



A Tradition of Stewardship
A Commitment to Service

REQUEST FOR STATEMENT OF QUALIFICATIONS

SERVICES FOR THE ACQUISITION, SALE AND LEASING OF REAL ESTATE AND REAL PROPERTY

Release Date: August 1, 2013

Due Date: **August 23, 2013 at 3:00 p.m.**

For additional information contact:

Larry Florin
Director of Housing and Intergovernmental Affairs
(707) 253-4621
Larry.Florin@countyofnapa.org

A. Background

Napa County (County) is soliciting Statements of Qualifications (statements) from firms to provide the County with all of the services, supervision, labor and equipment necessary to provide the County with the services of a real estate broker/firm to assist in the purchase, sale, and/or lease of real property and land required to meet the needs of the County for a period of three years. The County intends to enter into a non-exclusive professional services agreement with the most qualified firm to provide the services described in this Request for Statement of Qualifications (RFSQ) on a project-by-project basis.

Statements will be reviewed by a committee. Qualifications including specific experiences and successes, references, fees and familiarity with services requested will be evaluated. The committee will determine which statement best meets the needs and requirements of the County. A Scope of Work is included to provide further information in assisting with the completion of the statement.

Statements must be submitted as detailed below, no later than the date and time stated in this RFSQ. No late statements will be accepted.

B. Schedule for the RFSQ Process*

August 1, 2013	Request for Statement of Qualifications Released
August 20, 2013	County will release answers to questions submitted
August 23, 2013	Responses due by 3:00 p.m.
August 26, 2013 - August 30, 2013	County review period; possible interviews with respondents
September 4, 2013	Successful respondent selected and Award Recommendation notification sent out
October 1, 2013	Contract presented to Board of Supervisors for approval
October 1, 2013	Contract start date

*** These timelines are subject to change and provided for informational purposes only.**

C. Submission Process and General Conditions

1. All questions regarding the RFSQ are due by 3:00 p.m. on **August 16, 2013 by 3:00 p.m.** Questions are to be emailed to Larry.Florin@countyofnapa.org. Answers to all questions will be posted to the County’s website for review by **August 20, 2013.**

2. Respondents should submit one (1) signed original statement and four (4) copies to:

**Larry Florin
Director
Housing and Intergovernmental Affairs
1195 Third Street, Suite # 310
Napa, CA 94559**

Deadline for submitting statements: **August 23, 2013 at 3:00 p.m.**

3. By submitting a response, the respondent represents and warrants that:
 - (a) The information provided is genuine and not a sham, collusive, or made in the interest or in behalf of any party not therein named, and that the respondent has not directly or indirectly induced or solicited any other respondent to put in a sham statement, or any other respondent to refrain from presenting information and that the prospective provider has not in any manner sought by collusion to secure an advantage.
 - (b) The respondent has not paid or agreed to pay any fee or commission, or any other thing of value contingent upon the award of an exclusive operating area, to any employee, official, or existing contracting consultant of Napa County.
4. All costs of preparation of responses including travel for any interviews scheduled shall be borne by the respondents.
5. All statements become the property of Napa County. The County reserves the right to reject any and all submittals; to request clarification of information submitted; to request additional information from competitors; and to waive any irregularity in the submission and review process. None of the materials submitted will be returned to the respondent unless they are not submitted in a timely manner.
6. Statements will become a public record and available for release to the public upon selection of a successful respondent and an agreement is reached.
7. The County reserves the right to request additional information not included in this RFSQ from any or all respondents after **August 23, 2013**.
8. The County reserves the right to contact references not provided in the submittals.
9. The County reserves the right to incorporate its standard language into any contract resulting from this RFSQ. The County's standard agreement language is attached as information only.

D. Modification or Withdrawal of Qualifications

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

Any modification, amendment, addition or alteration to any submission must be presented, in writing, executed by an authorized person or persons, and submitted prior to the final date for submissions.

**NO AMENDMENTS, ADDITIONS OR ALTERATIONS WILL BE ACCEPTED
UNLESS REQUESTED BY THE COUNTY AFTER THE TIME AND DATE
SPECIFIED AS THE SUBMISSION DEADLINE.**

E. Protests or Objections

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

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

Protests must be filed in writing within five (5) working days from the time of the occurrence generating the protest. Protests received after this time will not be considered. Any protest shall include the following information:

The date and action taken resulting in a protest, and

Identification of the material issue, including a detailed explanation of the basis for the protest, and the remedy sought.

Resolution Process

Informal Resolution. Upon receipt of the protest, the Purchasing Agent will convene, at the earliest possible convenience, discussions between the protesting party and appropriate County staff to seek informal resolution and/or to clarify the issues.

Response to Protest/Appeal. If the protest is not resolved by mutual agreement, the Purchasing Agent shall provide a written response to the protesting party within fifteen (15) working days following the informal meeting. County Counsel shall be consulted before the written response is issued.

The response shall state the Purchasing Agent's decision, the facts supporting the decision, and shall inform the protesting party of its right to appeal the decision to the Board of Supervisors.

Appeal to the Board of Supervisors

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

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

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

Stay of Procurement Action During a Protest

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

F. RFSQ Addenda

Any changes to the RFSQ requirements and answers to the submitted questions will be made by addendum. All addenda shall include an acknowledgment of receipt that must be returned. The addenda must be signed and attached to the final response. Failure to attach any addendum will result in the rejection of the response.

All addenda will be mailed to each identifiable respondent and posted on the County's website.

G. Information Resources

Question about this Request for Statement of Qualifications can be referred to:

Larry Florin
Director
Housing and Intergovernmental Affairs
1195 Third Street, Suite # 310
Napa, CA 94559

Questions will not be answered that would tend to constitute an evaluation of a response being prepared or that might give an unfair advantage to a potential respondent. For additional information regarding the services to be provided, please review the Scope of Work. Except for the above named, potential respondents should **not** contact Napa County officials or staff regarding any aspect of this RFSQ. If such contact is made, the County reserves the right to reject the statement.

H. Verbal Agreement or Conversation

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

I. Organization of Statement and Required Information

The statement will be evaluated by the review committee and shall include, at a minimum, the following information:

1. Executive Summary. This section should be limited to a brief narrative describing the services proposed.
2. Company Background. Provide information pertaining to your company: location, addresses, phone numbers, email, web address, office hours, years in business, number of employees, and financial stability.
3. Specific Qualifications. Provide information pertaining to your company's abilities and capabilities to successfully provide all services listed herein, including how long the company has served governmental entity clients and the number of transactions involving governmental entities.
4. Personnel. This section shall define the qualifications and the experience of the consultant firm, key personnel and staff assigned to the County projects. Provide resumes of only those staff that will be assigned to County projects. A designated primary contact for the duration of the contractual period should be identified.
5. References. Provide a minimum of three references for similar work that your firm has provided within the last three (3) years. Include a detailed description of the services, the agency names, contact names and phone numbers, dates of services performed and successful work completed.
6. Rate Schedule and Commission percentage. Provide a rate schedule and the commission percentage that the County would be charged and/or the method of compensation /cost structure for representing the County in negotiations for purchasing/selling/leasing properties.
7. Disclosure. A complete disclosure of any alleged significant prior or ongoing contract failures, any civil or criminal litigation or investigation pending which involves the Proposer or a verification of no responsive incidents. Failure to comply with the terms of this provision may disqualify any statement. Napa County reserves the right to reject any statement based upon the proposer's prior history with Napa County or with any other party, which documents, without limitation, unsatisfactory performance, significant failures to meet contract milestones or other contractual failures.
8. Client List. A current list of clients as well as clients over the past three years.

J. Evaluation Criteria

The following criteria will be utilized for the purpose of determining the most qualified firm:

1. Professional background, qualifications and personnel assigned to the County (20 points)
2. Experience providing real estate services for governmental entities (10 points)
3. Commission percentage and method of compensation representing the County in negotiations for purchasing/selling/leasing properties (20 points)
4. Positive reference from prior clients (20 points)
5. Overall completeness, quality and professionalism of Statement of Qualifications submitted (10 points)
6. Demonstrated knowledge of Napa County real estate market (20 points)

K. Review of Statements

Statements will be reviewed by a committee. Qualifications including specific experiences and successes, references, fees and familiarity with services requested will be evaluated. The committee will determine which statement best meets the needs and requirements of the County. A Scope of Services is included to provide further information in assisting with the completion of the RFSQ.

The review committee may select and recommend additional reviewers during this process. While proposed compensation will be a factor, qualifications and experience of the firm and proposed staff in relation to the Scope of Work and the County's needs will be the primary selection criteria. The statement that is chosen may not be the lowest cost statement. Additionally, the review committee will determine whether respondent's existing client list present a conflict to the County's needs and Scope of Work.

L. Qualifications.

Responders to this RFSQ shall have the following qualifications:

1. Must be a licensed real estate broker or firm and in good standing with the California Bureau of Real Estate.
2. Must be knowledgeable in the Napa County local real estate market and have experience with small and large commercial properties unimproved land, and right-of-way acquisition.
3. Must be knowledgeable in the use of public real estate records maintained by the County Assessor, County Clerk and County Recorder.

4. Must be knowledgeable of the County's zoning requirements as well as local municipal zoning requirements.
5. Knowledge and experience in the acquisition and sale of government owned real property is desired.
6. Knowledge in acquisition and sale of public land and right-of-way is desired.

M. Local Vendor Preference

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

Attachments

- Scope of Work (Attachment A)
- Standard Agreement (Attachment B)

Attachment A

**SCOPE OF SERVICES FOR THE
ACQUISITION, SALE AND LEASING OF
REAL ESTATE AND REAL PROPERTY**

Contractor shall be responsible for the following tasks as requested by County on a project-by-project basis:

TASK 1. Contractor shall be responsible for making recommendations on County property for the purposes of leasing, for a time period which the County deems necessary.

TASK 2. Should the County acquire the current Dey Laboratories property located at 2751 Napa Valley Corporate Drive, Napa, CA 94558-6216, Contractor shall assist County with the marketing and leasing of some of the buildings at Dey Laboratories. County intends to occupy a portion of the buildings (approximately 150,000 square feet) while the remaining 300,000 square feet will be vacant and available for lease. Contractor will assist County with leasing office space not occupied by County. County desires to have the vacant space under lease by early 2014.

TASK 3. Contractor shall be responsible for marketing property on behalf of the County , including, but not limited to:

- Providing analyses and recommendations on certain County-owned properties.
- Confirming encumbrances and/or constraints utilizing official records and geographic information systems.
- Verifying zoning and land use requirements including flood map designation, available utilities and related jurisdictional requirements.
- Completing market comparable and availability analyses.
- Providing status reports at agreed upon frequencies.

TASK 4. Property Management: Contractor shall be responsible for providing property management services for leased facilities upon County's request.

TASK 5. Consulting Services related to real estate feasibility and marketing analyses, including, but not limited to:

- Performing typical real estate brokerage services as directed by the County. Such work may consist of, but not be limited to, opinions of value, consulting services, participation in property inspections, leasing, acquisition, and sales of real property.
- All work shall be performed in a professional manner and quality conforming to generally accepted practices of the real estate profession.

Dey Laboratories, LP

LAND:

The land referred to herein is situated in the City of Napa, County of Napa, State of California, and is described as follows:

- PARCEL 12-C as said parcel is shown on that certain Parcel Map filed May 15, 1987 in Book 15 of Parcel Maps at pages 55-56 in the office of the County Recorder of said Napa County, together with a portion of PARCEL 12-H, as said parcel is shown on that certain Parcel Map filed December 20, 1993 in Book 20 of Parcel Maps at page 6 in the office of the County Recorder of said Napa County, more particularly described as a whole as follows:
- BEGINNING at the Southwestern corner of said PARCEL 12-C; thence along the Westerly boundary thereof North 06° 49' 34" West 73.00 feet to the Southeastern corner of that certain parcel of land described in the Deed to Kaiser Steel Corporation, a Nevada corporation, recorded March 20, 1972 in Book 873 at page 206 of Official Records of Napa County; thence along the Easterly boundary of said Kaiser Steel Corporation parcel and the Westerly boundary of said PARCEL 12-C, North 00° 11' 04" East 581.31 feet to the Northwestern corner of said PARCEL 12-C; thence continuing along the Easterly boundary of said Kaiser Steel Corporation parcel and the Westerly boundary of said PARCEL 12-H hereinabove referred to, North 00° 11' 04" East 425.97 feet to the Northeastern corner of said Kaiser Steel Corporation parcel; thence continuing along said Westerly boundary of said PARCEL 12-H South 89° 48' 56" East 60.00 feet and North 00° 11' 04" East, 554.15 feet to a point which bears South 00° 11' 04" West 890.95 feet from the Northwestern corner of said PARCEL 12-H; thence South 89° 48' 56" East 587.43 feet to a point on the Westerly Right of Way line of Napa Valley Corporate Drive as shown on said parcel maps hereinabove referred to; thence along said Right of Way line and along the Easterly boundary of said PARCEL 12-H Southerly 695.22 feet along a curve concave to the East, having a radius of 4948.00 feet from a point whose radial bears South 85° 49' 55" East, through a central angle of 08° 03' 02"; thence continuing along said Right of Way line and boundary, tangent to the preceding curve, South 12° 13' 06" East 143.62 feet; thence continuing along said Right of Way line and boundary, Southerly 154.20 feet along a tangent curve concave to the West, having a radius of 952.00 feet, through a central angle of 9° 16' 49" to the Northeastern corner of said PARCEL 12-C; thence continuing along said Right of Way line and along the Easterly boundary of said PARCEL 12-C, Southerly 444.54 feet along said curve concave to the West having a radius of 952.00 feet, through a central angle of 26° 45' 16" to the Southeastern corner of said PARCEL 12-C; thence along the Southerly boundary of said PARCEL 12-C the following courses: South 66° 07' 49" West 181.61 feet, Southwesterly 530.98 feet along a tangent curve concave to the Northwest, having a radius of 1785.00 feet, through a central angle of 17° 02' 37", and South 83° 10' 26" West 37.70 feet to the point of beginning.

APN 046-610-021

Other property details: Total acreage is 25.32. Additionally, there is an easement held by PG&E; and another easement held by the Napa Sanitation District to access a recycled water pipeline.

IMPROVEMENTS:

There are four buildings on the Dey Laboratories property, totaling approximately 350,000 square feet.

Buildings 1 and 1a: 154,000 sq ft

Buildings 2 and 2a: 76,000 sq ft

Building 3: 65,800 sq ft

Building 4: 62,800 sq ft

The County intends to occupy approximately one half of buildings 1 and 1a; as well as the whole of buildings 2 and 2a. This leaves approximately 300,000 sq ft available for lease.

**NAPA COUNTY
STANDARD TERMS AND CONDITIONS FOR CONTRACTS**

The following are the standard terms and conditions used by the COUNTY in contracts with vendors. These standard terms will be included in the contract between COUNTY and the successful binder. Please indicate exceptions that your company is taking to these terms and conditions, if any, in the statement being submitted.

TERMS

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

1. **Term of the Agreement.** The term of this Agreement shall commence on the date first above written and shall expire on **June 30, 201_**, unless terminated earlier in accordance with Paragraphs 9 (Termination for Cause), 10 (Other Termination) or 23(a) (Covenant of No Undisclosed Conflict); except that the obligations of the parties under Paragraphs 7 (Insurance) and 8 (Indemnification) shall continue in full force and effect after said expiration date or early termination in relation to acts or omissions occurring prior to such dates during the term of the Agreement, and the obligations of CONTRACTOR to COUNTY shall also continue after said expiration date or early termination in relation to the obligations prescribed by Paragraphs 15 (Confidentiality), 20 (Taxes) and 21 (Access to Records/Retention). The term of this Agreement shall be automatically renewed for an additional year at the end of each fiscal year, under the same terms and conditions, unless either party gives the other party written notice of intention not to renew no less than thirty (30) days prior to the expiration of the then current term. Such notice of nonrenewal may be given on behalf of COUNTY by the Napa County Executive Officer or designee thereof. For purposes of this Agreement, "fiscal year" shall mean the period commencing on July 1 and ending on June 30..

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

3. **Compensation.**

(a) **Rates.** In consideration of CONTRACTOR's fulfillment of the promised work, COUNTY shall pay CONTRACTOR the rates set forth in Exhibit "B", attached hereto and incorporated by reference herein.

(b) No travel or other expenses will be reimbursed by COUNTY.

(c) **Maximum Amount.** Notwithstanding subparagraphs (a), the maximum payments under this Agreement shall be a total of _____ (**\$00**) for professional services provided however, that such amounts shall not be construed as guaranteed sums, and compensation shall be based upon services actually rendered

4. **Method of Payment.**

(a) **Invoices.** All payments for compensation and reimbursement for expenses shall be

made only upon presentation by CONTRACTOR to COUNTY of an itemized billing invoice in a form acceptable to the Napa County Auditor which indicates, at a minimum, CONTRACTOR's name, address, Social Security or Taxpayer Identification Number, itemization of the hours worked or, where compensation is on a per-task basis, a description of the tasks completed during the billing period, the person(s) actually performing the services and the position(s) held by such person(s), and the approved hourly or task rate. CONTRACTOR shall submit invoices not more often than monthly to COUNTY's Director of Housing and Intergovernmental Affairs who, after review and approval as to form and content, shall submit the invoice to the Napa County Auditor no later than fifteen (15) calendar days following receipt.

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

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

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

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

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

Manager.

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

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

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

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

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

(d) Deductibles/Retentions. Any deductibles or self-insured retentions shall be declared to, and be subject to approval by, COUNTY's Risk Manager, which approval shall not be denied unless the COUNTY's Risk Manager determines that the deductibles or self-insured retentions are unreasonably large in relation to compensation payable under this Agreement and the risks of liability associated with the activities required of CONTRACTOR by this Agreement. At the option of and upon request by COUNTY's Risk Manager if the Risk Manager determines that such deductibles or retentions are unreasonably high, either the insurer shall reduce or eliminate such deductibles or self-insurance retentions as respects COUNTY, its officers, employees, agents and volunteers or CONTRACTOR shall procure a bond guaranteeing payment of losses and related investigations, claims administration and defense expenses.

8. Hold Harmless/Defense/Indemnification.

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

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

(c) Obligations Relating to Criminal Background Checks.

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

(2) Notwithstanding anything to the contrary in (a) or (b), CONTRACTOR shall defend and indemnify COUNTY and its officers, agents and employees from any and all claims, actions, settlements or judgments of whatever kind which may arise from the failure of

CONTRACTOR to conduct the criminal background investigation described in this subparagraph (c) or from the failure of CONTRACTOR after the investigation to reasonably disallow an employee from having such personal contact or providing such direct personal service.

9. **Termination for Cause.** If either party shall fail to fulfill in a timely and proper manner that party's obligations under this Agreement or otherwise breach this Agreement and fail to cure such failure or breach within ten (10) days of receipt of written notice from the other party describing the nature of the breach, the non-defaulting party may, in addition to any other remedies it may have, terminate this Agreement by giving five (5) days prior written notice to the defaulting party in the manner set forth in Paragraph 13 (Notices). COUNTY hereby authorizes the Napa County Executive Officer to make all decisions and take all actions required under this Paragraph to terminate this Agreement on behalf of COUNTY for cause.

10. **Other Termination.** This Agreement may be terminated by either party for any reason and at any time by giving prior written notice of such termination to the other party and specifying the effective date thereof at least thirty (30) days prior to the effective date, as long as the date the notice is given and the effective date of the termination are in the same fiscal year; provided, however, that no such termination may be effected by COUNTY unless an opportunity for consultation is provided prior to the effective date of the termination. COUNTY hereby authorizes the Napa County Executive Officer to make all decisions and take all actions required under this Paragraph to terminate this Agreement on behalf of COUNTY for the convenience of COUNTY.

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

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

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

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

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

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

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

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

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

15. **Confidentiality.**

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

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

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

or policy and awareness programs for the protection of COUNTY Protected Information provided to, or accessed or created by, CONTRACTOR.

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

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

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

16. No Assignments or Subcontracts.

(a) In general. A consideration of this Agreement is the personal reputation of CONTRACTOR; therefore, CONTRACTOR shall not assign any interest in this Agreement or subcontract any of the services CONTRACTOR is to perform hereunder without the prior written consent of COUNTY, which shall not be unreasonably withheld. The inability of the assignee to provide personnel equivalent in experience, expertise, and numbers to those provided by CONTRACTOR, or to perform any of the remaining services required under this Agreement within the same time frame required of CONTRACTOR shall be deemed to be reasonable grounds for COUNTY to withhold its consent to assignment. For purposes of this subparagraph, the consent of COUNTY may be given by the Director.

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

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

18. Interpretation; Venue.

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

(b) Venue. This Agreement is made in Napa County, California. The venue for any

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

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

(a) Non-Discrimination. During the performance of this Agreement, CONTRACTOR and its subcontractors shall not deny the benefits thereof to any person on the basis of race, color, ancestry, national origin or ethnic group identification, religion or religious creed, gender or self-identified gender, sexual orientation, marital status, age, mental disability, physical disability, genetic information, or medical condition (including cancer, HIV and AIDS), or political affiliation or belief, nor shall they discriminate unlawfully against any employee or applicant for employment because of race, color, ancestry, national origin or ethnic group identification, religion or religious creed, gender or self-identified gender, sexual orientation, marital status, age, mental disability, physical disability, genetic information, or medical condition (including cancer, HIV and AIDS), use of family care leave or political affiliation or belief. CONTRACTOR shall ensure that the evaluation and treatment of employees and applicants for employment are free of such discrimination or harassment. In addition to the foregoing general obligations, CONTRACTOR shall comply with the provisions of the Fair Employment and Housing Act (Government Code section 12900, et seq.), the regulations promulgated thereunder (Title 2, California Code of Regulations, section 7285.0, et seq.), the provisions of Article 9.5, Chapter 1, Part 1, Division 3, Title 2 of the Government Code (sections 11135-11139.5) and any state or local regulations adopted to implement any of the foregoing, as such statutes and regulations may be amended from time to time. To the extent this Agreement subcontracts to CONTRACTOR services or works required of COUNTY by the State of California pursuant to agreement between COUNTY and the State, the applicable regulations of the Fair Employment and Housing Commission implementing Government Code section 12990 (a) through (f), set forth in Chapter 5 of Division 4 of Title 2 of the California Code of Regulations are expressly incorporated into this Agreement by reference and made a part hereof as if set forth in full, and CONTRACTOR and any of its subcontractors shall give written notice of their obligations thereunder to labor organizations with which they have collective bargaining or other agreements.

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

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

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

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

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

23. **Conflict of Interest.**

(a) **Covenant of No Undisclosed Conflict.** The parties to the Agreement acknowledge that they are aware of the provisions of Government Code section 1090, et seq., and section 87100, et seq., relating to conflict of interest of public officers and employees. CONTRACTOR hereby covenants that it presently has no interest not disclosed to COUNTY and shall not acquire any interest, direct or indirect, which would conflict in any material manner or degree with the performance of its services or confidentiality obligation hereunder, except as such as COUNTY may consent to in writing prior to the acquisition by CONTRACTOR of such conflict. CONTRACTOR further warrants that it is unaware of any financial or economic interest of any public officer or employee of County relating to this Agreement. CONTRACTOR agrees that if such financial interest does exist at the inception of this Agreement, COUNTY may terminate this Agreement immediately upon giving written notice without further obligation by COUNTY to CONTRACTOR under this Agreement.

(b) **Statements of Economic Interest.** CONTRACTOR acknowledges and understands that COUNTY has developed and approved a Conflict of Interest Code as required by state law which requires CONTRACTOR to file with the Elections Division of the Napa County Assessor-Clerk Recorder "assuming office", "annual", and "leaving office" Statements of Economic Interest as a "consultant", as defined in section 18701(a)(2) of Title 2 of the California Code of Regulations, unless the Director of Public Works has determined in writing that CONTRACTOR, although holding a "designated" position as a consultant, has been hired to perform a range of duties so limited in scope as to not be required to fully comply with such disclosure obligation. By authorizing its Chair to execute this Agreement on its behalf, COUNTY's Board of Supervisors hereby determines in writing on behalf of COUNTY that CONTRACTOR has been hired to perform a range of duties so limited in scope as to not be required to comply with such disclosure

obligations.

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

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

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

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

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

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

<p>COUNTY OF NAPA, a political subdivision of the State of California</p> <p>By: _____ Brad Wagenknecht, Chairman Napa County Board of Supervisors</p> <p style="text-align: center;">“COUNTY”</p>	<p>By: _____ Signature and Title</p> <p>By: _____ Signature and Title</p> <p style="text-align: center;">“CONTRACTOR”</p>
<p>ATTEST: GLADYS I. COIL, Clerk of the Board of Supervisors</p> <p>By: _____</p>	
<p>APPROVED BY THE NAPA COUNTY BOARD OF SUPERVISORS:</p> <p>Date: _____ Processed by Deputy Clerk of the Board</p> <p>_____</p>	
<p>APPROVED AS TO FORM: MINH C. TRAN, Napa County Counsel</p> <p>By: _____</p> <p>Date: _____</p>	