



**DEPARTMENT OF  
ADMINISTRATIVE SERVICES  
PURCHASING**

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Equal Opportunity Employer

Issue Date: November 5, 2015

**COUNTY OF MERCED  
REQUEST FOR PROPOSAL  
NUMBER 7105  
FOR  
WORKERS' COMPENSATION THIRD PARTY ADMINISTRATOR**

Notice is hereby given that proposals will be received at the Merced County Department of Administrative Services-Purchasing Division for performing all work necessary in accordance with the "SCOPE OF WORK" and other related documents provided herein. Please carefully read and follow the instructions.

**Proposals shall be presented under sealed cover with the Proposal Number and the Proposal Submittal Deadline Date clearly marked on the outside and mailed or delivered to:**

County of Merced  
Department of Administrative Services-Purchasing Division  
2222 "M" Street, Room 1  
Merced, California 95340  
Attn: Procurement Specialist: Jacquie Michael  
Email: [jmichael@co.merced.ca.us](mailto:jmichael@co.merced.ca.us)

Any Bidder who wishes their proposal to be considered, is responsible for making certain that their proposal is received in the Merced County Department of Administrative Services-Purchasing Division Office by the closing date.

**PROPOSALS RECEIVED AFTER THE DEADLINE WILL BE REJECTED AND WILL BE RETURNED TO THE BIDDER UNOPENED.**

**CLOSING DEADLINE DATE: 4:00 P.M., Friday December 18, 2015**

**PROPOSALS WILL BE CONSIDERED LATE WHEN THE OFFICIAL DEPARTMENT OF ADMINISTRATIVE SERVICES-PURCHASING DIVISION TIME CLOCK READS**

**4:01 P.M.**

All prospective bidders must comply with the [Terms and Conditions](#) listed on Merced County Web Site. Attachment A of Request For Proposal (RFP) will require written certification that the RFP is being submitted in compliance with the [Terms and Conditions](#) as stated on Merced County web page at 4:00 P.M. on date of close of RFP.

**STRIVING FOR EXCELLENCE**

## TABLE OF CONTENTS

Cover Page.....	1
Table of Contents.....	2
RFP Submittal Checklist .....	3
SECTIONS:	
1 – Intent .....	4
2 – Requirements .....	7
3 – Proposed Solution .....	15
4 – Special Provisions .....	16
Definitions .....	18
ATTACHMENTS:	
A – Signature Page.....	20
B – Reference List .....	21
C – Local Vendor Preference Certification .....	23
EXHIBITS:	
1: Sample Contract.....	24

## SUBMITTAL CHECKLIST

**All items are required. This checklist is provided to assist you in ensuring you submit a complete proposal.**

1. \_\_\_\_\_ Acknowledgement of Amendment(s) (If any)
2. \_\_\_\_\_ Cover Letter
3. \_\_\_\_\_ Table of Contents
4. \_\_\_\_\_ Executive Summary
5. \_\_\_\_\_ Exceptions
6. \_\_\_\_\_ Bidder's Qualifications
7. \_\_\_\_\_ Approach
8. \_\_\_\_\_ Cost Proposal
9. \_\_\_\_\_ Financial Statement or Sufficient Financial Information

**Sufficient Financial Information is described in Section 4.3**

**(Non-submittal is considered non-responsive and cause for rejection of proposal.)**

10. \_\_\_\_\_ Signature Sheet (Attachment A)
11. \_\_\_\_\_ References (Attachment B)
12. \_\_\_\_\_ Local Vendor Preference Certification Form (Attachment C)

## **SECTION 1**

### **INTENT OF THE REQUEST FOR PROPOSAL**

#### **1. INTRODUCTION**

It is the intent of this Request for Proposal (RFP) to secure the services of a qualified third party workers' compensation administrator (TPA) to provide a pro-active, organized system of service to deliver effective workers' compensation claims administration and the delivery of benefits to injured employees, in a self-insured environment, in compliance with California statutory and regulatory requirements. The County's current Claims Administration Agreement expires June 30, 2016.

Qualified organizations which have significant experience with self-insured California Counties or Cities and demonstrated competence in the administration of self-insured Workers' Compensation claims programs are invited to submit proposals.

This RFP is for the selection of professional services and the County reserves the right to reject any and all proposals for any reason.

Your proposal must adhere to all the proposal requirements outlined in the RFP and the CSAC EIA Workers Compensation Claims Guidelines. Answer all questions contained in this RFP and explicitly state any deviations from the RFP.

The primary goal of the County in purchasing the services of the Workers' Compensation Claims Administrator is to provide appropriate benefits and services in a timely, cost effective manner focusing on communication, quality care and early return-to-work.

The objectives in meeting the primary goals of the Administration of the County of Merced's Workers' Compensation Program are to:

1. Comply with the Labor Code statutes and rules & regulations applicable to workers' compensation.
2. Implement a system of early intervention, control, and employee assistance.
3. Maintain a current and pro-active system of claim status, action planning, diary action and follow through that expedites claim resolution and minimizes cost.
4. Establish an effective relationship with the local medical community.
5. Develop a team approach to pro-active claim management.
6. Focus on return-to-work from claim inception.

#### **2. BACKGROUND INFORMATION**

The County of Merced has been an approved Workers' Compensation self-insurer (Certificate No. 7019) since July 1, 1976 with a program that now covers regular and part time employees in all departments, including the Sheriff's Department and Labor Code 4850 benefit payment.

The County adopted a resolution in 1973 to cover volunteers, which includes volunteer firefighters, Sheriff's reserves and various councils and committee members. Jail inmates were accepted in 1985.

The Risk Management Department Insurance & Benefits Technician II oversees the workers' compensation program.

Specific Excess insurance above a \$300,000 S.I.R. is currently placed with CSAC Excess Insurance Authority.

The estimated FY 2015-16 payroll is \$119,440,907, with the number of employees as follows:

Public Safety: 356 with the following breakdown;

- 114 Sheriff / Marshall
- 16 Sheriff Reserves (Unpaid)
- 113 Volunteer Firefighter (Paid Call)
- 113 Probation/Juvenile Institutions Officer

Regular Employees 1,771 Active Full & Part Time

Annual new claims filed by year: FY10-11 FY11-12 FY12-13 FY13-14 FY14-15

Medical Only	135	115	106	119	95
Indemnity	99	76	83	70	66

Current Open Claims: 338 with the following breakdown;

- 285 Indemnity Files
- 53 Medical Only Files

Current Open Litigated Claims: 159

Current Future Medical Award Files: 107 including 4 Life Pensions  
(Included in open claims above)

The County of Merced averages 10 to 20 new claims per month, the majority being medical only.

The County is currently contracted with Innovative Claims Services, Inc. for TPA services since September 1, 2010.

Claim Payments 2014/15

Indemnity:	\$ 1,296,158.58
Medical:	\$ 1,840,741.23
Expense:	<u>\$ 304,448.14</u>
Total:	\$ 3,441,347.95

The County and the incumbent TPA currently use David Renaissance claims software. The County prefers to maintain claims software consistency with CSAC-EIA, who is currently using Systema, but County will consider other systems if approved by CSAC-EIA and with the TPA guarantee of full data transfer and equivalent or increased functionality.

### 3. **CONTRACT TERM**

The Contract term shall be for a period of three (3) years with an option for the County to extend the contract for two (2) additional 1 year periods. The start date will tentatively commence July 1, 2016 with a scheduled completion date of June 30, 2021, contingent on the optional extensions and appropriate and sufficient funding.

A Sample Contract is attached as Exhibit 1. This contract will form the basis of the final agreement with successful Bidder awarded the proposal. Any exceptions to the Sample Contract must be identified separately or they are waived. The County will execute the contract upon final selection of successful Bidder with the approval of the County's Board of Supervisors.

### 4. **SCHEDULED ACTIVITIES**

To the extent achievable, the following schedule shall govern the review, evaluation and award of the proposal. The County reserves the right to modify the dates below in accordance with its review process.

<u>Activity Estimated Schedule</u>	<u>Date</u>
1. Availability of the Request for Proposal	November 5, 2015
2. Last day to submit Questions	November 19, 2015
3. Closing Date for the Request for Proposal.	December 18, 2015
<b>NOTE: A list of respondents will be posted to the Web-site at close of RFP</b>	
4. Commencement of review of Request for Proposal	December 21, 2015
5. Finalist Selection	January 13, 2016
6. Interviews and <b><u>Mandatory</u></b> Oral Presentations for the respondents that qualify	January 18, 2016 - January 29, 2016
7. Evaluation Committee's recommendation	February 16, 2016
8. Selection	February 19, 2016
9. Contract negotiation	February 22, 2016 - March 4, 2016
10. Contract to Board for execution	April 5, 2016
11. Contract Performance to Commence	July 1, 2016

## **SECTION 2**

### **REQUIREMENTS**

#### **1. SERVICES**

Services to be provided MUST include, but not be limited to:

##### **A. Claims Administration - Existing Claims or Reopening Claims**

Administration and system of transfer, conversion, installation and adjustment of all open claims as of July 1, 2016, including the maintenance of all closed claims records (to be efficiently maintained in close proximity to the claims examiner).

##### **B. Claims Administration - New Claims**

Administration and system of adjustment for all claims reported during the contract year, to include the services of claims examiners with a minimum of three years active claims adjusting experience as a claims examiner. A claims trainee or assistant will not take the place of an examiner.

Each examiner should have a claims case load of no more than 150 open indemnity claims at any one time. In addition, it is preferred that a 1-to-1 ratio be maintained between technical assistants and claims examiners.

##### **C. Claims Examiners**

The County prefers the claims examiners be assigned to the County's account exclusively. Claims Examiners shall be supervised and examiners shall have obtained a Workers' Compensation Competency Certificate. These positions shall have available to them at all times an experienced claims Administrator who will have passed the State of California test for Administrator, Self-Insurance Plans, given by the Self-Insurance Plans Office or other division administering the test. Claims Examiners shall participate in effective continuing education.

#### **2. CLAIMS MANAGEMENT**

**A.** The County, as a member of the CSAC Excess Insurance Authority Workers Compensation Excess Insurance Program, requires compliance with Addendum A, "Workers Compensation Claims Administration Guidelines" which are attached and incorporated herein as a requirement for the Claims Administrator.

**B.** The Administrator shall promptly make up a claims file and electronic record within 24 hours after receipt from the County, investigate questionable claims, and coordinate with County Staff.

**C.** The Administrator shall expedite the employer's report when or if the doctor's first report of work injury is received.

**D.** All claim files shall be available to the County for inspection, review, and/or claims audit with or without prior notice to the adjusting firm. It is understood and agreed that all files will remain the property of Merced County at all times.

- E. The Administrator shall provide online capabilities allowing access to claims notes, claim detail, and electronic transfer of information including transmittal of Employer's Report.

### **3. SERVICES SPECIFICATIONS**

#### **A. Claim Control**

The County's current plan seeks to maintain strong medical control of claims. To further strengthen medical control, the County is open to establishing or joining an existing Medical Provider Network. Proposals for claims administration services must address the policies and procedures used by the bidder to maintain strong medical control, including a description of relationships established with the medical community.

#### **B. Return to Work**

The County also operates a strong return to work (RTW) policy, characterized by temporary work modification and, where possible, permanent modifications. In this regard, the County looks to the Administrator to acquire a working knowledge of the County's return to work, disability, and retirement systems so as to develop return to work plans that minimize the County's costs in both the workers comp and retirement arenas. Proposals should describe the services offered to maintain and strengthen the RTW Program.

#### **C. Partnership and Communication**

County Risk Management seeks to build partnerships to include the County managers and the Claims Administrator to collaborate in the resolution of workers compensation problem cases. To that end, periodic meetings are held with the participation of the claims examiner, Risk Management and departmental management to share information and strategy on case management. Proposals should address how this would be supported and list any limitations imposed by the Administrator.

1. Special claims review of open claims files at the request of the County.
2. Regular quarterly review of claims selected by the County and the Administrator as appropriate for review.

#### **D. State Compliance**

Proposals should set forth the specifics of claims handling including time limits and steps followed. The method of conformance to legal requirements should be specifically addressed. It is not sufficient to merely state that the bidder will conform to the requirement of the Labor Code and California Code of Regulations.

#### **E. Public Safety Benefits**

Proposals must include the experience of the Administrator and procedures used in administering claims for safety members.

#### **F. Analysis Reporting and Documentation**

Administration of a self-insurance program relies heavily on the availability of complete information and relevant reporting. Currently, the County has access to the claim notes



maintained by the Administrator. Proposals should include plans for providing information on individual cases as well as a description of the type and number of statistical reports to be provided. Among the reporting to be furnished are the claim loss information necessary to support preparation of the County's actuarial application, insurance renewal application, accident prevention analysis, annual self-insurance budget, preparation of the Self-Insurer's Annual Report, monthly claims activity report, ad-hoc reports, queries of records, data analyses, and data downloads as needed. The County desires access to the claim system to make data queries.

**G. Vocational Rehabilitation/SJDB**

Proposals should include a description of how the vocational rehabilitation/ supplemental job displacement benefits are to be administered, should they arise.

**H. Cost Containment**

Several ancillary services are needed to proactively administer a self-insured workers' compensation program, including medical case management, utilization review, preferred providers & organizations, and medical bill review. The County retains the right to be involved in the selection of these service providers independent of the contract for TPA services. The County expects the Administrator to fully cooperate with these providers to achieve efficient and effective results. Proposals should address this. As other providers are identified, whose services would be of benefit to the County, the Administrator is expected to cooperate with the County in investigating and implementing such selected services.

**I. Medical Management**

The Workers compensation system is complicated and structured. Most employees who find themselves a part of the system have little grasp of how it works and what their obligations are. The Administrator must take an active role in helping the employee by promptly answering questions and giving courteous and clear answers and direction. The County is also involved in this process. The proposal should include the services the Administrator will provide in educating and directing individual employees in how the system works - what they must do to receive the benefits, and achieve claim resolution.

**J. Claimant Support/Litigation**

The County is diligent about selecting legal representation and managing litigation. The proposal must describe how the Administrator will support that management function, including a description of the roles the Administrator and the defense attorney fill. For example, if the Administrator proposes to represent the County before the WCAB in less complex matters, please so indicate.

**K. Financial/Accounting**

Describe the system you would propose to maintain financial accountability of the payment trust account and the procedures for seeking replenishment of the account, addressing the following items:

1. A trust account shall be maintained for the purpose of paying benefits that may be due on the claims. The amount that will be maintained in the trust account shall be determined by the parties and confirmed by written document or letter.
2. Provide access to a copy of all checks, vouchers, or warrants drawn by the TPA to pay benefits on County Claims. Electronic copies of checks must be provided along with the weekly check register as backup, or as determined by mutual agreement per County needs.
3. A weekly check/voucher register of all transactions made for the period shall be provided by the TPA. It shall list the checks/vouchers in numerical order, claim number, amount, payee, recoveries of all types and any other information considered necessary by the County.
4. At the sole discretion of the County, there may be an annual/yearly financial audit of the trust account to ensure the integrity of the account. This account may also be subject to a Grand Jury audit at any time.
5. Penalties that are incurred due to no fault of the county shall be reimbursed to the County by the TPA within 30 days of payment of penalty.
6. Payments shall be processed with an effective duplicate payment system that includes a re-check system for overlapping service date ranges, similar amounts paid for similar dates, and with vendor entry controls to eliminate duplicate vendors.
7. Overpayments that occur due to no fault of the County shall be reimbursed to the County within 30 days of overpayment.
8. Maintain an effective IRS 1099 reporting and reconciliation system.

#### **L. Subrogation**

The Administrator must provide subrogation services to recover costs from third parties (responsible persons, agencies, insurers, and/or their agents) responsible for employees, volunteers, inmates, etc., injuries, up to the point necessitating legal counsel. The Administrator will give prompt notice to County Risk Manager for each case indicating a potential for subrogation.

Subrogation efforts on injuries in which there is also property loss to the County shall be coordinated by the Workers Compensation Administrator with the County and/or their liability program administrator as appropriate. Subrogation notices and action against another party require the advance authorization from the County. If subrogation action develops problems or unreasonable delays, the matter is to be referred to and reviewed by County Risk Management for referral to County Counsel or County designated Counsel for legal action.

#### **M. Recovery and Excess Insurance**

The administrator shall prepare and submit information to the County's excess insurance carrier regarding claims that exceed the limits of self-retained workers' compensation liability, and comply with all excess insurance carriers reporting and notice requirement.

The Administrator shall also endeavor to recover costs where there are applicable sources for liens, credits, and contribution.

#### **N. Compliance Audit**

Compliance audits and accuracy audits are a fact of life in workers compensation claims administration. Describe the responsibilities and liabilities the Administrator will assume in the event of OBAE audits and periodic claim audits.

##### **1. Audits**

- a. In the event of a State audit by OBAE (Office of Benefit Assistance and Enforcement), resulting in penalties based upon actions of the TPA, the Administrator selected shall be responsible for all associated legal costs, including those of the County.
- b. The administrator is required to cooperate with an independent outside auditor selected by the County. The County reserves the right to audit the contractor at any time and as frequently as the County may believe it's necessary.

#### **O. Service Pricing**

While the County maintains the right to contract separately for cost containment or other services, the County requests pricing information, where applicable, for TPA in-house services as numbered below.

Where the TPA has selected partners with outside providers, who provide superior service (and TPA prefers/recommends them), and the TPA has negotiated advantageous rates and/or terms, the County requests service and pricing information under which the TPA proposes to use such services.

1. Medical Case Management (1. Telephonic 2. On-site)
2. Fee Schedule Review
3. Utilization Review
4. Pharmacy Management
5. PPO – Medical, Hospital
6. Imaging, Testing Management
7. Investigation
8. MSA, SCHIP Reporting
9. Records Services
10. MPN (Medical Provider Network)
11. Disability Management/Return to Work

Administrator bears the cost of installing and maintaining any claims administrative costs including automated claims administration systems and applications, transfer of records and systems, and any administrative / office expenses including staff, space, equipment, supplies, communication, transportation, postage, etc.

**P. Litigation**

1. Selection of defense counsel shall be by agreement between the County and the Administrator. Investigations are to be coordinated with County staff. Both defense counsel and investigation assignments require authorization by the County in advance of assignment.
2. Litigation efforts shall be controlled and closely monitored by the administrator who shall maintain regular communication with the County and shall provide document copies as requested by the County.
3. Administrative and medical control of litigated claims shall stay with the Administrator and shall not pass to defense counsel unless approved by the County.
4. Settlement authority on litigated claims must be first approved by the County staff before being presented or negotiated with the injured workers attorney.
5. When an application for adjudication has been filed on less complex straight-forward cases, an effort will be made by the TPA, within the claims examiner's skills, to settle the claim without assigning it to a defense counsel.
6. As agreed in advance by the County and TPA, the Claims Examiner and/or Claims Supervisor, shall attend Worker's Compensation Appeals Board Hearings, conferences and reviews with legal counsel (defense counsel). The County encourages periodic meetings with claims examiners, supervisors and County Staff to update the County on status of claims.

**Q. Fraud Unit**

Third Party Administrator shall take an aggressive stance against fraud by filing F81/FB2 forms with the State Department of Insurance. Whenever warranted, the Third Party Administrator shall aggressively pursue fraud cases with the District Attorney's office after review and authorization from Risk Management.

**4. ADDITIONAL SERVICES**

**A. Forms**

Forms necessary for the County's processing of benefits or claims information are to be provided at the expense of the adjusting firm (to include DWC-1 forms and workers' compensation facts brochures and/or as required by the State).

**B. Reports**

Provide a system to and/or prepare OSHA reports; Public Self-Insurer's Annual Report; prepare charts and graphs on a quarterly basis for statistical analysis of countywide claim frequency and severity, as well as similar charts and graphs by departments other classes of data; provide the Risk Management Department with an annual report as of June 30th each year with loss trending analysis; provide charts and graphs to be used in the development of Departmental Action Plans for all departments that have had injuries during the year.

**C. Training County Personnel**

Assist in the training of County staff as required including forms, procedures and techniques to improve the claim process. Instruct County personnel as directed by the County Risk Management Department about automated systems and reports. Update County staff on current changes in workers' compensation law and case decisions.

**D. Procedure Manual**

Assist in preparing and maintaining standards and a procedure manual in compliance with state law and County needs with particular attention to a coordination of benefits.

**E. Accreditation of Administrator**

The Administrator shall maintain appropriate accreditation and/or license as a provider of workers' compensation services in the State of California.

**F. Toll Free Telephone Number**

The County requests the Administrator maintains a toll free number for access to the Administrator's office by injured workers, and other interested parties. The cost of the toll free telephone service will be the responsibility of the Administrator.

**G. Information System**

1. All records, files, transcripts, computer tapes, media, information systems data, and any other materials on Workers Compensation claims are the property of the County and must be relinquished in good order and condition upon termination of an eventual contract with the adjusting firm without an additional cost.
2. TPA must maintain an effective claim electronic data security system including adequate access and integrity controls, and continuity program for uninterrupted systems operations.
3. The Administrator must maintain full and effective EDI capabilities, and comply with WCIS regulations and UR reporting guidelines.

**5. SPECIFIC COMPLIANCE**

The Bidder awarded the Contract derived from this proposal will be required to abide by all applicable Federal and State laws and regulations, including, but not limited to:

- Department of Industrial Relations - Division of Workers' Compensation
- California Department of Self-Insurance Plans
- Cal OSHA Requirements
- Energy Policy and Conservation Act
- State and Federal Employment Law
- Harassment and Discrimination Law
- HIPAA – Medical Confidentiality
- Medicare – SCHIP Reporting

## **6. EVALUATION CRITERIA**

**All proposals will be evaluated on the following criteria:**

- **Pass/Fail criteria:**

- A. Respondent provides Financials as described in section 4.3
  - B. Performance References: capabilities, reputation, reliability and service history as determined by reference validations.

- **Weighted Criteria:**

- A. Overall responsiveness to the Request for Proposal, which includes clarity, completeness and general quality of the proposal submitted. Include in this rating the level and caseload of staff, education of County employees and supervisors, communications with County Risk Management, the soundness of reserving policies and practices, and Bidder's commitment to attain RFP specifications.
  - B. Comprehensiveness of the Bidder's proposal, which takes into account the Bidders understanding of the desired scope of work and the ability to perform such work as evidenced by Bidder's proposal. Includes attention to medical control; support for return to work; timely and effective contact with claimants, doctors, and employer; claim resolution action planning; interval of file review; and apparent overall efficiency and effectiveness of administration.
  - C. Technical Capability, expertise and experience of the bidder and staff personnel in providing similar services. Includes experience levels of examiners, on-going training, data management and reporting to County, access to claims management information system, organizational control, technical and reference resources, and support of examiners.
  - D. Bidder's Capability to complete the "Scope of Work" within time frames required. Includes the effectiveness and timeliness of the claims set-up process, claims examiner and staff task completion and diary system, file conversion schedule and procedures, procedures for management and control of the trust checking account, procedures for accountability and documentation in a paperless check environment.
  - E. Bidder's Acceptance of RFP Terms and Conditions and Sample Contract. Includes bidder's commitment to cooperate with other providers, conformance to County insurance requirements, accommodation of County authorizations, assumption of responsibility for TPA caused penalties, and Bidders exceptions to the RFP.
  - F. Relative Cost of Services proposed in relationship to the proposed scope of work. Total annualized cost.
  - G. Familiarity with CSAC-EIA Requirements.

## SECTION 3

### **PROPOSED SOLUTION**

#### **1. PROPOSED SOLUTION**

The “Proposed Solution” section should contain detailed, step-by-step descriptions of the work being proposed by the Bidder in response to the Requirements section. It should be organized to reflect the order in which the work will be done. The work sequence should identify the task and subtasks as carefully and with as much detail as possible for performing that work. A task is a discrete unit of work to be done. Subtasks are detailed activities of the task. All tasks and subtasks make up the “Scope of Work”. The end of each major task section should specify the item resulting from successful completion of the task.

Each task should be described in a separate, numbered paragraph. There should be a deliverable item for each task. Deliverable items can be listed after each task, or may be listed in a summary schedule and cross-referenced by the appropriate task number. Acceptance of the deliverable items will signify satisfactory completion of each task. For instance, a task might read as follows:

*Example:*

“Consultant shall prepare a work plan for the project including consulting personnel to be assigned, department personnel involvement, work schedules in chart form and the time schedule”.

“Deliverable: Complete a work plan submitted to project manager within five working days of startup”.

#### **2. COST INFORMATION**

Please provide detailed pricing for all aspects of the requirements submitted as an annual contract price for each year of services including the two optional years as well as pricing for each task that would be implemented separately, if not included in the annual contract price:

- Claim conversion cost
- Data system access cost
- Claim storage cost
- CMS reporting cost
- Training cost

## SECTION 4

### SPECIAL PROVISIONS

#### 1. INSURANCE

Prior to the commencement of work, and as a precondition to this contract, shall purchase and maintain the types of insurance as follows:

1. Commercial General Liability: \$2,000,000 per occurrence and \$4,000,000 annual aggregate covering bodily injury, personal injury and property damage. The County and its officers, employees and agents shall be endorsed to above policies as additional insured, using ISO form CG2026 or an alternate form that is at least as broad as form CG2026, as to any liability arising from the performance of this Agreement.
2. Automobile Liability: \$1,000,000 per accident for bodily injury and property damage, or alternatively split limits of \$500,000 per person and \$1,000,000 per accident for bodily injury with \$250,000 per accident for property damage.
3. Workers Compensation: Statutory coverage, if and as required according to the California Labor Code, including Employers' Liability limits of \$1,000,000 per accident. The policy shall be endorsed to waive the insurer's subrogation rights against the County.
4. Professional Liability: \$3,000,000 limit per occurrence and \$3,000,000 annual aggregate limit covering Bidder's wrongful acts, errors and omissions.

#### 2. FIDELTY BOND

**Fidelity/Crime Insurance/Bond: Within fourteen (14) working days of the award of the Contract, the successful bidder will be required to furnish a Fidelity bond in an amount equal to one million dollars (\$1,000,000).**

Said Bond shall be furnished as a separate instrument, shall be in the statutory form, and shall contain or embrace the statutory obligations in accordance with the law of the State of California. Said Bond shall be on forms satisfactory to the County. Bonds shall be issued by a Surety Company licensed to issue such Bonds in the State of California.

##### Insurance Conditions

1. Insurance is to be placed with admitted insurers rated by A.M. Best Co. as A:VII or higher. Lower rated, or approved but not admitted insurers, may be accepted if prior approval is given by the County's Risk Manager.
2. Each of the above required policies shall be endorsed to provide County with 30 days prior written notice of cancellation. County is not liable for the payment of premiums or assessments on the policy. No cancellation provisions in the insurance policy shall be construed in derogation of the continuing duty of to furnish insurance during the term of this Agreement.



### **3. NUMBER OF COPIES TO BE SUBMITTED**

Please submit **one (1) original signature hard copies** to be signed in blue ink (original copies marked as such) and **four (4) exact copies** of the original.

### **4. FINANCIAL STATEMENT**

Bidder also to submit **ONE (1) paper copy** of Financial Statement as set forth herein.

**FINANCIAL STATEMENT SUBMITTED WILL BE FORWARDED TO COUNTY AUDITOR-CONTROLLER FOR REVIEW AND DESTROYED OR RETURNED WITHIN THREE (3) WORKING DAYS FOLLOWING CLOSE OF RFP. IF YOU WISH TO HAVE YOUR FINANCIAL STATEMENTS RETURNED, A SELF-ADDRESSED, STAMPED ENVELOPE MUST BE ENCLOSED.**

Provide copies of the Bidders most current and prior two (2) fiscal years financial statements. Financial statements should include a balance sheet and income statement at minimum. Financials consisting of, but not limited to the Balance Sheet (Statement of Financial Positions), and Income Statement (Statement of Operations), and the Retained Earnings Statement (Changes in Fund Balance) are necessary for construction and service provider contracts over \$10,000. For contracts under \$100,000 (federal funding over \$100,000 single audit requirements will apply), if audited statements are available, these should be submitted to meet this requirement. Financial statements will be kept confidential if so stamped on each page.

If financial statements are not available, sufficient financial information should be submitted to demonstrate the ability to finance the contract and provide the services in accordance with the requirements of this RFP, understanding that cash advances are not available. Financial information will be kept confidential if so stamped on each page.

**THIS INFORMATION TO BE PLACED IN A SEPARATE SEALED ENVELOPE AND MARKED "BIDDER'S FINANCIAL STATEMENT" ON THE OUTSIDE OF THE ENVELOPE. FAILURE TO SUBMIT FINANCIAL INFORMATION WILL BE CONSIDERED AS "NONRESPONSIVE", RESULTING IN REJECTION OF PROPOSAL.**

## DEFINITIONS

**Bidder** - A person, partnership, firm, corporation, or joint venture submitting a bid proposal for the purpose of obtaining a County Contract.

### **Bonds –**

**Fidelity Bond** - Also referred to as a Dishonesty Bond. A fidelity bond is a form of protection that covers the County for losses as a result of fraudulent acts by the Contractor.

**Proposal Security Bond** – Also referred to as Bid Security. A bond that is submitted with Bidder's proposal to compensate the County for damages it might suffer if successful bidder refuses to execute the contract that may be derived from their proposal. Generally, it is 10% of the amount of Bidder's bid as bid security.

**Performance Bond** – A bond to ensure completion of the project as requested under the "Scope of Work". The Performance Bond is backed by a surety who guarantees the project will be completed in accordance with the specifications of the proposal.

**Payment Bond** – This bond is to protect sub-contractors and suppliers. It ensures that the surety backing the bond will pay the sub-contractors and suppliers if the general contractor does not.

**Closing Date/Time** - The day and time the Request for Proposal must be received in the office of the Department of Administrative Services-Purchasing Division for acceptance.

**Contract** - Comprises the Request for Proposal (RFP), any addenda thereto, the bid proposal, and the purchase order if appropriate. The Contract constitutes the entire agreement between the County and the awarded Bidder.

**Contractor** - The Bidder or Vendor awarded the Contract derived from this Bid or RFP.

**County** - The County of Merced, a political subdivision of the State of California.

**Deliverable** - The physical evidence such as documentation, certification of completion, hardware/software delivery, etc. which shows that a specific work has been completed as specified in the Scope of Work.

**Discount** - A percentage amount allowed off invoices for prompt payment.

**Evaluation Committee** - A committee established to review and evaluate proposals to determine the Contract award. The committee includes representatives of the department seeking the goods or services and staff from the Department of Administrative Services-Purchasing Division.

**Formal Date of Award** - Effective date the Board of Supervisors take formal action to award the subject RFP to the most responsive Bidder.

**Goals/Tasks** - A discrete unit of work to be performed.

**Joint Ventures** - Two or more corporations or entities that form a temporary union for the

purpose of the RFP.

**May** – Indicates something that is not mandatory but permissible.

**Must/Shall** – Indicates a mandatory requirement. A proposal that fails to meet a mandatory requirement will be deemed non-responsive and not be considered for award.

**Notice of Intent to Award** - Letter sent by County to all participating Bidders advising them of the date the County Board of Supervisors will hear and possibly take action in awarding the Contract to the apparent successful Bidder as recommended by the Evaluation Committee.

**Objectives/Sub-Tasks** - Detailed activities that comprise the actual performance of the Goal/Task. The total of all Goals/Tasks and Objectives/Sub-Tasks makes up the “Scope of Work”.

**Prime Contractor** - The Bidder who is awarded the Contract and designated as the legal entity. The Prime Contractor will hereafter also be known as the Contractor. Any subcontracting, Joint Ventures, or other legal arrangements made by the Contractor during this project are the sole responsibility of the Contractor.

**Proposal Deadline** - The closing date associated with this proposal.

**Proprietary** – The information provided that is considered exempt from public disclosure defined as Trade Secrets under Civil Code Section 3426.1, pursuant to Public Records Act.

**Scope of Work** - The mutually agreed to document which describe tasks, dependencies, the sequence and timing of events, deliverables, and responsible parties associated with the various phases of the proposal.

**Subcontractors** - Any person, entity or organization, to which Contractor or County has delegated any of its obligations hereunder.

**Tasks** – A discrete unit of work to be done

**ATTACHMENT A**

SIGNATURE PAGE

(BIDDER TO COMPLETE AND PLACE IN FRONT OF PROPOSAL)

INDIVIDUAL/COMPANY \_\_\_\_\_

ADDRESS \_\_\_\_\_  
(P.O. Box/Street) (City) (State) (Zip)

CONTACT PERSON: \_\_\_\_\_

TITLE: \_\_\_\_\_

TELEPHONE NO. \_\_\_\_\_ FAX NO. \_\_\_\_\_

E-MAIL ADDRESS \_\_\_\_\_

The undersigned hereby certifies that he/she is a duly authorized official of their organization and has the authority to sign on behalf of the organization and assures that all statements made in the proposal are true, agrees to furnish the item(s) and/or service(s) stipulated in this Request for Proposal at the price stated herein, and will comply with all terms and conditions set forth, unless otherwise stipulated.

**“I certify that I have read the Terms and Conditions pursuant to the submittal of a Request For Proposal (RFP) as detailed on Merced County web site and will comply with said Terms and Conditions, unless otherwise noted by exception herein, as of the date and time of close of this proposal”.**

\_\_\_\_\_  
Authorized Representative - Name Title

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

Business License No.: (Merced City) \_\_\_\_\_

(Merced County) \_\_\_\_\_

Professional License No.: \_\_\_\_\_

Taxpayer Identification No.: \_\_\_\_\_

**ATTACHMENT B**

REFERENCE LIST

(BIDDER TO COMPLETE AND RETURN WITH PROPOSAL)

List Four (4) Reference where the same or similar Scope of Work were provided

**REFERENCE NO. 1 - COMPANY NAME:** \_\_\_\_\_

ADDRESS: \_\_\_\_\_

CONTACT PERSON: \_\_\_\_\_ TITLE: \_\_\_\_\_

E-MAIL: \_\_\_\_\_ TELEPHONE NUMBER: \_\_\_\_\_

AMT. OF CONTRACT: \_\_\_\_\_ DATE AND TYPE OF SERVICE \_\_\_\_\_

**REFERENCE NO. 2 - COMPANY NAME:** \_\_\_\_\_

ADDRESS: \_\_\_\_\_

CONTACT PERSON: \_\_\_\_\_ TITLE: \_\_\_\_\_

E-MAIL: \_\_\_\_\_ TELEPHONE NUMBER: \_\_\_\_\_

AMT. OF CONTRACT: \_\_\_\_\_ DATE AND TYPE OF SERVICE \_\_\_\_\_

**REFERENCE NO. 3 - COMPANY NAME:** \_\_\_\_\_

ADDRESS: \_\_\_\_\_

CONTACT PERSON: \_\_\_\_\_ TITLE: \_\_\_\_\_

E-MAIL: \_\_\_\_\_ TELEPHONE NUMBER: \_\_\_\_\_

AMT. OF CONTRACT: \_\_\_\_\_ DATE AND TYPE OF SERVICE \_\_\_\_\_

**REFERENCE NO. 4 - COMPANY NAME:** \_\_\_\_\_

ADDRESS: \_\_\_\_\_

CONTACT PERSON: \_\_\_\_\_ TITLE: \_\_\_\_\_

E-MAIL: \_\_\_\_\_ TELEPHONE NUMBER: \_\_\_\_\_

AMT. OF CONTRACT: \_\_\_\_\_ DATE AND TYPE OF SERVICE \_\_\_\_\_

## ATTACHMENT C

### **LOCAL VENDOR PREFERENCE CERTIFICATION**

I certify that my company meets all of the following qualifications to be eligible for a local vendor preference in accordance with the requirements of Merced County's local preference ordinance, number §1678 & §1852:

1. A principal place of business located within the County of Merced with a valid and verifiable business license, if applicable, issued by a city the County or a business located in the unincorporated areas of the County. Post Office Boxes do not qualify as verifiable local business addresses;
2. Employs at least one (1) full-time employee within the County, or if the business has no employees, shall be at least fifty percent (50%) owned by one or more persons whose primary residence(s) is located within the County; and
3. Has had a fixed office or place of business having a street address within the County for at least six (6) months immediately prior to the issuance of the request for competitive bids by the County.

I make this certification on behalf of my company with the full knowledge that should I provide any information that proves to be false, my company will be ineligible to conduct business with Merced County for a period of not less than three (3) months and not more than twenty-four (24) months as determined at the sole discretion of the County. The County also has the right to terminate all or part of any agreement entered into with any such company.

---

A certification form must be submitted for each competitive procurement request.

Bid Number \_\_\_\_\_

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

Address \_\_\_\_\_

Business License Number and Jurisdiction \_\_\_\_\_

Tax ID Number (TIN) \_\_\_\_\_

Phone Number \_\_\_\_\_

Printed Name \_\_\_\_\_

Signature \_\_\_\_\_

Date \_\_\_\_\_

**EXHIBIT 1**  
**Sample Contract**

**AGREEMENT FOR SPECIAL SERVICES  
(CONTRACTOR)**

**MERCED COUNTY**  
**CONTRACT NO. \_\_\_\_\_**

**THIS AGREEMENT**, is made and entered into by and between the County of Merced, a political subdivision of the State of California, (hereinafter referred to as "County"), and (name of contracting company or individual; specify the type of organization such as - government agency, individual, corporation, partnership, i.e. "California Skilled Nursing and Care Company", a California Corporation), located at (Street Address, Suite No., City, State) (hereinafter referred to as "Contractor").

**WHEREAS**, County desires to contract with Contractor for special services which consist of (list the type of services you desire to contract for); and

**WHEREAS**, Contractor is specially trained, experienced, and competent to perform such services in connection with (list type of services to be rendered) pursuant to (include any government code sections that may be applicable to this agreement); and

**WHEREAS**, the parties desire to set forth herein the terms and conditions under which said services shall be furnished.

**NOW, THEREFORE**, in consideration of the mutual covenants and promises herein contained, the parties hereby agree as follows:

**1. SCOPE OF SERVICES**

Contractor shall provide (list type of services to be rendered) services in accordance with the terms and conditions stated herein, and any specifically referenced attachments hereto. Contractors' services include, but are not limited to, the following:

- A. (describe in detail the service to be performed by Contractor)
- B. \_\_\_\_\_

The following exhibits are specifically incorporated by reference, attached hereto, and made a part hereof, except when in conflict with this Agreement or modified herein:

- Exhibit A - (i.e., County's Request for Proposal, Statement of Work, etc.)
- Exhibit B - (i.e., Contractors Responding Proposal, Proposed Budget, etc.)
- Exhibit C - (i.e., Related Documentation)

## 2. TERM

The Contract term shall be for a period of three (3) years with an option for the County to extend the contract for two (2) additional 1 year periods.

The term of this Agreement shall commence on the \_\_\_\_ day of \_\_\_\_, 20\_\_\_\_, and continue until the \_\_\_\_ day of \_\_\_\_, 20\_\_\_\_, unless sooner terminated in accordance with the sections entitled "TERMINATION FOR CONVENIENCE" or "TERMINATION FOR CAUSE", as set forth elsewhere in this Agreement.

## 3. COMPENSATION

County agrees to pay Contractor a Total Contract Price of (type out contract price, i.e., Five Thousand Dollars and No/100 Cents) Dollars and No/100 Cents (\$) for all of Contractor's services to be provided herein, as are more specifically set forth under Section "SCOPE OF SERVICES". The Total Contract Price shall include all of County's compensation to Contractor, including reimbursement for all expenses incurred by Contractor in the performance of this Agreement. No other fees or expenses of any kind shall be paid to Contractor in addition to the Total Contract Price. In no event shall the total services to be provided hereunder exceed the Total Contract Price. This fee may be subject to withholding for State of California income tax.

Any and/or all payments made under this Agreement shall be paid by check, payable to the order of the Contractor and be mailed or delivered to Contractor at:

Name:

Address:

City/State/Zip:

Contractor may request that County mail the check to Contractor, to such other address as Contractor may from time to time designate to County. Such request must be made in writing in accordance with the procedures as outlined under Section "NOTICES".

(OR)

## 3. COMPENSATION

County agrees to pay Contractor an hourly rate of (type out hourly rate in dollars, i.e., Fifty Dollars and No/100 Cents) (\$) per hour for hours actually engaged in the performance of such work, as are more specifically set forth under Section "SCOPE OF SERVICES", whether said work be performed at County premises or elsewhere, but such compensation shall not be paid for time necessary to travel from Contractor's location to County premises. This fee includes, but is not limited to, Contractor's time on-site, preparation time associated with this Agreement, and all out-of-pocket expenses. No other fees or expenses of any kind shall be paid to Contractor in addition to those rates or expenses listed herein. In no event shall the total services to be performed by Contractor hereunder exceed a Total Contract Price of \$ \_\_\_\_\_. This fee may be subject to withholding for State of California income tax.



Any and/or all payments made under this Agreement shall be paid by check, payable to the order of the Contractor and be mailed to Contractor at:

Name:  
Address:  
City/State/Zip:

Contractor may request that County mail the check to Contractor to such other address as Contractor may from time to time designate to County. Such request must be made in writing in accordance with the procedures as outlined under Section "NOTICES".

#### 4. **PRICING CONDITIONS:**

County agrees to pay Contractor for all services required herein as prescribed, fixed at the submitted pricing, which shall include reimbursement for all expenses incurred. No other expenses shall be paid to Contractor without formal approval of the County's Board of Supervisors or its authorized agent. In no event shall the total services to be performed hereunder exceed \$\_\_\_\_\_.

County shall not be responsible for any charges or expenses incurred by Contractor, his/her agents, employees or independent Contractors, other than those listed herein, in connection with the performance of services hereunder unless authorized in advance in writing by County.

#### 5. **TERMS OF PAYMENT**

Payment shall be only for full, complete satisfactory performance of the services required to be provided herein and as set forth under Section "SCOPE OF SERVICES." Payment shall be made in the following manner:

Upon completion of the required services as set forth under Section "SCOPE OF SERVICES," Contractor shall submit an invoice **within 30 calendar days of each invoice period**, detailing the services it has provided and the amount owed under this Agreement. In addition to the invoice submitted by the Contractor for payment, Contractor must complete and submit to the County, Form W-9, "A Request for Taxpayer Identification Number and Certification", located at ([www.irs.gov/pub/irs-pdf/fw9.pdf](http://www.irs.gov/pub/irs-pdf/fw9.pdf)). Both the invoice and W-9 form shall be forwarded to the COUNTY at the COUNTY address shown under Section "NOTICES" of this Agreement, **not later than thirty (30) calendar days after completion and acceptance by the County of all tasks identified on the invoice**. Upon approval by County, the fee due hereunder shall be paid to Contractor within thirty (30) days following receipt of a complete and correct invoice.

Each invoice or approved alternate documentation must:

- A. Detail by task the service performed by Contractor.
- B. Detail the labor cost (number of hours) attributed to each task.

- C. Show the cumulative cost for all tasks performed to date.
- D. Provide any additional information and data requested by County as deemed necessary by County to properly evaluate or process Contractors claim.

In no event shall County be liable for the payment of any invoice not submitted within thirty (30) calendar days following termination of the Agreement.

**6. NO PAYMENT FOR SERVICE PROVIDED FOLLOWING EXPIRATION / TERMINATION OF AGREEMENT**

Contractor shall have no claim against County for payment of any kind whatsoever for any services provided by Contractor which were provided after the expiration or termination of this Agreement.

**7. NOTICES**

All notices, requests, demands or other communications under this Agreement shall be in writing. Notice shall be sufficiently given for all purposes as follows:

- A. Personal Delivery. When personally delivered to the recipient, notice is effective upon delivery.
- B. First Class Mail. When mailed first class to the last address of the recipient known to the party giving notice, notice is effective three mail delivery days after deposit in a United States Postal Service office or mailbox.
- C. Certified Mail. When mailed by certified mail, return receipt requested, notice is effective upon receipt, if delivery is confirmed by a return receipt.
- D. Overnight Delivery. When delivered by an overnight delivery service, charges prepaid or charged to the sender's account, notice is effective on delivery, if delivery is confirmed by the delivery service.
- E. Facsimile Transmission. When sent by fax to the last fax number of the recipient known to the party giving notice, notice is effective upon receipt, provided that: a) a duplicate copy of the notice is promptly given by first class mail or certified mail or by overnight delivery, or b) the receiving party delivers a written confirmation of receipt. Any notice given by fax shall be deemed received on the next business day if received after 5:00 P.M. (recipient's time) or on a non-business day.

Any correctly addressed notice that is refused, unclaimed or undeliverable because of an act or omission of the party to be notified shall be deemed effective as of the first date that the notice was refused, unclaimed or deemed undeliverable by the postal authorities, messengers or overnight delivery service.

Information for notice to the parties to this Agreement at the time of endorsement of this Agreement is as follows:

County of Merced c/o

Contractor

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

Any party may change its address or fax number by giving the other party notice of the change in any manner permitted by this Agreement.

**8. CONDITION SUBSEQUENT/NON-APPROPRIATION OF FUNDING**

The compensation paid to CONTRACTOR pursuant to this Agreement is based on COUNTY'S continued appropriation of funding for the purpose of this Agreement, as well as the receipt of local, county, state and/or federal funding for this purpose. The parties acknowledge that the nature of government finance is unpredictable, and that the rights and obligations set forth in this Agreement are therefore contingent upon the receipt and/or appropriation of the necessary funds. In the event that funding is terminated, in whole or in part, for any reason, at any time, this Agreement and all obligations of the COUNTY arising from this Agreement shall be immediately discharged. COUNTY agrees to inform CONTRACTOR no later than ten (10) calendar days after the COUNTY determines, in its sole judgment, that funding will be terminated and the final date for which funding will be available. Under these circumstances, all billing or other claims for compensation or reimbursement by CONTRACTOR arising out of performance of this Agreement must be submitted to COUNTY prior to the final date for which funding is available. In the alternative, COUNTY and CONTRACTOR may agree, in such circumstance, to a suspension or modification of either party's rights or obligations under this Agreement. Such a modification, if the parties agree thereto, may permit a restoration of previous contract terms in the event funding is reinstated. Also in the alternative, the COUNTY may, if funding is provided to the COUNTY in the form of promises to pay at a later date, whether referred to as "government warrants," "IOUs," or by any other name, the COUNTY may, in its sole discretion, provide similar promises to pay to the CONTRACTOR, which the CONTRACTOR hereby agrees to accept as sufficient payment until cash funding becomes available.

**9. TERMINATION FOR CONVENIENCE**

This Agreement, notwithstanding anything to the contrary herein above or hereinafter set forth, may be terminated by County at any time without cause or legal excuse by providing the other party with thirty (30) calendar days written notice of such termination.

Upon effective date of termination, County shall have no further liability to Contractor except for payment for actual services incurred during the performance hereunder. Such liability is limited to the time specified in said notice and for services not previously reimbursed by County. Such liability is further limited to the extent such costs are actual, necessary, reasonable, and verifiable costs and have been incurred by Contractor prior to, and in connection with, discontinuing the work hereunder.

#### **10. TERMINATION FOR CAUSE**

The County may terminate this Agreement and be relieved of making any payments to Contractor, and all duties to Contractor should the Contractor fail to perform any material duty or obligation of the Agreement. All duties and obligations set forth herein this contract are deemed material. Notice shall be given as otherwise provided herein. In the event of such termination the County may proceed with the work in any manner deemed proper by the County. All costs to the County shall be deducted from any sum otherwise due the Contractor and the balance, if any, shall be paid to the Contractor upon demand. Such remedy is in addition to such other remedies as may be available to the County provided by law.

#### **11. MODIFICATION OF THE AGREEMENT**

Notwithstanding any of the provisions of this Agreement, the parties may agree to amend this Agreement. No alteration or variation of the terms of this Agreement shall be valid unless made in writing and signed by the parties hereto. No oral understanding or agreement not incorporated herein shall be binding on any of the parties hereto.

#### **12. INSURANCE**

Prior to the commencement of work, and as a precondition to this contract, shall purchase and maintain the types of insurance as follows:

- A.** Commercial General Liability: \$2,000,000 per occurrence and \$4,000,000 annual aggregate covering bodily injury, personal injury and property damage. The County and its officers, employees and agents shall be endorsed to above policies as additional insured, using ISO form CG2026 or an alternate form that is at least as broad as form CG2026, as to any liability arising from the performance of this Agreement.
- B.** Automobile Liability: \$1,000,000 per accident for bodily injury and property damage, or alternatively split limits of \$500,000 per person and \$1,000,000 per accident for bodily injury with \$250,000 per accident for property damage.
- C.** Workers Compensation: Statutory coverage, if and as required according to the California Labor Code, including Employers' Liability limits of \$1,000,000 per accident. The policy shall be endorsed to waive the insurer's subrogation rights against the County.
- D.** Professional Liability: \$3,000,000 limit per occurrence and \$3,000,000 annual aggregate limit covering Bidder's wrongful acts, errors and omissions.

#### **13. FIDELTY BOND**

**Fidelity/Crime Insurance/Bond: Within fourteen (14) working days of the award of the Contract, the successful bidder will be required to furnish a Fidelity bond in an amount equal to one million dollars (\$1,000,000).**

Said Bond shall be furnished as a separate instrument, shall be in the statutory form, and shall contain or embrace the statutory obligations in accordance with the law of the State of California. Said Bond shall be on forms satisfactory to the County. Bonds shall be issued by a Surety Company licensed to issue such Bonds in the State of California.

#### **Insurance Conditions**

- A.** Insurance is to be placed with admitted insurers rated by A.M. Best Co. as A: VII or higher. Lower rated, or approved but not admitted insurers, may be accepted if prior approval is given by the County's Risk Manager.
- B.** Each of the above required policies shall be endorsed to provide County with 30 days prior written notice of cancellation. County is not liable for the payment of premiums or assessments on the policy. No cancellation provisions in the insurance policy shall be construed in derogation of the continuing duty of to furnish insurance during the term of this Agreement.

### **14. INDEMNIFICATION**

Contractor has the contracted duty (hereinafter "the duty") to indemnify, defend and hold harmless, COUNTY, its Board of Supervisors, officers, employees, agents and assigns from and against any and all claims, demands, liability, judgments, awards, interest, attorney's fees, costs, experts' fees and expenses of whatsoever kind or nature, at any time arising out of or in any way connected with the performance of this Agreement, whether in tort, contract or otherwise. This duty shall include, but not be limited to, claims for bodily injury, property damage, personal injury, and contractual damages or otherwise alleged to be caused to any person or entity including, but not limited to employees, agents and officers of Contractor.

Contractor's liability for indemnity under this Agreement shall apply, regardless of fault, to any acts or omissions, willful misconduct or negligent conduct of any kind, on the part of the Contractor, its agents, sub-Contractors and employees. The duty shall extend to any allegation or claim of liability except in circumstances found by a jury or judge to be the sole and legal result of the willful misconduct of County. This duty shall arise at the first claim or allegation of liability against County. Contractor will on request and at its expense defend any action suit or proceeding arising hereunder. This clause for indemnification shall be interpreted to the broadest extent permitted by law.

### **15. PATENT INDEMNITY**

The awarded Bidder shall hold the County, its officers, agents, and employees, harmless from liability of any nature in kind, including costs and expenses, from infringement or use of any copyrighted or un-copyrighted composition, secret process, patented or unpatented invention, article, or appliance furnished or used in connection with this proposal. The Bidder may also be required to furnish a bond or other indemnification to

the County against any and all loss, damage, costs, expenses, claims, and liability for patent or copyright infringement.

## **16. INDEPENDENT CONTRACTOR**

It is mutually understood and agreed that Contractor is an independent Contractor in the performance of the work duties and obligations devolving upon Contractor under this Agreement. County shall neither have, nor exercise any control or direction over the methods by which Contractor shall perform the assigned work and functions. The contractual interest of County is to assure that the services covered by this Agreement shall be performed and rendered in a competent, efficient and satisfactory manner.

It is agreed that no employer-employee relationship is created and Contractor shall hold County harmless and be solely responsible for withholding, reporting and payment of any federal, state or local taxes; any contributions or premiums imposed or required by workers' compensation; any unemployment insurance; any social security=income tax; and any other obligations from statutes or codes applying to Contractor, or its sub-Contractors and employees, if any.

It is mutually agreed and understood that Contractor, its sub-Contractors and employees, if any, shall have no claim under this Agreement or otherwise against the County for vacation pay, sick leave, retirement or social security benefits, occupational or non-occupational injury, disability or illness, or loss of life or income, by whatever cause.

Contractor shall insure that all its personnel and employees, sub-Contractors and their employees, and any other individuals used to perform the contracted services are aware and expressly agree that County is not responsible for any benefits, coverage or payment for their efforts.

## **17. RECORDS, INFORMATION AND REPORTS**

Contractor shall maintain full and accurate records with respect to all matters covered under this Agreement. To the extent permitted by law, County shall have free access at all proper times or until the expiration of four (4) years after the furnishing of services to such records, and the right to examine and audit the same and to make transcripts there from, and to inspect all data, documents, proceedings, and activities pertaining to this Agreement.

To the extent permitted by law, Contractor shall furnish County such periodic reports as County may request pertaining to the work or services undertaken pursuant to this Agreement. The costs and obligations incurred or to be incurred in connection therewith shall be borne by the Contractor.

## **18. OWNERSHIP OF DOCUMENTS**

To the extent permitted by law, all technical data, evaluations, plans, specifications, reports, documents, or other work products developed by Contractor hereunder are the exclusive property of County and upon request of County shall be delivered to County

upon completion of the services authorized hereunder. In the event of termination, all finished or unfinished documents and other materials, if any, at the option of County, and to the extent permitted by law, shall become the property of the County. Contractor may retain copies thereof for its files and internal use.

Any publication of information directly derived from work performed or data obtained in connection with services rendered under this Agreement must be first approved by County.

## **19. QUALITY OF SERVICE**

Contractor shall perform its services with care, skill, and diligence, in accordance with the applicable professional standards currently recognized by such profession, and shall be responsible for the professional quality, technical accuracy, completeness, and coordination of all reports, designs, drawings, plans, information, specifications, and/or other items and services furnished under this Agreement.

- 20.** Contractor shall, without additional compensation, correct or revise any errors or deficiencies immediately upon discovery in its reports, drawings, specifications, designs, and/or other related items or services.

## **21. PERSONAL SATISFACTION AS A CONDITION PRECEDENT**

The obligations of County as provided in this Agreement are expressly conditioned upon Contractor's compliance with the provisions of this Agreement to the personal satisfaction of the County. County shall determine compliance in good faith as a reasonable person would under the circumstances.

## **22. PUBLIC AGENCY PARTICIPATION**

Any public agency, i.e., city, district, public authority, public agency, municipality and other political subdivision or a public corporation of California (hereinafter referred to as Public Agency) located in the State of California shall have the option of participating in this agreement at the same prices and terms and conditions. The County is not an agent, partner, or representative of the Public Agency, and is not obligated or liable for any financial responsibility in connection with purchase orders issued by any Public Agency. The Public Agency shall accept sole responsibility for placing orders or payments to the successful Bidder.

## **23. ENTIRE AGREEMENT**

This Agreement and any additional or supplementary document or documents incorporated herein by specific reference contain all the terms and conditions agreed upon by the parties hereto, and no other contracts, oral or otherwise, regarding the subject matter of this Agreement or any part thereof shall have any validity or bind any of the parties hereto.

## **24. COUNTY NOT OBLIGATED TO THIRD PARTIES**

County shall not be obligated or liable hereunder to any party other than Contractor.

**25. LAWS, LICENSES, PERMITS AND REGULATIONS**

Contractor and County agree to comply with all State laws and regulations that pertain to construction, health and safety, labor, minimum wage, fair employment practice, equal opportunity, and all other matters applicable to Contractor and County, their sub-grantees, Contractors, or sub-Contractor, and their work.

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 Merced 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.

**26. LIMITED AFFECT OF WAIVER OR PAYMENT**

In no event shall the making, by County, of any payment to Contractor constitute, or be construed as, a waiver by County of any breach of covenant, or any default which may then exist, on the part of Contractor. The making of any such payment by County while any such breach or default shall exist, shall not be construed as acceptance of substandard or careless work or as relieving Contractor from its full responsibility under this Agreement.

No waiver by either party of any default, breach or condition precedent shall be valid unless made in writing and signed by the parties hereto. No oral waiver of any default, breach or condition precedent shall be binding on any of the parties hereto. 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.

**27. PERSONNEL**

Contractor represents that it has, or will secure at its own expense, all personnel required in performing the services under this Agreement. All of the services required hereunder will be performed by Contractor or under its supervision, and all personnel engaged in the work shall be qualified to perform such services.

**28. SUBCONTRACTS - ASSIGNMENT**

Contractor shall not subcontract or assign this Agreement, or any part thereof, or interest therein, directly or indirectly, voluntarily or involuntarily, to any person without obtaining the prior written consent by County. 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.



**29. APPLICABLE LAW; VENUE**

All parties agree that this Agreement and all documents issued or executed pursuant to this Agreement as well as the rights and obligations of the parties hereunder are subject to and governed by the laws of the State of California in all respects as to interpretation, construction, operation, effect and performance. No interpretation of any provision of this Agreement shall be binding upon County unless agreed in writing by County and counsel for County.

Notwithstanding any other provision of this Agreement, any disputes concerning any question of fact or law arising under this Agreement or any litigation or arbitration arising out of this Agreement, shall be tried in Merced County, unless the parties agree otherwise or are otherwise required by law.

**30. BREACH OF CONTRACT**

Upon breach of this Agreement by Contractor, County shall have all remedies available to it both in equity and/or at law.

**31. REMEDY FOR BREACH AND RIGHT TO CURE**

Notwithstanding anything else in this Agreement to the contrary, if Contractor fails to perform any obligation of this Agreement, the County may itself perform, or cause the performance of, such agreement or obligation. In that event, Contractor will, on demand, fully reimburse County for all such expenditures. Alternatively, County, at its option, may deduct from any funds owed to Contractor the amount necessary to cover any expenditures under this provision. This is in addition to any other remedies available to the County by law or as otherwise stated in this Agreement.

**32. SUCCESSORS IN INTEREST**

All the terms, covenant, and conditions of this Agreement shall be binding and in full force and effect upon any successors in interest and assigns of the parties hereto. This paragraph shall not be deemed as a waiver of any of the conditions against assignment set forth herein.

**33. CONFLICT OF INTEREST**

Contractor covenants that it presently has no interest and shall not acquire any interest, direct or indirect, which would conflict in any manner or degree with the performance of this Agreement. Contractor shall ensure that no conflict of interest exists between its officers, employees, or sub-Contractors, and the County. Contractor shall ensure that no County officer or employee in a position that enables them to influence this Agreement will have any direct or indirect financial interest resulting from this Agreement. Contractor shall ensure that no County employee shall have any relationship to the Contractor or officer or employee of the Contractor, nor that any such person will be employed by Contractor in the performance of this Agreement without immediate

divulgence of such fact to the County.

**34. NONDISCRIMINATION IN EMPLOYMENT, SERVICES, BENEFITS AND FACILITIES**

Contractor and any sub-Contractors shall comply with all applicable federal, state, and local Anti-discrimination laws, regulations, and ordinances and shall not unlawfully discriminate, deny family care leave, 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.

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 (Government Code §§ 12900 et seq.), and ensure a workplace free of sexual harassment pursuant to Government Code 12950; and regulations and guidelines issued pursuant thereto.

Contractor agrees to compile data, maintain records and submit reports to permit effective enforcement of all applicable antidiscrimination laws and this provision.

Contractor shall include this nondiscrimination provision in all subcontracts related to this Agreement and when applicable give notice of these obligations to labor organizations with which they have Agreements.

**35. CAPTIONS**

The captions of each paragraph in this Agreement are inserted as a matter of convenience and reference only, and in no way define, limit, or describe the scope or intent of this Agreement or in any way affect it.

**36. SEVERABILITY**

If a court of competent jurisdiction holds any provision of this Agreement to be illegal, unenforceable or invalid, in whole or in part, for any reason, the validity and enforceability of the remaining provisions, or portion of them, will not be affected. Compensation due to Contractor from the County may, however, be adjusted in proportion to the benefit received despite the removal of the effected provision.

**37. DUPLICATE COUNTERPARTS**

This Agreement may be executed in duplicate counterparts, each of which shall be deemed a duplicate original. The Agreement shall be deemed executed when it has been signed by both parties.

**38. DEATH AND DISABILITY** *\*when applicable*

It is understood and agreed that if this Agreement is entered into for the unique personal services of Contractor, in the event of his/her death, this Agreement is forthwith terminated. In the event Contractor is disabled permanently or for an extended period, County may, at its option, terminate this Agreement forthwith. Permanent or extended disability means that Contractor is unable to perform the services of this Agreement for such a period of time that it would cause a detriment to the County as determined by the reasonable judgment of the County.

County of Merced

*(Name of Individual/Company)*

By \_\_\_\_\_  
*(Name)*

By \_\_\_\_\_  
*(Name)*

\_\_\_\_\_  
*(Title of Individual)*

\_\_\_\_\_  
*(Title of Individual)*

\_\_\_\_\_  
Dated

\_\_\_\_\_  
Dated

APPROVED AS TO LEGAL FORM  
MERCED COUNTY COUNSEL

By \_\_\_\_\_

\_\_\_\_\_  
Dated