



A Tradition of Stewardship  
A Commitment to Service

## **Request for Proposal**

### **Federal & State Health Care Program Auditing Services**

**Release Date: October 23, 2013**

**Due Date: October 30, 2013**

For additional information contact:

Lisa Storment

Assistant Manager, Quality Management

Phone: 707-253-4076

Email: [Lisa.storment@countyofnapa.org](mailto:Lisa.storment@countyofnapa.org)

## **A. Background**

Napa County (County) is soliciting Proposals from contractors to provide the Health and Human Services Quality Management (QM) Division with internal record auditing services. This contract will support audits of health care programs supported by County, State & Federal funding sources, specifically two audits of Alcohol & Drug Services Division programs.

The Quality Management Division is committed to ensuring that its audits are accurate, methodical and consistent. The QM Division helps to ensure this by adopting and adhering to internal audit protocols that are based on applicable laws, regulations & rules, as well as the most current guidance from State and Federal regulatory oversight agencies.

Proposals will be reviewed by a committee. Qualifications including specific experiences and successes, references, fees and familiarity with requested services will be evaluated. The committee will determine which proposal 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 RFP.

## **B. SCOPE OF WORK**

PROJECT DESCRIPTION/OBJECTIVES – This project will develop and implement a plan designed to meet the following objectives:

- The Contractor will complete two Audits for the Alcohol and Drug Services Division reviewing a total of 74 sampled services. Audit activities take place onsite on the HHSA Campus and at the site of the Napa ADS Contractor, both of which are located in the city of Napa.
  1. ADS Outpatient Audit– 50 sampled services
  2. ADS Contractor –24 sampled services.
  3. Contractor will execute a random sampling of services to be audited.
  4. The following strategies will be employed:
    - a. Audit Electronic Health Records (Anasazi/Cerna Millennium), with review of hard copy records as necessary. Contractor will consult with QM Division Manager, and/or ADS Division Manager for clarification needed and/or to provide consultative expertise when indicated.

5. Contractor will apply the established Napa County HHSa audit tool, worksheet, and standards for Alcohol and Drug services. (Note: Materials are not available for review beforehand)
  6. Review of sampled services to include:
    - a. Review of each sampled service note (which represents a client contact) to determine whether or not it meets regulatory standards for service documentation.
    - b. Review each client chart to determine if supporting core documentation, for each sampled service, meets California Drug Medi-Cal standards and regulations, (Title 22)
    - c. Create a record of the findings for each audited service.
    - d. Create electronic and hard copy back up files for each sampled service.
    - e. Review findings with Division staff prior to finalization of the audit.
- Complete a draft audit report for review, followed by a final audit report.

Proposals must be submitted as detailed below, no later than the date and time stated in the RFP. No late proposals will be accepted.

**C. Schedule for the RFP Process**

<b>October 23, 2013</b>	<b>Request for Proposal Released</b>
<b>October 30, 2013</b>	<b>Responses due by 5:00p.m.</b>
<b>October 30-31, 2013</b>	<b>County review period; interviews with respondents if needed</b>
<b>November 1, 2013</b>	<b>Successful respondent selected and Award Recommendation notification sent out</b>
<b>November 7, 2013</b>	<b>Contract start date</b>
<b>January 31, 2014</b>	<b>Completion of Scope of Work</b>

**C. Submission Process and General Conditions**

1. Respondents should submit one (1) original proposal and (2) copies to:

**Lisa Storment**  
**Assistant Manager, Quality Management**  
**Quality Management Division, Building Q**  
**2261 Elm Street, Napa, CA 94559**

2. Deadline for submitting proposals: **5:00pm Wednesday, October 30, 2013**
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 proposal, or any other respondent to refrain from presenting information and that the prospective provider has not in any manner sought by collusion to secure an advantage.
  - (b) The respondent has not paid or agreed to pay any fee or commission, or any other thing of value contingent upon the award of an exclusive operating area, to any employee, official, or existing contracting consultant of the County of Napa.
4. All costs of preparation of responses including travel for any interviews scheduled shall be borne by the respondents.
5. All proposals become the property of the County of Napa. 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 bidder unless they are not submitted in a timely manner.
6. Proposals will become a public record and available for release to the public upon selection of a successful respondent and a notice of award recommendation is published .
7. The County reserves the right to request additional information not included in this RFP from any or all respondents after **October 30, 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 Request for Proposal. The County's standard agreement language is attached as information only.
10. It is recommended that responses be submitted on paper that contains at least 30% recycled content and printed on both sides of the paper (duplex).

#### **D. Modification or Withdrawal of Qualifications**

At any time prior to the specified time and date set for the RFP 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:

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

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

#### Resolution Process

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

**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. RFP Addenda**

Any changes to the RFP requirements. 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 Proposal can be referred to:

Teresa Zimny  
PROGRAM MANAGER II  
Health & Human Services Administration  
HHS Bldg P – HR (2344 Old Sonoma Rd)  
[TERESA.ZIMNY@countyofnapa.org](mailto:TERESA.ZIMNY@countyofnapa.org)

Questions will not be answered that would tend to constitute an evaluation of a response being prepared or that might give an unfair advantage to a potential respondent. 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 RFP. If such contact is made, the County reserves the right to reject the proposal.

#### **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 RFP or any agreement resulting from this process.

#### **I. Organization of Proposal**

This is an informal RFP, therefore the County is not requesting a standard response format to this RFP. The proposal will be evaluated by the review committee and shall include, at a minimum, the following information:

1. Necessary expertise – Establish that the applicant has necessary and advanced expertise in auditing State and Federal Health Care programs, including Alcohol & Drug Services/Drug Medi-Cal.
2. Experience - Describe experience in working with other counties on similar auditing projects; describe experience with the use of Electronic Health Record auditing, specifically Anasazi (Cerner Millennium), and describe experience in the writing of audit reports, and describe experience in using Drug Medi-Cal Regulations.
3. Personnel. This section shall define the qualifications and the experience of the consultant firm, key personnel and staff or sub consultants assigned to the services. A designated primary contact for the duration of the contractual period should be identified.
4. Contractor will have read and sign an agreement to abide by the Napa County Code of Ethics.
5. References. Provide 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. A complete disclosure of any alleged significant prior or ongoing contract failures, any civil or criminal litigation or investigation pending which involves the Proposer or a verification of no responsive incidents. Failure to comply with the terms of this provision may disqualify any proposal.

The County of Napa reserves the right to reject any proposal based upon the Proposer's prior history with the County of Napa or with any other party, which documents, without limitation, unsatisfactory performance, significant failures to meet contract milestones or other contractual failures.

7. A current list of clients as well as clients over the past three years.
8. Approach to Scope of Work. This section shall briefly define the approach and scope consultants will undertake to complete these audits. Describe the methods to be used to complete the activities required (i.e. Random sample selection, review of services, records of audit findings, etc.)
9. Cost Summary. Contractor to outline the costs and proposed fee for the job as outlined in the Scope of Work in Section B. Summary should include a breakdown of fees associated with described deliverable work products. Budget not to exceed \$15,000.

#### **J. Review of Proposals**

Proposals will be reviewed by a committee. Qualifications including specific experiences and successes, references, fees and familiarity with requested services will be evaluated. The committee will determine which proposal best meets the needs and requirements of the County.

The review committee may select and recommend additional reviewers during this process. While proposed compensation will be a factor, qualifications, approach to Scope of Work, 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 proposal that is chosen may not be the lowest cost proposal. Additionally, the review committee will determine whether respondents existing client list present a conflict to the County's needs and Scope of Work.

The county retains the right to interview the finalist(s) in person or by phone, if found to be necessary, before determining a contract award.

#### **K. 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.

**Professional Services Agreement-- General Terms and Conditions --Version 9**

**2.1 Term of the Agreement.**

(a) Term. The term of this Agreement shall commence on the date first written on page 1 and shall expire on the expiration date set forth on page 1 unless terminated earlier in accordance with Paragraphs 2.9 (Termination for Cause), 2.10 (Other Termination) or 2.23(a) (Covenant of No Undisclosed Conflict).

(b) Automatic Renewal. 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. For purposes of this Agreement, "fiscal year" shall mean the period commencing on July 1 and ending on June 30. COUNTY authorizes the Department Director to determine whether this Agreement shall not be renewed and to provide the written notice of the intention to not renew on behalf of COUNTY.

(c) Obligations Extending Beyond Term. The obligations of the parties under Paragraphs 2.7 (Insurance) and 2.8 (Hold Harmless/Defense/Indemnification) shall continue in full force and effect after the 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 the expiration date or early termination in relation to the obligations prescribed by Paragraphs 2.15 (Confidentiality), 2.20 (Taxes) and 2.21 (Access to Records/Retention). To the extent the paragraphs referenced in this Paragraph 2.1 may be modified by Specific Terms and Conditions contained in SECTION 3 of this Agreement, the modifications shall also continue after the expiration date or early termination.

**2.2 Scope of Services.** CONTRACTOR shall provide COUNTY those services set forth in Exhibit "A."

**2.3 Compensation.**

(a) Compensation/Maximum. In consideration of CONTRACTOR's fulfillment of the promised work, COUNTY shall pay CONTRACTOR at the rates and/or in the amount(s) set forth in Exhibit "B". The maximum payment for the initial term of this Agreement, and the successive maximum payments for each subsequent automatically renewed term, shall each be that maximum amount set forth on page 1; provided, however, that such amounts shall not be construed as guaranteed sums, and compensation shall be based upon services actually rendered and reimbursable expenses actually incurred.

(b) Advance Funding.

1. Use of Funds. To the extent this Agreement may permit advance funding of services and expenses, use of funds delineated in this Agreement is limited to the term of performance unless otherwise modified in accordance with Paragraph 2.17 (Amendment/Modification). COUNTY may at its discretion recapture funds obligated under the authority of this Agreement if expenditure plans are not being met.

2. Reversion of Funds. If funds awarded to CONTRACTOR have not been expended in accordance with this Agreement and COUNTY has determined after consultation with CONTRACTOR that funds will not be spent in a timely manner, such funds will revert to COUNTY for that reason and to the extent permitted by and in a manner consistent with federal and state law, regulations, and policies.

(c) Availability of Funds. It is mutually understood that, for the benefit of both parties, this Agreement may have been written before ascertaining the availability of congressional and/or state legislative appropriation of funds in order to avoid program and fiscal delays that would occur if the Agreement were executed after that determination was made. If funding of this Agreement is dependent upon the availability of congressional and legislative appropriation of funds, then:

1. This Agreement shall be deemed automatically terminated if the Congress and and/or the State Legislature do not appropriate funds needed for this Agreement;

2. At COUNTY's discretion, this Agreement may be deemed automatically terminated or this Agreement may be modified or amended in accordance with Paragraph 2.17

(Amendment/Modifications), if the Congress and/or State Legislature do not appropriate sufficient funds needed for this Agreement; and

3. This Agreement is subject to any additional restrictions, limitations, or conditions enacted by the Congress or State Legislature, or any statute enacted by the Congress or State Legislature, that may in any manner affect the provisions, terms, or funding of this Agreement.

(d) COUNTY may withhold any compensation due CONTRACTOR as an offset for any revenues lost arising from an act or omission in billing or documentation practices by CONTRACTOR. CONTRACTOR shall make COUNTY whole for any such lost revenues.

#### 2.4 **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. Where expense reimbursement is sought, the invoice shall describe the nature and cost of the expense, the task(s) if any to which the expense was related, and the date incurred. CONTRACTOR shall submit invoices not more often than monthly to the Contract Administrator. After review and approval as to form and content, the invoice shall be submitted 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 provided to the Contract Administrator upon request 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.

2.5 **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.

2.6 **Specific Performance.** It is agreed that CONTRACTOR, including the agents, employees and authorized subcontractors 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.

2.7. **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. If and 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 with 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. If CONTRACTOR is a state-licensed professional, CONTRACTOR shall provide 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. If CONTRACTOR is another public agency, CONTRACTOR shall provide 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) combined single limit per occurrence.

3. Comprehensive Automobile Liability Insurance. If CONTRACTOR's obligations under this Agreement shall involve the operation of owned, hired, leased and/or non-owned vehicles, CONTRACTOR shall provide 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 2.7(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 Contract Administrator 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 2.7(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 2.7(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.

## 2.8 **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 to act 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 or 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) Obligations Relating to Criminal Background Checks.

1. If CONTRACTOR's obligations under this Agreement involve contact with vulnerable populations such as children, elderly, mentally ill or disabled persons (hereafter in this paragraph referred to as "third persons"), then 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 (c), 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 (b) 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.

(c) 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.

**2.9 Termination for Cause.**

(a) 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 written notice to the defaulting party in the manner set forth in Paragraph 2.13 (Notices).

(b) The Department Director is delegated the authority to terminate this Agreement in accordance with this Paragraph on behalf of COUNTY, but may exercise such authority only after consultation with, and concurrence of, the County Counsel and the County Executive Officer or their respective designees; however, nothing in this delegation prevents the Department Director from requesting the Board of Supervisors to terminate this Agreement under this Paragraph.

**2.10 Other Termination.**

(a) This Agreement may be terminated by either party for any reason and at any time by giving prior written notice of such termination to the other party specifying the effective date thereof at least thirty (30) days prior to the effective date; 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.

(b) The Department Director is delegated the authority to terminate this Agreement in accordance with this Paragraph on behalf of COUNTY, but may exercise such authority only after consultation with, and concurrence of, the County Counsel and the County Executive Officer or their respective designees; however, nothing in this delegation prevents the Department Director from requesting the Board of Supervisors to terminate this Agreement under this Paragraph.

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

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

(b) Upon expiration or termination of this Agreement, all finished or unfinished documents and other materials, if any, and all rights therein shall become, at the option of COUNTY, the property of and shall be promptly returned to COUNTY, although CONTRACTOR may retain a copy of such work for its personal records only. Unless otherwise expressly provided in this Agreement, any copyrightable or patentable work created by CONTRACTOR under this Agreement shall be deemed a "work made for hire" for purposes of copyright or patent law and only COUNTY shall be entitled to claim or apply for the copyright or patent thereof.

(c) Notwithstanding the provisions set forth in subparagraph (b) above, if the services involve development or improvement of previously patented inventions or previously copyrighted software, upon expiration or termination of this Agreement, title to, ownership of, and all applicable patents, copyrights and trade secrets in the products developed or improved under this Agreement, shall remain with CONTRACTOR or any other person or entity if such person previously owned or held such patents, copyrights, and trade secrets, and such persons shall retain complete rights to market such product; provided, however, that COUNTY shall receive, at no additional cost, a perpetual license to use such products for its own use or the use of any consortium or joint powers agency to which COUNTY is a party. If the product involves a source code, CONTRACTOR shall either provide a copy of the source code to COUNTY or shall place the source code in an escrow account, at CONTRACTOR's expense, from which the source code may be withdrawn and used by COUNTY for the sole purpose of maintaining and

updating the system dependent upon such code when such use is necessary to prevent loss of service to COUNTY.

(d) CONTRACTOR shall be entitled to receive compensation for any satisfactory work completed prior to expiration or receipt of the notice of termination or commenced prior to receipt of 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.

2.12 **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.

2.13 **Notices.**

(a) In General. Except as set forth in subparagraph (b) below with respect to notice of automatically adopted provisions, 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 notice sent by mail in the manner prescribed by this subparagraph 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. Any mailed notice, demand, request, consent, approval or communication that COUNTY desires to give to CONTRACTOR shall be addressed to CONTRACTOR's Contract Contact Person at the mailing address set forth in SECTION 1 of this Agreement. Any mailed notice, demand, request, consent, approval or communication that CONTRACTOR desires to give to COUNTY shall be addressed to COUNTY's Contract Administrator at the mailing address set forth in SECTION 1 of this Agreement. Either party may change its address by notifying the other party of the change of address.

(b) Provisions Adopted Automatically. COUNTY reserves the right to provide notice to CONTRACTOR via facsimile of terms, which automatically become part of this Agreement upon approval by the Napa County Board of Supervisors. Notice delivered by facsimile shall be deemed to have been received on the date a successful delivery confirmation report is generated.

(c) Waiver of Notice by CONTRACTOR. If receipt of notice is refused by CONTRACTOR or if notice is undeliverable due to CONTRACTOR's failure to provide a change of address, notice shall be deemed waived and COUNTY may proceed as though notice were accomplished.

2.14 **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. Future versions of the following policies shall automatically become part of this Agreement upon approval by the Napa County Board of Supervisors and notice to CONTRACTOR pursuant to Paragraph 2.13. 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.

(b) County of Napa "Policy for Maintaining a Harassment and Discrimination Free Work Environment."

(c) Drug and Alcohol Policy.

(d) Napa County Information Technology Use and Security Policy. 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.

**2.15 Confidentiality.**

(a) Maintenance of Confidential Information. Confidential information is defined as all information disclosed to or created by 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 or create, if any, in trust and confidence, except with the prior written approval of COUNTY, as expressed through the Department Director. Upon cancellation or expiration of this Agreement, to the extent permitted by law, 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 2.15.

(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.

**2.16 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 Department 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.

**2.17 Amendment/Modification.**

(a) 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, by the Department Director (as long as the aggregate compensation payable to CONTRACTOR by COUNTY under this and all prior agreements with CONTRACTOR will not exceed \$10,000), or by COUNTY's Purchasing Agent (as long as the aggregate compensation payable to CONTRACTOR by COUNTY under this and all prior agreements with CONTRACTOR will not exceed the maximum aggregate amount for Purchasing Agent contracts as specified by Napa County Code section 2.36.040 (G)) or by COUNTY's Board of Supervisors (in all other instances), 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.

(b) Notwithstanding anything to the contrary in (a), this Agreement may be unilaterally modified by COUNTY upon written notice to CONTRACTOR under the following circumstances:

1. There is a decrease in state or federal funding needed for this Agreement;
2. There is a no-cost extension of the end date of the Agreement as authorized by a state or federal funding source; or
3. There is a change in state/federal law or regulation requiring a change in a provision of this Agreement.

(c) The Department Director is delegated the authority to modify this Agreement in accordance with subparagraph (b), but may exercise such authority only after consultation with, and concurrence of, the County Counsel and the County Executive Officer or their respective designees; provided, however, that nothing in this delegation prevents the Department Director from requesting the Board of Supervisors to modify this Agreement under subparagraph (b).

#### 2.18 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.

2.19 **Compliance with Laws.** CONTRACTOR shall observe and comply with all applicable Federal, State and local laws, ordinances, and codes. **CONTRACTOR acknowledges its independent duty to be and to remain informed of all changes in such laws without reliance on COUNTY to provide notice of such changes.** 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 (over 40), mental disability, physical disability, genetic information, or medical condition (including cancer, HIV and AIDS), or political affiliation or belief nor shall they discriminate unlawfully against any employee or applicant for employment because of race, color, ancestry, national origin or ethnic group identification, religion or religious creed, gender or self-identified gender, sexual orientation, marital status, age (over 40), mental disability, physical disability, genetic information, or medical condition (including cancer, HIV and AIDS, use of family care leave, or political

affiliation or belief. CONTRACTOR shall ensure that the evaluation and treatment of employees and applicants for employment are free of such discrimination or harassment. In addition to the foregoing general obligations, CONTRACTOR shall comply with the provisions of the Fair Employment and Housing Act (Government Code section 12900, et seq.), the regulations promulgated thereunder (Title 2, California Code of Regulations, section 7285.0, et seq.), the provisions of Article 9.5, Chapter 1, Part 1, Division 3, Title 2 of the Government Code (sections 11135-11139.5) and any state or local regulations adopted to implement any of the foregoing, as such statutes and regulations may be amended from time to time. To the extent this Agreement subcontracts to CONTRACTOR services or works required of COUNTY by the State of California pursuant to agreement between COUNTY and the State, the applicable regulations of the Fair Employment and Housing 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) Federal Grant Source. Notwithstanding anything to the contrary in this Agreement, if the funds for this Agreement are derived from a grant from a federal agency, pursuant to 29 CFR 97.36(i)(8) and (9), CONTRACTOR is hereby notified of, and shall comply with the requirements and regulations imposed by the federal granting agency with respect to any discovery or invention which arises or is developed pursuant to this Agreement, and pertaining to any copyrights or rights in data created or otherwise developed when engaging in activities of CONTRACTOR under this Agreement. The requirements and regulations imposed by the federal granting agency are set forth in the original grant agreement specified in Section 1 of the Agreement and are incorporated by reference herein. The original grant agreement is on file with the Clerk of the Board of Supervisors.

(d) Prevailing Wages. If the services to be provided relate to construction or pre-construction-related services, including but not limited to testing, surveying, and inspection, then this Agreement includes the following provisions:

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

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

(3) Payroll records. In accordance with Labor Code section 1776, a copy of all payrolls for work subject to this subparagraph shall be submitted weekly to COUNTY's Director of Public Works. Payrolls shall contain the full name, address and social security number of each employee, his correct classification, rate of pay, daily and weekly number of hours worked, itemized deductions made and actual wages paid. They shall also indicate apprentices and ratio of apprentices to journeymen. The employee's address and social security number need only appear on the first payroll on which his name appears. The payroll shall be accompanied by a "Statement of Compliance" signed by the employer or his agent indicating that the payrolls are correct and complete and that the wage rates contained therein are not less than those required by the contract. The "Statement of Compliance" shall be on forms furnished by the Director of Public

Works or his designee or on any form with identical wording. CONTRACTOR shall be responsible for the submission of copies of payrolls of all subcontractors.

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

(e) 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 2.19 in all such subcontracts as obligations of the subcontractor.

**2.20 Taxes.** CONTRACTOR agrees to file all applicable federal and state tax returns or applicable withholding documents and to pay all applicable taxes or to 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.

**2.21 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 other work authorized hereunder and all pending matters are closed, whichever is later.

**2.22 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. The parties further warrant that the signatories to this Agreement are authorized to execute this Agreement on behalf of their respective parties and that any action necessary to bind each such party has been taken by that party prior to entering into this Agreement.

**2.23 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. The Department Director is delegated the authority to terminate this Agreement in accordance with this Paragraph on behalf of COUNTY, but may exercise such authority only after consultation with, and concurrence of, the County Counsel and the County Executive Officer or their respective designees; however, nothing in this delegation prevents the Department Director from requesting the Board of Supervisors terminate 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 COUNTY, through a person authorized to execute this Agreement on behalf of COUNTY, or the Department Director, 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. CONTRACTOR agrees to timely comply with all filing obligations for a consultant under COUNTY’s Conflict of Interest Code unless such a determination is on file on the filing dates for each of the required Statements of Economic Interest.

2.24 **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 general public.

2.25 **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.

2.26 **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.

2.27 **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.

2.28 **Entirety of Contract.** This Agreement, including documents incorporated by reference and 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.

2.29. **Other Terms and Conditions [Reserved.]**

2.30 **Acknowledgment of Funds; Compliance with Government Code Section 7550.**

(a) **In General.** Because the monies provided by COUNTY are funded by taxpayer dollars, it is important that the public know the individuals and organizations that are receiving funds from COUNTY under this Agreement. Therefore, CONTRACTOR shall acknowledge funding received under this Agreement in statements or printed materials relating thereto. All printed materials shall contain the following information in a type size and style appropriate to the materials: “Made possible by funding provided by the County of Napa.”

(b) **Compliance With Government Code Section 7550.** In addition, if the Scope of Work includes preparation of a document or written report and the total cost of the work is more than \$5,000, each document or report prepared by CONTRACTOR for or under the direction of COUNTY pursuant to this Agreement shall contain the numbers and dollar amounts of the Agreement and all subcontracts under the Agreement relating to the preparation of the document or written report as required by Government Code section 7550. The Agreement and subcontract dollar amounts shall be contained in a separate section of the document or written report. If multiple documents or written reports are the subject of the Agreement or subcontracts, the disclosure section may also contain a statement indicating that the total contract amount represents compensation for multiple documents or written reports.

**2.31 Compliance with Federal Health Care Program Requirements.** If CONTRACTOR will be performing services under this Agreement that are covered by a Federal Health Care Program, then:

(a) CONTRACTOR shall observe and comply with all applicable Federal Health Care Program Requirements, including but not limited to those requirements set forth in "Addendum For Contracts Involving Federal Health Care Programs" for services performed before July 1, 2005 or "Addendum For Contracts Involving Federal Health Care Programs--Revision No. 1" for services performed on or after July 1, 2005, whichever is applicable. Both Addenda are incorporated by reference as if set forth herein. Copies of the Addenda are on file with and available for inspection in the offices of the Clerk of the Napa County Board of Supervisors and the Department and are also online at: [www.countyofnapa.org](http://www.countyofnapa.org).

(b) CONTRACTOR shall attend and/or provide Compliance Trainings as required by the Department Director unless otherwise deemed exempt by the Department Director or designee thereof.

(c) CONTRACTOR shall make COUNTY whole for any revenues lost arising from an act or omission in billing practices by CONTRACTOR.

(d) CONTRACTOR warrants that no one providing services is an Excluded Individual as such term is defined for Federal Health Care Programs.

(e) CONTRACTOR shall pay any penalty or fine assessed against COUNTY arising from CONTRACTOR's failure to comply with the obligations imposed by the "Addendum for Contractors Involving Federal Health Care Programs". Said penalties and fines that may be assessed are as follows: civil monetary penalties of \$11,000 per item or service; treble damages for the submission of claims for reimbursement from an excluded health care provider.

(f) CONTRACTOR shall pay any penalty or fine assessed against COUNTY arising from CONTRACTOR's failure to comply with all applicable Federal or State Health Care Program Requirements, including, but not limited to any penalties or fines which may be assessed under a Federal or State False Claims Act provision.

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

(h) CONTRACTOR agrees to abide by COUNTY'S policies entitled "Whistleblower Protections" and "The False Claims Act (Federal & State Statutes) & Other Administrative Remedies & Statutes". The policies are on file with the Clerk of the Napa County Board of Supervisors and the Department and are also online at: [www.countyofnapa.org](http://www.countyofnapa.org).

**2.32 Compliance with State Medi-Cal Specialty Mental Health Services Requirements.** If CONTRACTOR, under this Agreement, is required to and performs services that are covered by a State Medi-Cal Specialty Mental Health Services Program, then:

(a) CONTRACTOR shall observe and comply with all applicable State Medi-Cal Specialty Mental Health Services Requirements, including but not limited to those requirements set forth in "Addendum For Contracts Involving Medi-Cal Specialty Mental Health Services", incorporated by reference herein. The Addendum is on file with the Clerk of the Napa County Board of Supervisors and the Department and is also online at: [www.countyofnapa.org](http://www.countyofnapa.org).

(b) CONTRACTOR shall provide such documentation as required by the Department Director, Contract Administrator, or designees thereof at any time for purposes of quality assurance, audit, or to substantiate claims for payment. COUNTY may elect to withhold payment, or request reimbursement of payments made, for failure by CONTRACTOR to provide such documentation as required by COUNTY.

(c) CONTRACTOR is subject to any audits of its services or claims conducted by the Department, the California State Department of Mental Health or other auditors. Any resulting audit exemption shall be repaid to COUNTY.

(d) CONTRACTOR shall make COUNTY whole for any losses, including, but not limited to, disallowances for payment or lost revenues identified and discovered by COUNTY that are attributable to CONTRACTOR's actions when performing its obligations under this Agreement, such as insufficient documentation by CONTRACTOR of Medical Necessity or billing errors by CONTRACTOR that preclude COUNTY from claiming the Federal Financial Participation share of Medi-Cal or State General Funds.

(e) To the extent that CONTRACTOR must make COUNTY whole under this Paragraph, COUNTY may elect to withhold any payments for past services, offset against any payments for future services for which CONTRACTOR provides, or demand reimbursement without offset.

(f) CONTRACTOR shall pay any penalty or fine assessed against COUNTY arising from CONTRACTOR's failure to comply with all applicable Federal or State Health Care Program Requirements, including, but not limited to any penalties or fines which may be assessed under a Federal or State False Claims Act provision.

(g) To the extent any of the services required of CONTRACTOR under this Agreement are subcontracted to a third party, CONTRACTOR shall include the provisions of the applicable Addendum in all such subcontracts as obligations of the subcontractor.

**2.33 Compliance with Mental Health Activities Requirements.** If CONTRACTOR, under this Agreement, is required to perform mental health activities, then:

(a) CONTRACTOR shall provide such documentation as required by the Department Director, Contract Administrator or designees thereof at any time for purposes of quality assurance, audit, or to substantiate claims for payment. COUNTY may elect to withhold payment, or request reimbursement of payments made, for failure by CONTRACTOR to provide such documentation as required by COUNTY.

(b) CONTRACTOR shall be subject to any audits of its services or claims conducted by Department, California State Department of Mental Health or other auditors. Any resulting audit exemption shall be repaid to COUNTY.

(c) CONTRACTOR shall make COUNTY whole for any losses, including, but not limited to, lost revenues as identified and discovered by the COUNTY that are attributable to CONTRACTOR's performance under this Agreement such as CONTRACTOR's insufficient documentation of services as required by the Agreement.

(e) To the extent that CONTRACTOR must make COUNTY whole under this Paragraph, COUNTY may elect to withhold any payments for past services, offset against any payments for future services for which CONTRACTOR provides, or demand reimbursement without offset.

(f) CONTRACTOR shall pay any penalty or fine assessed against COUNTY arising from CONTRACTOR's failure to comply with all applicable requirements.

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

**2.34 Compliance with Federal Health Insurance Portability and Accountability Act of 1996.** If CONTRACTOR shall perform services under this Agreement involving the receipt, use, or disclosure of protected health information, then:

(a) Federal and other applicable law. CONTRACTOR shall observe and comply with all applicable requirements of the Federal Insurance Portability and Accountability Act of 1996 and regulations promulgated thereunder by the U.S. Department of Health and Human Services (collectively referred to as "HIPAA"), and other applicable laws.

(b) HIPAA Business Associate Agreement. If applicable, CONTRACTOR shall comply with the terms and conditions of the HIPAA Business Associate Agreement previously entered into with COUNTY, which is incorporated by reference herein and on file with the Clerk of the Board of Supervisors.

(c) Use or Disclosure of Protected Health Information. CONTRACTOR may use or disclose protected health information for the purpose of performing functions, activities for or on behalf of COUNTY, as specified in this Agreement, provided that such use or disclosure would not violate HIPAA, if done by COUNTY, or the provisions of any applicable HIPAA Business Associate Agreement.

(d) Subcontractors. To the extent any of the services required of CONTRACTOR under this Agreement are subcontracted to a third party, CONTRACTOR shall require compliance with all applicable HIPAA provisions, other applicable law, and any applicable HIPAA Business Associate Agreement(s) in such subcontracts as obligations of the subcontractor.

**2.35 Compliance With COUNTY's Obligations Under Contracts With Other Entities.** If CONTRACTOR under this Agreement shall perform services as a subcontractor under COUNTY's contract(s) with other entities, including, but not limited to State and Federal Agencies, and such services involve the use or disclosure of personally identifiable information, then:

(a) CONTRACTOR shall observe and comply with all applicable terms of COUNTY's contract(s) with other entities, including, but not limited to, those requirements set forth in "Addendum For Contracts Involving Personally Identifiable Information Subject to Confidentiality or Security Provisions of County's Agreements with Other Entities" which is incorporated by reference herein, is on file with the Clerk of the Board of Supervisors and the Department, and is also online at: [www.countyofnapa.org](http://www.countyofnapa.org).

(b) CONTRACTOR shall pay any penalty or fine assessed against COUNTY arising from CONTRACTOR's failure to comply with the obligations imposed by the "Addendum for Contracts Involving Personally Identifiable Information Subject to Confidentiality or Security Provisions of County's Agreements with Other Entities".

(c) To the extent any of the services required of CONTRACTOR under this Agreement are subcontracted to a third party, CONTRACTOR shall include the provisions of the "Addendum for Contracts Involving Personally Identifiable Information Subject to Confidentiality or Security Provisions of County's Agreements with Other Entities" in all such subcontracts as obligations of the subcontractor.

**2.36 Napa Health Matters Listing.** If CONTRACTOR is an organization providing health, human, or social services of a type recognized for listing on the "Napa Health Matters" website, CONTRACTOR agrees to maintain a current and accurate listing on [www.NapaHealthMatters.org](http://www.NapaHealthMatters.org) for such services.

**2.37 Licensure Status.**

(a) License in Good Standing. If CONTRACTOR is providing services under this Agreement as a state-licensed professional, CONTRACTOR shall ensure that CONTRACTOR's professional license is in good standing with all applicable licensing boards. CONTRACTOR understands COUNTY may terminate the Agreement if CONTRACTOR fails to maintain a current professional license in good standing. For purposes of this Agreement, "license in good standing" means there is no suspension, revocation or probation for any reason (including the failure to pay licensing fees), nor any restriction upon the provisions of the license: including, but not limited to, restrictions placed by a licensing agency upon CONTRACTOR's license pursuant to any consent or settlement agreement or to an administrative decision of the licensing agency.

(b) Expiration of License. In the event that CONTRACTOR's professional license is not renewed on or before its expiration, CONTRACTOR shall neither provide nor be reimbursed for services pursuant to this Agreement commencing the day after license expiration and until CONTRACTOR's professional license is renewed. For purposes of this Agreement, renewal date is the date the licensing board issues a renewed license, and it is irrelevant whether the licensing board subsequently recognizes any lapse in licensure.

**2.38 Code of Ethics.** CONTRACTOR understands that Napa County Health and Human Services (HHSA) has adopted a Code of Ethics. If the Department Director determines that the HHSA Code of Ethics applies to CONTRACTOR's activities under this Agreement, CONTRACTOR shall read, understand, and abide by the Code of Ethics, and CONTRACTOR shall on an annual basis provide written certification to HHSA that CONTRACTOR has received, read, understands, and will abide by HHSA's Code of Ethics. The Code of Ethics may be found online at [www.countyofnapa.org](http://www.countyofnapa.org) or may be obtained from HHSA upon written request.

**2.39 Electronic Billing System.** CONTRACTOR understands that Napa County Health and Human Services (HHSA) operates an electronic billing system program, which seeks reimbursement from the State of California for the delivery of alcohol, drug abuse and mental health services. If CONTRACTOR provides any services related to alcohol, drug abuse or mental health services under the terms of CONTRACTOR's Agreement, CONTRACTOR agrees, upon request of the Director of HHSA or the

Director's designee, to implement the COUNTY's sponsored electronic health record system as part of CONTRACTOR's requirement for the delivery of these services.

**2.40 Audit Report Requirements.** If CONTRACTOR receives an independent financial statement audit, the CONTRACTOR shall provide COUNTY with a copy of the Independent Auditor's Report, Audited Financial Statements, Management Letter (if issued) and the Single Audit Report (if issued) for the year CONTRACTOR is under contract with the COUNTY. In addition, the Federal Office of Management and Budget Circular A-133 "Audits of States, Local Governments, and Non-Profit Organizations" sets forth standards for obtaining consistency and uniformity among Federal agencies for the audit of States, local governments, and non-profit organizations expending Federal awards. The audit threshold requires all non-Federal entities (States, local governments, and non-profit organizations) that expend \$500,000 or more in a year in Federal awards to have an audit conducted in accordance with Circular A-133. If CONTRACTOR meets the audit threshold mentioned above for funds received through COUNTY, CONTRACTOR shall be required to conduct a Single Audit in accordance with OMB Circular A-133 and provide COUNTY with a copy for each year CONTRACTOR is under contract.