter referred to as "COUNTY," and
_____, hereinafter referred
to as "CONTRACTOR"**

[ONLY IF APPLICABLE]

HIPAA Business Associate Provisions: If COUNTY determines that under this Agreement CONTRACTOR is a "Business Associate" of COUNTY, as defined in the Health Insurance Portability and Accountability Act (45 CFR 160.03), then CONTRACTOR shall comply with the Business Associate provisions contained in Exhibit ___, which is attached hereto and incorporated by reference herein.

HIPAA Business Associate Exhibit to Contract

Whereas, COUNTY, pursuant to the terms of the Agreement, wishes to disclose to CONTRACTOR and CONTRACTOR wishes to disclose to COUNTY, certain information, some of which may constitute Protected Health Information (PHI) including any in an electronic format (Electronic Protected Health Information or EPHI);

Whereas, in the course of the performance of the Agreement, CONTRACTOR will be provided with access to PHI;

Whereas, COUNTY and CONTRACTOR desire to protect the privacy and provide for the security of PHI disclosed to each other in compliance with the Health Insurance Portability and Accountability Act of 1996 (HIPAA) Title 45 Code of Federal Regulations (CFR), Title 42 CFR Section 1320d, and regulations promulgated thereunder by the U.S. Department of Health and Human Services (the HIPAA Regulations) and other applicable laws and regulations.

Whereas, it appears that the CONTRACTOR is a Business Associate of COUNTY as that term is defined in the HIPAA regulations; and

Whereas, COUNTY is willing to provide CONTRACTOR and its agents with access to PHI such that CONTRACTOR can perform under the Agreement, under the terms of this Exhibit;

Whereas, the purpose of this Exhibit is to satisfy certain standards and requirements of HIPAA and the HIPAA Regulations, including, but not limited to, Title 45, Section 164.504(e) of the Code of Federal Regulations (CFR), as the same may be amended from time to time.

NOW, THEREFORE, in consideration of the mutual promises made herein, the parties agree as follows:

I. HIPAA REQUIREMENTS

A. Definitions:

1. "Protected Health Information" or "PHI" means any information, whether oral or recorded in any form or medium, including electronic (E PHI) as that term is defined in the Security Rule: 1) that relates to the past, present, or future physical or mental condition of an individual; the provision of health care to an individual; or the past, present or future payment for the provision of health care to an individual, and 2) that identifies the individual or with respect to which there is a reasonable basis to believe the information can be used to identify the individual, and shall have the meaning given to such term under HIPAA and the HIPAA Regulations, including, but not limited to, 45 CFR Section 164.501;

2. "Individual" shall have the same meaning as the term "individual" in 45 CFR Section 164.501 and shall include a person who qualifies as a personal representative in accordance with 45 CFR Section 164.502(g);

3. "Privacy Rule" shall mean the "Standards for Privacy of Individually Identifiable Health Information", 45 CFR Part 160 and Part 164, subparts A and E, as amended from time to time.

4. "Security Rule" shall mean the "Security Standards", 45 CFR Parts 160, 162, and 164.

B. Permitted Uses and Disclosures: CONTRACTOR may use and/or disclose PHI received by it pursuant to the Agreement and this Exhibit solely for the purpose of performing its obligations under the Agreement and this Exhibit or as otherwise required by law. CONTRACTOR may disclose PHI to, and permit the use of PHI by, its employees, contractors, agents, or other representatives only to the extent directly related to and necessary for the performance of the Agreement and this Exhibit. CONTRACTOR shall not use or disclose PHI in any manner that would constitute a violation of HIPAA and the HIPAA regulations if so used by COUNTY.

C. Use and Disclosure for Contractor's Purposes and Data Aggregation: CONTRACTOR may, if necessary, use and disclose PHI for the proper management and administration of CONTRACTOR's business or to carry out CONTRACTOR's legal responsibilities. CONTRACTOR may also use PHI to provide data aggregation services to COUNTY as permitted by 45 CFR Section 164.504(e)(2)(i)(B).

D. De-Identification: Notwithstanding anything herein to the contrary, CONTRACTOR may store, analyze, access and use components of PHI that have been "de-identified" and that do not contain individually identifiable health information, provided that any such use is consistent with applicable laws and regulations.

E. Appropriate Safeguards: Prior to receipt of PHI in connection with the Agreement and Exhibit, CONTRACTOR shall implement and maintain appropriate security safeguards to ensure that PHI is not used or disclosed by CONTRACTOR in violation of this Exhibit or applicable laws and regulations. Security measures maintained by CONTRACTOR shall include such appropriate administrative, technical and physical safeguards as are necessary to protect such PHI. Such safeguards shall be designed to protect the confidentiality and integrity of such PHI obtained, accessed or created from or on behalf of COUNTY. Upon request by COUNTY, CONTRACTOR shall provide a written description of such safeguards. CONTRACTOR shall ensure that any sub-contract it maintains in order to meet the terms of this AGREEMENT includes the same requirements for appropriate safeguards as found in this AGREEMENT.

F. Reporting Unauthorized Uses and Disclosures: As required by 45 CFR Section 164.308(a)(2), the designated HIPAA Security Officer of CONTRACTOR shall notify COUNTY in writing within five (5) working days of its discovery of any use or disclosure of PHI not permitted by the Agreement or this Exhibit of which CONTRACTOR or its officers, employees or agents become aware. Such notice shall include the name of each individual, with address or other identifiers where known, whose unsecured protected health information (PHI) has been, or is reasonably believed by the CONTRACTOR to have been, accessed, acquired, or disclosed during such unauthorized use or disclosure.

Any unauthorized use or disclosure shall be treated as discovered by the CONTRACTOR on the first day on which such access, acquisition or disclosure is known to the CONTRACTOR, including any person, other than the individual committing the unauthorized use or disclosure, that is an employee, officer or other agent of the CONTRACTOR, or who should reasonably have known such unauthorized activities had occurred.

CONTRACTOR shall promptly identify, respond to and report to COUNTY any suspected or known "security incident" of which it becomes aware. Such term is defined in the HIPAA Security Rule, 45 CFR Section 164.304: "the attempted or successful unauthorized access, use, disclosure, modification, or destruction of information or interference with system operations in an information system." CONTRACTOR's incident report shall identify the date of the security incident, the scope of the security incident, the CONTRACTOR's response to the security incident and the identification of the party responsible for causing the security incident if known.

CONTRACTOR agrees that any sub-contractor of the CONTRACTOR that provides services to the CONTRACTOR directly related to this AGREEMENT has the same responsibilities regarding reporting unauthorized uses or disclosures as the CONTRACTOR. CONTRACTOR further agrees that it shall ensure that these responsibilities are defined in any sub-contract it enters into in order to service this AGREEMENT.

G. Mitigating the Effect of Unauthorized Uses and Disclosures:

CONTRACTOR shall take prompt corrective action to mitigate to the greatest extent possible, any harmful effects arising from any improper use and/or disclosure of PHI and shall take such other action pertaining to such unauthorized use or disclosure as may be required by applicable federal and state laws and regulations.

Mitigation shall include CONTRACTOR notification to each individual whose unsecured protected health information (PHI or EPHI) has been, or is reasonably believed by the CONTRACTOR to have been, accessed, acquired, or disclosed during such unauthorized use or disclosure. The standard for such notification shall comply with all notification requirements as specified in 45 CFR Subpart D.

Upon completion of such notification, the designated HIPAA Security Officer of CONTRACTOR shall provide the COUNTY Compliance Officer a report including the following: method(s) of communication used, as specified in 45 CFR Subpart D; date such notification was made; number of individuals notified; and a copy of the content of the notification.

CONTRACTOR agrees that any sub-contractor of the CONTRACTOR that provides services to the CONTRACTOR directly related to this AGREEMENT has the same responsibilities regarding mitigating any unauthorized uses or disclosures as the CONTRACTOR. CONTRACTOR further agrees that it shall ensure that these responsibilities are defined in any sub-contract it enters into in order to service this AGREEMENT.

H. Individual Rights: CONTRACTOR shall comply with the following individual rights requirements as applicable to PHI obtained, used or maintained by CONTRACTOR:

1. Right of Access. CONTRACTOR shall provide access to PHI, at the request of COUNTY and in the time and manner designated by COUNTY, to COUNTY or, as directed, to an individual in order to meet the requirements under 45 CFR Section 164.524.

2. Right of Addendum. CONTRACTOR shall make any Addendum to PHI that COUNTY directs or agrees to pursuant to 45 CFR Section 164.526 at the request of COUNTY or an individual, and in the time and manner designated by COUNTY.

3. Documenting of Disclosures. CONTRACTOR shall document such disclosures of PHI as would be required for COUNTY to respond to a request by an Individual for an accounting of disclosures of PHI in accordance with 45 CFR Section 164.528.

4. Right to Accounting of Disclosures. CONTRACTOR agrees to provide COUNTY or an individual, in the time and manner designated by COUNTY, such information collected in order to permit COUNTY to respond to a request by an

individual for an accounting of disclosures of PHI in accordance with 45 CFR Section 164.528.

I. County Obligations:

1. COUNTY shall notify CONTRACTOR of any limitation in its notice of privacy practices in accordance with 45 CFR Section 164.520 to the extent that such limitation may affect CONTRACTOR's use or disclosure of PHI.

2. COUNTY shall notify CONTRACTOR of any changes in, or revocation of, permission by an individual to use or disclose PHI, to the extent that such changes may affect CONTRACTOR's use or disclosure of PHI.

3. COUNTY shall notify CONTRACTOR of any restriction to the use or disclosure of PHI that COUNTY has agreed to in accordance with 45 CFR Section 164.522, to the extent that such restriction may affect CONTRACTOR's use or disclosure of PHI.

J. Contractor's Agents: CONTRACTOR shall require that any agent, subcontractor or other representative that is authorized to receive, use or have access to PHI obtained or created under the Agreement or this Exhibit shall agree in writing to adhere to the same restrictions, conditions and requirements regarding the use and/or disclosure of PHI and safeguarding of PHI that apply to CONTRACTOR under this Agreement and Exhibit. CONTRACTOR shall implement and maintain sanctions against any agent, subcontractor or other representative that violates such restrictions, conditions or requirements and shall mitigate the effects of any such violation. Such agreement shall identify COUNTY as a third-part beneficiary with rights of enforcement in the event of any violations by CONTRACTOR's agents, subcontractors or other representatives. Additionally, the agent, subcontractor or other representative shall be required to notify CONTRACTOR of any instances of which it is aware in which the confidentiality of PHI has been breached.

K. Regulatory Compliance: CONTRACTOR shall make its internal practices, books and records relating to the use and disclosure of PHI received from COUNTY, or created or received by CONTRACTOR on behalf of COUNTY, available to any state or federal agency, including the U.S. Department of Health and Human Services, for purposes of determining compliance with the HIPAA Regulations.

L. Inspection of Records: Within ten (10) calendar days of a written request, CONTRACTOR shall make available to COUNTY for inspection during normal business hours at CONTRACTOR's place of business all records, books, agreements, data, systems, policies and procedures relating to the use and/or disclosure of PHI received from, or created or received by CONTRACTOR on behalf of COUNTY, for purposes of enabling COUNTY to determine CONTRACTOR's compliance with the terms of this Exhibit. In the event that protected health information (PHI) has been, or is reasonably believed by the CONTRACTOR to have been, accessed, acquired, or disclosed, pursuant to (G) of this Exhibit, this advance notice by COUNTY may be waived.

M. Audit, Inspection and Enforcement By County: With reasonable notice, COUNTY and its authorized agents or contractors may audit and/or examine CONTRACTOR's facilities, systems, policies and procedures, data and records as may be necessary to determine compliance with the terms of this Exhibit. CONTRACTOR shall promptly correct any violation of this Exhibit found by COUNTY and shall certify in writing that the correction has been made. COUNTY's failure to detect any unsatisfactory practice does not constitute acceptance of the practice or a waiver of COUNTY's enforcement rights under this Agreement and Exhibit.

N. Compliance With Law: CONTRACTOR shall comply with all applicable federal and state laws and regulations, including, if applicable under the terms and requirements of the Agreement and this Exhibit, the HIPAA Standards for Electronic Transactions, 45 CFR Parts 160 and 162.

O. Interpretation: Any ambiguity in this Exhibit shall be resolved in favor of a meaning that permits COUNTY to comply with HIPAA and its implementing regulations.

P. Amendment: The parties agree to amend this Exhibit from time to time as necessary for COUNTY to comply with the requirements of HIPAA and its implementation.

Q. Term and Termination:

1. The terms of this Exhibit shall remain in effect for the duration of all services provided by CONTRACTOR and for so long as CONTRACTOR shall remain in possession of any PHI received from, or created or received by CONTRACTOR on behalf of COUNTY, unless COUNTY has agreed in accordance with this section that it is not feasible to return or destroy all PHI.

2. Upon termination of the Agreement and this Exhibit, CONTRACTOR shall recover any PHI relating to the Agreement and this Exhibit in the possession of its subcontractors, agents or representatives. CONTRACTOR shall return to COUNTY, or destroy with consent of COUNTY, all such PHI plus all other PHI relating to the Agreement and this Exhibit in its possession and shall retain no copies. If CONTRACTOR believes that it is not feasible to return or destroy the PHI as described above, CONTRACTOR shall so notify COUNTY in writing. The notification shall include: i) a statement that CONTRACTOR has determined that it is not feasible to return or destroy the PHI in its possession, and ii) the specific reasons for such determination. If COUNTY agrees in its sole discretion that CONTRACTOR cannot feasibly return or destroy the PHI, CONTRACTOR shall ensure that any and all protections, requirements and restrictions contained in this Agreement and Exhibit shall be extended to any PHI retained after the termination of the Agreement and the Exhibit, and that any further uses and/or disclosures will be limited to the purposes that make the return or destruction of the PHI infeasible.

R. Insurance: In addition to any insurance requirements in the Agreement, CONTRACTOR shall maintain insurance, in such amounts as the COUNTY Risk

Manager may deem necessary, to cover loss of PHI data and claims based upon alleged violations of privacy rights through improper use or disclosure of PHI. All such policies shall meet or exceed any minimum insurance requirements of the Agreement.

APPENDIX O

COUNTY OF SACRAMENTO
«ContractNum»

«CONTRACTTYPE» AGREEMENT NO.

EXHIBIT ____ to Agreement
between the COUNTY OF SACRAMENTO,
hereinafter referred to as “COUNTY”, and
«CONTRACTORNAME»,
hereinafter referred to as “CONTRACTOR”

CERTIFICATION REGARDING DEBARMENT AND SUSPENSION

CONTRACTOR agrees to comply with 45 CFR Part 76.100 (Code of Federal Regulations), which provides that federal funds may not be used for any contracted services, if CONTRACTOR is debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from covered transactions by any federal department or agency.

I (We) certify to the best of my (our) knowledge and belief, that CONTRACTOR named below and its principals:

1. Are not presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from covered transactions by any federal department or agency;
2. Have not within a three (3)-year period preceding this proposal been convicted of or had a civil judgment rendered against them for commission of fraud or a criminal offense in connection with obtaining, attempting to obtain, or performing a public (federal, state, or local) transaction or contract under a public transaction; violation of federal or state antitrust statutes or commission of embezzlement, theft, forgery, bribery, falsification or destruction of records, making false statements, or receiving stolen property;
3. Are not presently indicted or otherwise criminally or civilly charged by a governmental entity (federal, state, or local) with commission of any of the offenses enumerated in paragraph (2) of this certification; and
4. Have not within a three (3)-year period preceding this application/proposal/agreement had one or more public transactions (Federal, State, or local) terminated for cause or default.
5. Shall notify COUNTY within ten (10) days of receipt of notification that CONTRACTOR is subject to any proposed or pending debarment, suspension, indictments or termination of a public transaction.

6. Shall obtain a certification regarding debarment and suspension from all its subcontractors that will be funded through this Agreement.
7. Hereby agree to terminate immediately, any subcontractor's services that will be/are funded through this Agreement, upon discovery that the subcontractor is ineligible or voluntarily excluded from covered transactions by any federal department or agency.

«CONTRACTORNAME»

BY: _____ DATE: _____



APPENDIX P

REQUEST FOR EXCEPTION TO COMPETITIVE BIDDING (ETB) PROCESS AND DISCLOSURE STATEMENT

Contract # [Click here to enter text.](#)

Estimated Total Cost: \$ [Click here to enter text.](#)

Proposed Vendor: [Click here to enter text.](#) **Check One:** ☐ **Exception to Bid** OR ☐ **Sole Source**

An exception to bid is when there are similar products/services available from other sources, but you have a strong justification to purchase a specific product/service from the proposed vendor. A sole-source is when there is no alternative product/service available.

Description of Product/Service: [Click here to enter text.](#)

If your request were to be denied and the product/service is procured via an open and competitive bidding process, what would be the impact: [Click here to enter text.](#)

This form must accompany the purchase document whenever an exception to the competitive bidding process is requested. State and local laws subject Sacramento County to competitive bidding rules. Requests for goods and/or services from a specific vendor or limited to a specific brand, where substitutes to the recommended vendor or brand are unacceptable, must be accompanied by a written justification explaining the circumstances that make alternatives unacceptable. The employee signing the justification must disclose in writing whether or not he/she has a perceived, potential or actual conflict of interest. County employees who have a business relationship with or financial interest in the recommended vendor must disclose the conflict of interest. Any employee with an actual or potential conflict of interest may not participate in the purchase decision.

The Purchasing Agent or authorized designee will determine whether the justification is appropriate. Requests for exception must be supported by factual statements that will pass an audit.

INSTRUCTIONS

Contract requestor/user shall complete the above and all the following pages and sign in the appropriate place (Sections 1-5) and then submit to the Contracting Authority for review, concurrence and other due diligence (if applicable). If the Contracting Authority is different than the Department Head, then submit to Department Head for final review and approval. Attach all supporting documentation and include in your contract file.

EXCEPTION TO BIDDING AND DISCLOSURE STATEMENT (ETB)

1. Please check all applicable categories (a. through i.) below and provide additional information where indicated.

- ☐ a. The requested product is an integral repair part or accessory compatible with existing equipment or system.
- Existing Equipment/System:** [Click here to enter text.](#) **Manufacturer/Model Number:** [Click here to enter text.](#)
- Age:** [Click here to enter text.](#) **Current Estimated Value:** [Click here to enter text.](#)
- Purchase Date:** [Click here to enter text.](#) **Purchase Order/Contract #** [Click here to enter text.](#)
- ☐ b. The requested product has unique design/performance specifications or quality requirements that are not available in comparable products.
- ☐ c. I have standardized the requested product and the use of another brand/model would require considerable time and funding to evaluate.
- ☐ d. The requested product is one in which I (and/or my staff) have specialized training and/or extensive expertise. Retraining would incur substantial cost in time and/or funding.
- ☐ e. The requested product is used or demonstration equipment available at a lower-than-new cost.
- ☐ f. Repair/Maintenance service is available only from manufacturer or designated service representative.
- ☐ g. Upgrade to or enhancement of existing software is available only from manufacturer.
- ☐ h. Service proposed by vendor is unique; therefore, competitive bids are not available or applicable.
- ☐ i. Other factors (provide detailed explanation in #2 below).

2. Provide a detailed explanation and pertinent documentation *for each category* checked in item 1 above.
Attach additional sheets if necessary:

[Click here to enter text.](#)

3. Was an evaluation of other equipment, products, or services performed?

☐ Yes ***If yes, please provide all supporting documentation.***

☐ No **Explain why:** [Click here to enter text.](#)

4. List below the name of each individual who was involved in the evaluation, if conducted, and in making the recommendation to procure this product or service. Attach additional information, if necessary. Each individual must submit a completed and signed Disclosure Statement (attached).

[Click here to enter text.](#)
Name

[Click here to enter text.](#)
Name

[Click here to enter text.](#)
Name

EXCEPTION TO BIDDING AND DISCLOSURE STATEMENT (ETB)

5. **REQUESTOR/USER CERTIFICATION:** I certify that the above information is accurate to the best of my knowledge, and a signed copy of this document will be kept on file and available for audit in my department.

_____ Signature	_____ Date	Click here to enter text. Printed Name
Click here to enter text. Department Name		Click here to enter text. Title

6. **CONTRACTING AUTHORITY (SIGNER OF CONTRACT) CONCURRENCE:** I hereby certify that I fully agree with and support this request to waive the county's competitive bidding requirement for the purchase listed in the enclosed documentation.

Other due diligence performed: Click here to enter text.

_____ Signature	_____ Date	Click here to enter text. Printed Name
Click here to enter text. Department Name		Click here to enter text. Title

7. **DEPARTMENT HEAD CONCURRENCE (IF DIFFERENT THAN CONTRACTING AUTHORITY)**

_____ Signature	_____ Date	Click here to enter text. Printed Name
Click here to enter text. Department Name		Click here to enter text. Title

8. **PURCHASING AGENT (OR DESIGNEE) APPROVAL**

_____ Signature	_____ Date	Click here to enter text. Printed Name
Click here to enter text. Department Name		Click here to enter text. Title

**DISCLOSURE STATEMENT TO ACCOMPANY
REQUEST FOR EXCEPTION TO COMPETITIVE BIDDING PROCESS**

Each individual involved in evaluating and/or in making a recommendation to purchase must complete, sign, and submit a Disclosure Statement with the applicable purchase document. Filing an annual statement of economic interest does not exempt an employee from this requirement. (Attach additional information if necessary.)

1. Did you receive any income or gifts from this company during the past 12 months: ☐ **Yes** or ☐ **No**. If yes, please describe below.
[Click here to enter text.](#)
2. Do you have a financial interest (stocks, shares, investments, etc.) in this company: ☐ **Yes** or ☐ **No**. If yes, please describe below.
[Click here to enter text.](#)
3. Do you have any other type of business relationship with this company? ☐ **Yes** or ☐ **No**. If yes, please describe below.
[Click here to enter text.](#)
4. To the best of your knowledge, does any member of your departmental staff have a business relationship with this company? ☐ **Yes** or ☐ **No**. If yes, please describe below.
[Click here to enter text.](#)
5. Do you or any of your near relatives have any financial interest in this company? ☐ **Yes** or ☐ **No**. If yes, please describe below.
[Click here to enter text.](#)
6. ***Please provide any additional information you believe should be disclosed at this time:***

[Click here to enter text.](#)
7. I certify that the above information is true:

Signature

[Click here to enter text.](#)

Date

[Click here to enter text.](#)

Printed Name

[Click here to enter text.](#)

Title

**EXHIBIT [redacted] to Agreement between the COUNTY OF SACRAMENTO,
hereinafter referred to as "COUNTY," and**

**_____, hereinafter referred
to as "CONTRACTOR"**

Software as a Service Supplemental Terms and Conditions

I. DEFINITIONS

- a. **Backup:** Backup refers to the process of making copies of data or data files, on a regular basis, to use in the event the original data or data files are lost or destroyed.
- A backup is the duplication of system information in a manner that:
 - Is not electronically connected to the primary system in its end state. (Replication, raid drives, and fail-over systems are not a backup).
 - Is not on the same power supply of the primary system.
 - Is located at least ten miles away from the primary system.
 - Has been tested to ensure that a restoration can be done on a separate set of equipment from the primary equipment. A backup process is not considered to be in place unless a restoration has been tested.
 - Keeps a history of at least one iteration in case the primary backup fails.
 - Is maintained in a secure area.
- Regular Basis:
 - Backup of servers will occur every day after regular business hours.
 - Full Backup: Copying into an archive file of computer data so it may be used to restore the original after a data loss event. At a minimum, one full backup will be performed weekly, to include all the source files.
 - Differential Backup: A backup of all changes made since the last full backup. At a minimum, Differential Backup will be performed daily.
 - Incremental Backup: One in which successive copies of the data contain only the portion that has changed since the preceding backup copy was made. When a full recovery is needed, the restoration process would need the last full backup plus all the incremental backups until the point of restoration. At a minimum, Incremental Backup will be performed as needed.
- b. **CONTRACTOR:** The contractor and its employees, subcontractors, agents and affiliates who are providing the services agreed to under this Agreement.
- c. **COUNTY Data:** All data created or in any way originating with the COUNTY, and all data that is the output of computer processing or other electronic manipulation of any data that was created by or in any way originated with the COUNTY, whether such data or output is stored on the COUNTY's hardware, the CONTRACTOR's

hardware, hardware owned by subcontractors of the CONTRACTOR, or exists in any system owned, maintained or otherwise controlled by the COUNTY, the CONTRACTOR, or subcontractors of the CONTRACTOR.

- d. **COUNTY and CONTRACTOR Identified Contact:** The person or persons designated below in writing by the COUNTY/CONTRACTOR to receive Security Incident or breach notification.

POC/ Role	COUNTY OF SACRAMENTO	CONTRACTOR
AO/CIO	Rami Zakaria Department of Technology Desk: (916) 874-7825 zakariar@saccounty.net	
Program Manager	Rob Schultz IT Division Chief Desk: (916) 876-7825 schultzr@saccounty.net	
Information Security Office (ISO)	Information Security Office ISO Group Line (916) 874-5171 InformationSecurityOffice@saccounty.net	
Security Incident Reporting	ISO or 24/7 Emergency Notification & Security Operations Center Desk: 311	

- e. **Data Breach:** Access that results in the unauthorized use, unauthorized disclosure, or theft of COUNTY's unencrypted Personal Data.
- f. **Electronic Systems:** Includes all servers, routers, storage area networks, user data, configuration data, source code, databases, applications, PC's with user data, PC's with locally installed applications, or any other system component that is required to make a system operable for an end user.
- g. **Individually Identifiable Health Information:** Information that is a subset of health information, including demographic information collected from an individual, and
- Is created or received by a health care provider, health plan, employer or health care clearinghouse; and
 - Relates to the past, present or future physical or mental health or condition of an individual; the provision of health care to an individual; or the past, present or future payment for the provision of health care to an individual; and
 - (a) That identifies the individual; or
 - (b) With respect to which there is a reasonable basis to believe, the information can be used to identify the individual.
- h. **Non-Public Data:** Data, other than Personal Data, that is not subject to distribution to the public as public information. It is deemed to be sensitive and confidential by the COUNTY because it contains information that is exempt by statute, ordinance or administrative rule from access by the general public as public information.
- i. **Personal Data:** Data that includes information relating to a person that identifies the person by name and has any of the following personally identifiable information

(PII): government-issued identification numbers, including but not limited to Social Security, driver's license, passport; financial account information, including account number, credit or debit card numbers; or Protected Health Information (PHI) relating to a person.

- j. **Protected Health Information (PHI):** Individually Identifiable Health Information transmitted by electronic media, maintained in electronic media, or transmitted or maintained in any other form or medium. PHI excludes education records covered by the Family Educational Rights and Privacy Act (FERPA), as amended, 20 U.S.C. 1232g, records described at 20 U.S.C. 1232g(a)(4)(B)(iv) and employment records held by a covered entity in its role as employer.
- k. **Recovery Time Objective (RTO):** The overall length of time an information system's components can be in the recovery phase before negatively impacting the organization's mission or mission/business functions. The targeted duration of time which COUNTY's processes must be Restored after a disaster (or disruption) in order to avoid unacceptable consequences associated with a break in business continuity. For example, COUNTY typical business hours 9am to 5pm, Monday through Friday, will use the following timescales:
 - 4 hours = 4 consecutive hours
 - 24 hours = 1 consecutive calendar days
 - 48 hours = 2 consecutive calendar days
 - 10 days = 10 business days
 - 30 days = 30 business days
 - 60 days = 60 business days
 - 90 days = 90 business days
 - 1 year = 365 consecutive calendar days
 - Annually = 365 consecutive calendar days
 - 5 years = 1,825 consecutive calendar days
- l. **Restore:** The ability to return to a fixed production state:
 - Within 48 hours of when replacement equipment is available.
 - Return to service systems on equipment platforms other than the primary equipment platform.
 - Restore all source code, applications, databases, drivers, or supporting systems to make a service fully functional to the end customer.
 - Restore test and development systems associated with the production application.
 - For critical systems, the ability to restore all components to restore services without the ability to connect to the internet.
- m. **Security Incident:** A violation of an explicit or implied security policy; or the potentially unauthorized access to Personal Data or Non-Public Data the COUNTY believes could reasonably result in the unauthorized use, unauthorized disclosure, or theft of a COUNTY's unencrypted Personal Data or Non-Public Data within the possession or control of the CONTRACTOR. A Security Incident may or may not turn into a Data Breach.

II. DATA OWNERSHIP

The COUNTY will own all rights, title and interest in its data that is related to the services provided by this Agreement. The CONTRACTOR shall not access COUNTY user accounts or COUNTY Data, except:

- (1) In the course of data center operations;
- (2) In response to service or technical issues;
- (3) As required by the express terms of this Agreement or;
- (4) At the COUNTY's written approval.

III. DATA PROTECTION

Protection of personal privacy and data shall be an integral part of the business activities of the CONTRACTOR to ensure there is no inappropriate or unauthorized use of COUNTY information at any time. To this end, the CONTRACTOR shall safeguard the confidentiality, integrity and availability of COUNTY information and comply with the following conditions:

- a. The CONTRACTOR shall adhere and maintain to the National Institute of Standards and Technology (NIST) Special Publications (SP) 800-53 r4 moderate controls and 800-45 administrative, technical and organizational security measures to safeguard against unauthorized access, disclosure or theft of Personal Data and Non-Public Data. Such security measures shall be in accordance with recognized industry practice, such as NIST and the Health Insurance Portability and Accountability Act (HIPAA) and not less stringent than the measures the CONTRACTOR applies to its own Personal Data and Non-Public Data of similar kind.
- b. All data obtained by the CONTRACTOR in the performance of this Agreement shall become and remain the property of the COUNTY.
- c. COUNTY/CONTRACTOR shall ensure appropriate identification and authentication controls, access controls, and audit logging controls are implemented on every network component.
- d. The CONTRACTOR is responsible for encryption of all data, at rest and in transit, with encrypted web protocols specified by the NIST SP 800-53 r4 or most current version moderate controls, using Transport Layer Security (TLS) 1.2, or better, with Advanced Encryption Standard (AES) 256, or the then-current NIST standard, whichever is more secure, as the minimum standard encryption algorithm signed by a public signing authority. In the event the NIST standard increases during the term of this Agreement, CONTRACTOR shall satisfy such new NIST standard at no additional cost to the COUNTY.
- e. At no time shall any data or processes—that either belong to or are intended for the use of the COUNTY or its officers, agents or employees—be copied, disclosed

or retained by the CONTRACTOR or any party related to the CONTRACTOR for subsequent use in any transaction that does not include the COUNTY.

- f. The CONTRACTOR shall not use any information collected in connection with the service provided under this Agreement for any purpose other than fulfilling the service.

IV. DATA LOCATION

The CONTRACTOR shall provide its services to the COUNTY solely from data centers in the United States (U.S.). Storage of COUNTY Data at rest shall be located solely in data centers in the U.S. The CONTRACTOR shall not allow its personnel or contractors to store COUNTY Data on portable devices, including personal computers, except for devices that are used and kept only at its U.S. data centers and used for this Agreement. The CONTRACTOR shall permit its personnel and contractors to access COUNTY Data remotely only as required to provide technical support. The CONTRACTOR may provide technical user support on a 24/7 basis using a follow-the-sun model, unless otherwise prohibited in this Agreement.

V. SECURITY INCIDENT OR DATA BREACH NOTIFICATION

The CONTRACTOR discovering a Security Incident will report it in accordance with the COUNTY's incident reporting procedures and ensure that the COUNTY is notified. Incident reporting contact information is listed in section I.d, "COUNTY and CONTRACTOR Identified Contact", of this Agreement.

The COUNTY's personnel will be notified of any Security Incident that may have an operational/security impact on COUNTY's resources, or may become a breach.

Incident Response: The parties agree to notify their designated counterparts, found in section I.d, by telephone or e-mail at the earliest opportunity in the event a Security Incident has been detected, so the other party may take steps to determine whether its system has been compromised and to take appropriate security precautions. This communication should include a description of the incident and status on containment and/or resolution efforts. The system owner will receive a formal written incident summary within ten (10) business days after the incident has been remediated.

- a. **Security Incident Reporting Requirements:** The CONTRACTOR shall report a Security Incident to the appropriate COUNTY Identified Contact immediately as defined in section I.d.
- b. **Breach Reporting Requirements:** If the CONTRACTOR has actual knowledge of a confirmed Data Breach that affects the security of any COUNTY content that is subject to applicable Data Breach notification law, the CONTRACTOR shall:
 - (1) Notify the appropriate COUNTY Identified Contact within 24 hours (as identified in section I.k) or sooner, unless shorter time is required by applicable law, and;

- (2) Take the measures specified in this Agreement, or in the event not specifically specified in this Agreement take commercially reasonable measures, to address the Data Breach in a timely manner.

VI. BREACH RESPONSIBILITIES

This section only applies when a Data Breach occurs with respect to Personal Data within the possession or control of the CONTRACTOR.

- a. The CONTRACTOR shall immediately notify the appropriate COUNTY Identified Contact, section I.d, by telephone if it confirms that there is, or reasonably believes that there has been a Data Breach. The CONTRACTOR shall:
 - (1) Promptly investigate any alleged misuse of COUNTY Data or related security breach, and to cooperate reasonably with COUNTY personnel in connection with any alleged breaches involving its data.
 - (2) Promptly implement necessary remedial measures, if necessary, and
 - (3) Document responsive actions taken related to the Data Breach, including any post-incident review of events and actions taken to make changes in business practices in providing the services, if necessary.
- b. If a Data Breach is a direct result of the CONTRACTOR's obligation to encrypt Personal Data or otherwise prevent its release, the CONTRACTOR shall bear the costs associated with:
 - (1) The investigation and resolution of the Data Breach;
 - (2) Notifications to individuals, regulators or others required by state law;
 - (3) A credit monitoring service required by state (or federal) law;
 - (4) A website or a toll-free number and call center for affected individuals required by state law; and
 - (5) All corrective actions as reasonably determined by the COUNTY based on root cause.

VII. NOTIFICATION OF LEGAL REQUESTS

The CONTRACTOR shall contact the COUNTY upon receipt of any requests including but not limited to Public Records Act requests, discovery requests, litigation holds, and requests for expert testimonies related to the COUNTY's data under this Agreement, or which in any way might reasonably require access to the COUNTY Data. The CONTRACTOR shall not respond to subpoenas, service of process and other legal requests related to the COUNTY without first notifying the COUNTY Identified Contacts in section I.d.

VIII. TERMINATION AND SUSPENSION OF SERVICE

- a. In the event of a termination of this Agreement, the CONTRACTOR shall implement at no additional cost to the COUNTY an orderly return of COUNTY Data in a comma-separated values (CSV) file 60 business days, section I.k, after the effective date of termination.

- b. During any period of service suspension, the CONTRACTOR shall not take any action to intentionally erase, sanitize, or delete any COUNTY Data.
- c. In the event of termination of this Agreement, the CONTRACTOR shall not take any action to intentionally erase, sanitize, or delete any COUNTY Data for a period of 60 days (see section I.k) or a longer period if specified by the COUNTY.
- d. After such period, the CONTRACTOR shall have no obligation to maintain or be provided any COUNTY Data and shall thereafter, unless legally prohibited, sanitize or delete, in accordance with NIST SP 800-88, all COUNTY Data in its systems or otherwise in its possession or under its control, as stated in this Agreement.
- e. The COUNTY shall be entitled, at no additional cost to the COUNTY, to any post-termination assistance generally made available with respect to the services; unless a unique data retrieval arrangement has been established as part of this Agreement.
- f. The CONTRACTOR shall securely dispose of all requested data in all of its forms, such as electronic/paper, when requested by the COUNTY at no additional cost to the COUNTY. Data shall be permanently deleted and shall not be recoverable, according to NIST approved methods. Certificates of destruction shall be provided to the COUNTY at no cost to the COUNTY.

IX. BACKGROUND CHECKS

The CONTRACTOR shall conduct criminal background checks – and must satisfy Federal Tax Information background check policy, if applicable - and not utilize any staff, including subcontractors, to fulfill the obligations of this Agreement who have been convicted of any crime of dishonesty, including but not limited to criminal fraud, or otherwise convicted of any felony or misdemeanor offense for which incarceration for up to one year is an authorized penalty. CONTRACTOR shall provide documentation of the above background checks upon request of the COUNTY at no cost to the COUNTY.

The CONTRACTOR shall ensure that all individuals maintaining COUNTY Data have attended initial basic and annual refresher Information Security and Privacy Awareness and Training. Additionally, ensure that persons with significant security responsibilities for the data, receive annual role based training covering their specific areas of responsibility. This training should ensure that staff members know how to report suspicious or prohibited activities. CONTRACTOR shall provide documentation of the above training upon request of the COUNTY at no cost to the COUNTY.

X. ACCESS TO SECURITY LOGS AND REPORTS

The CONTRACTOR shall provide security logs to the COUNTY in a JavaScript Object Notation (JSON) format. Reports shall include, but not limited to:

- User identification
- Type and origin of event
- Date and time
- Success or failure indication
- Identity or name of affected data; System component or resource
- All actions taken by any individual with elevated privileges
- Invalid logical access attempts

- Use of and changes to identification and authentication mechanisms
 - Creation and deletion of system level objects
- Security logs will be retained for at least five (5) (see section I.k) years or such longer period as specified by the COUNTY or as required by law.

XI. CONTRACT AUDIT

The CONTRACTOR shall allow the COUNTY to audit conformance to the Agreement terms. The COUNTY may perform this audit or contract with a third party at its discretion and at the COUNTY's expense.

XII. DATA CENTER AUDIT

The CONTRACTOR shall perform an independent audit of its data center(s) at least annually at its expense, and provide a redacted version of the audit report upon request at no cost to COUNTY. The CONTRACTOR may remove its proprietary information from the redacted version. A Service Organization Control (SOC) 2 audit report or equivalent approved by the COUNTY sets the minimum level of a third-party audit.

XIII. CHANGE CONTROL AND ADVANCE NOTICE

Significant changes, any upgrade or modification that affects the security of the system, the system architecture, documentation, or configurations, of either parties, will be reviewed, approved, and documented in accordance with CONTRACTOR/COUNTY configuration or change control process. Each party shall notify the other if a system change significantly changes the approved security posture of the system or introduces new significant risk/residual risk to either system. Whenever significant changes are made at one or both parties, (e.g., through additional staff, service, etc.), these changes should be recorded as an addendum to the original Agreement.

The CONTRACTOR shall give ninety (90) business days' advance notice, or such other agreed upon days, to the COUNTY of any upgrades (e.g., major upgrades, minor upgrades, system changes) that may impact service availability and performance. A major upgrade is a replacement of hardware, software or firmware with a newer or better version in order to bring the system up to date or to improve its security posture and characteristics. It usually includes a new version number.

XIV. INFORMATION SECURITY

The CONTRACTOR shall disclose upon COUNTY request its non-proprietary security processes and technical limitations to the COUNTY such that adequate protection and flexibility can be attained between the COUNTY and the CONTRACTOR. For example: virus checking and port sniffing — the COUNTY and the CONTRACTOR shall understand each other's roles and responsibilities.

XV. NON-DISCLOSURE AND SEPARATION OF DUTIES

The CONTRACTOR shall enforce separation of job duties where only the staff that require access to the COUNTY data have access to the COUNTY data, require commercially reasonable non-disclosure agreements, and limit staff knowledge of COUNTY Data to that which is absolutely necessary to perform job duties.

XVI. IMPORT AND EXPORT OF DATA

The COUNTY shall have the ability to import or export data in piecemeal or in entirety at its discretion without interference from the CONTRACTOR. This includes the ability for the COUNTY to import or export data to/from other contractors.

XVII. RESPONSIBILITIES AND UPTIME GUARANTEE

The CONTRACTOR shall be responsible for the acquisition and operation of all hardware, software and network support related to the services being provided. The technical and professional activities required for establishing, managing and maintaining the environments are the responsibilities of the CONTRACTOR. The system shall be available 24/7/365 (with agreed-upon maintenance downtime during non-peak hours only).

XVIII. SUBCONTRACTOR DISCLOSURE

The CONTRACTOR shall identify all of its strategic business partners related to services provided under this Agreement, including but not limited to all subcontractors or other entities or individuals who may be a party to a joint venture or similar agreement with the CONTRACTOR, and who shall be involved in any application development and/or operations.

XIX. RIGHT TO REMOVE INDIVIDUALS

Both parties shall allocate the appropriate human resources to ensure the continual function of this Agreement, irrespective of changes in personnel. Each party agrees to provide the other with notification of any changes in point of contact information.

The COUNTY shall have the right at any time to require that the CONTRACTOR remove from interaction with COUNTY any CONTRACTOR representative who the COUNTY believes is detrimental to its working relationship with the CONTRACTOR. The COUNTY shall provide the CONTRACTOR with notice of its determination, and the reasons it requests the removal. If the COUNTY signifies that a potential security violation exists with respect to the request, the CONTRACTOR shall immediately remove such individual. The CONTRACTOR shall not assign the person to any aspect of this Agreement or future work orders without the COUNTY's consent.

XX. BUSINESS CONTINUITY AND DISASTER RECOVERY

The CONTRACTOR shall provide a business continuity and disaster recovery plan upon request at no cost to the COUNTY and ensure that the COUNTY's Recovery Time Objective (RTO) of 48 hours (see section I.k) are met.

The parties agree to provide notification to the COUNTY and CONTRACTOR identified contacts in section I.d. by telephone or e-mail at least every four (4) hours in the event of a disaster or other contingency which disrupts the normal operation of one or both of the connected systems. This communication shall include the cause of the outage and reasonable forecasts pertinent to the restoration of services. The system owner will receive formal after action written event summary within ten (10), see section I.k, business days after restoration of services.

XXI. COMPLIANCE WITH ACCESSIBILITY STANDARDS

The CONTRACTOR shall comply with and adhere to Accessibility Standards of Section 508 Amendment to the Rehabilitation Act of 1973.

XXII. ENCRYPTION OF DATA

The CONTRACTOR shall ensure hard drive encryption consistent with validated cryptography standards as referenced and specified by the NIST SP 800-53 r4 or most current version moderate controls, using Transport Layer Security (TLS) 1.2, or better, with Advanced Encryption Standard AES 256, or the then-current NIST standard, as the minimum standard encryption algorithm signed by a public signing authority. In the event the NIST standard increases during the term of this Agreement, CONTRACTOR shall satisfy such new NIST standard, at no additional cost to the COUNTY.

XXIV. CURRENT VERSIONS

- a. CONTRACTOR will certify its product is compatible and runs without defect with versions of supporting systems that are within two major versions and four minor versions (service packages) of the most recent release by the component manufacturer. These supporting systems include, but are not limited to: client and server operating systems, databases, web servers, Java clients, programming languages, third party application components (such as grids, calendars and widgets), reporting tools, etc.
- b. Should the CONTRACTOR fail to keep its products current within two major versions and four minor versions of the most recent release by the component manufacturer, the CONTRACTOR will forego maintenance payments by the COUNTY until such time as the CONTRACTOR's product is compatible.
- c. Should the CONTRACTOR lapse in updating its product to be compatible with newer supporting platforms, the CONTRACTOR will reimburse the COUNTY for any necessary costs incurred to keep the supporting systems under maintenance by the component manufacturer after their end-of-life date (e.g., Microsoft Extend Life Support for operating systems).

- d. At no time shall the CONTRACTOR allow its system, or components of its system to lapse to a point that security patches are no longer available.

XXV. BACKUPS

All Electronic Systems and their components will be backed up on a Regular Basis and before any work is done on production systems.

The CONTRACTOR shall create a Backup copy of the COUNTY Data at least daily and shall ensure that each such copy is sufficient to enable the COUNTY to restore the services to the state they were in at the time the Backup was taken. In addition, the CONTRACTOR shall retain and securely store each such copy for a minimum period of 90 days, section I.k.

Within the period of 48 hours (section I.k) following receipt of a written request from the COUNTY, the CONTRACTOR shall use all reasonable endeavors to Restore the COUNTY Data stored in any Backup copy created and stored by the CONTRACTOR. The COUNTY acknowledges that this process will overwrite the COUNTY's data stored on the platform prior to the restoration.

XXVIII. CERTIFICATION

- The CONTRACTOR shall maintain a Federal Risk and Management Program (FEDRAMP) certification.
- If the CONTRACTOR is utilizing any type of credit card or payment card a current certification that the systems meet the most recent version of Payment Card Industry Security Standards (PCI DSS) must also be maintained.
- CONTRACTOR shall send to the COUNTY's Chief Information Security Officer (CISO) a copy of the current certification prior to any payments under this Agreement, and annually at:
Sacramento County Chief Information Security Officer
799 G Street
Sacramento, CA 95814