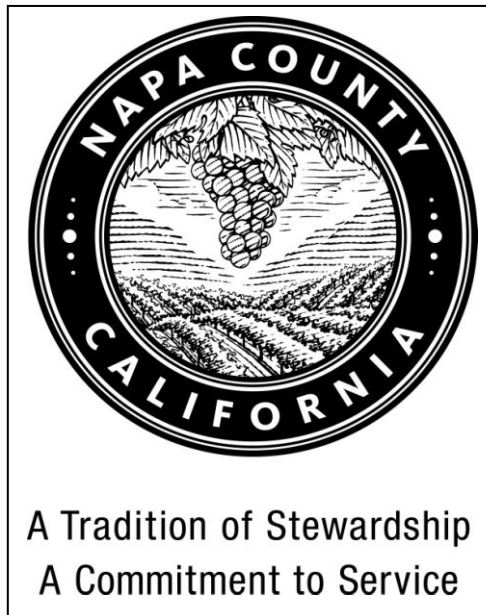




Informal Request for Proposal
Correctional Literacy Program Developer

Release Date: March 11, 2011

Due Date: April 19, 2011

For information: Lisa Powers

Literacy and Volunteer Services Supervisor
Napa City-County Library
(707) 253-4283 Lisa.Powers@countyofnapa.org

A. Background

The County of Napa ("County") is requesting proposals to establish a contract for a **Correctional Literacy Program Developer** with work to commence on May 16, 2011 and to be completed on March 16, 2012. The Napa County Jail houses approximately 264 inmates. The Correctional Literacy program would be designed to assist 1-12 inmates at one time. Any program would need to take into consideration inmate housing and other security measures.

B. Scope of Work

Create the necessary materials for the development of a new literacy program serving the Department of Corrections. This would require the development of policies and procedures, learner assessment tools, curriculum and instruction appropriate to the target population, staff and volunteer training materials and roles and responsibilities for staff and volunteers. Specifically the chosen responder would:

- Work closely with Napa County Department of Corrections and Napa City-County Library's Literacy Center to establish procedures, policies, and guidelines for the new corrections literacy program
- Develop an intake procedure, including an assessment measure, that appropriately evaluates the goals, interests, learning style and skill level of learners
- Develop small group and individual curriculum in reading and writing that employs instructional methods and strategies targeted specifically for at-risk adults
- Create training materials that effectively prepare staff and volunteers to provide literacy instruction to at-risk adults
- Develop clear program objectives and evaluation method to measure their success
- Work independently and cooperatively with departmental staff from the Literacy Center, Department of Corrections, and outside agency personnel
- Beta test materials to ensure viability

C. Schedule for the Informal RFP Process

March 11, 2011	Request for Proposal released
March 23, 2011	Interest and questions due by 5:00 p.m.
April 8, 2011	County will release answers to questions submitted.
April 19, 2011	Responses due by 5:00 p.m.
April 20, 2011- May 5, 2011	County review period; interviews with respondents
May 6, 2011	Respondent selected for recommendation for contract; notifications sent out
May 10, 2011	Contract presented to Board of Supervisors for approval
May 16, 2011	Contract start date

*Schedule of events may be subject to change upon issuance of an addendum by Director of the Napa City-County Library

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

D. Submission Requirements and General Conditions

1. All interested respondents shall express interest by March 23, 2011. Please email Lisa Powers at Lisa.Powers@countyofnapa.org to declare interest.

Deadline for submitting proposals: Friday, April 19, 2011 at 5:00pm.

2. Respondents should submit one (1) original proposal (preferably PDF) and Email it to:

Lisa Powers, Literacy and Volunteer Services Supervisor
Napa City-County Library LITERACY CENTER
580 Coombs Street
Napa, CA 94559
Lisa.Powers@countyofnapa.org

3. Responses should not exceed eight (8) pages

4. 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.
5. By submitting a proposal, the respondent represents and warrants that:
The information provided is genuine and that 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.
6. All costs of preparation of proposals including travel for any interviews schedule shall be borne by the respondents.

E. Substantive Proposal Requirements

The Response to the RFP should contain the following information:

1. Qualifications. This section should state the qualifications and the experience of the responder as well as current or past relevant clients.
2. Approach to Scope of Services. This section shall briefly define the approach the responder will undertake to best serve the County's correctional literacy needs. Specific experience developing programs, teaching adults and designing innovative curriculum, creating and performing learner assessments, creating training programs and policies and procedures element law, should be included in this section.
3. References. Provide two references and their contact information.
4. Cost Summary. This section shall define the fee schedule and pricing proposal.
5. A complete disclosure of any alleged significant prior or ongoing contract failures, any civil or criminal litigation or investigation pending which involves the Responder. 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.
6. The County retains the right to reject any proposals and to waive any irregularities or any requirements in any proposal after considering all proposals.

F. Evaluation Criteria

Proposals will be reviewed by a committee of staff members from the Napa City-County Library, Department of Corrections and County Alcohol and Drug Services. The committee

will review relevant qualifications, including specific experiences and successes, references, fees and familiarity with services requested. The Committee will evaluate which proposals best meet the needs and requirements of the County as well as the individual's knowledge, skills and ability. The Committee's evaluation will consider the individual's:

1. Experience assessing and/or developing assessments for at-risk adults .
2. Experience developing policies and procedures
3. Experience creating innovative curriculum that integrates the arts
4. Experience developing programs, particularly educational, with clear program objectives and methods for evaluating success
5. Training and experience in instructional methods for adult literacy learners, particularly those at risk
6. Experience researching and applying best practices in developing new programs
7. Demonstrated ability to communicate effectively orally and in writing
8. Experience in corrections and/or drug recovery settings
9. BA in liberal arts, linguistics, English, education, history or social science; MA preferable

G. Interviews

The Committee will determine who are top three responders and they will be contacted to participate in the interview process. Interviews will be conducted from April 20, 2011-May 5, 2011. The location and exact times will be coordinated with responders. The Interview panel will consist of up to five members, comprised of Corrections Staff, Library Staff and Napa County Executive Office Staff and County Alcohol and Drug Services. The interview panel determine which responder best meets the needs and requirements of the County.

H. Protests or Objections

Any protest or objection regarding the RFP procedures as defined in this document may be submitted in writing to Lisa Powers, Literacy & Volunteer Services Supervisor. All protests must be submitted within five (5) working days of the notification of a respondent selected for recommendation for contract. It will be reviewed by the purchasing agent to determine whether the protest is valid. Only respondents may submit protests. Protests on the qualifications review process will not be considered.

I. Professional Services Agreement

The successful responder will be required to enter into a Professional Services Agreement (PSA) with the County to provide the services. Attached as Exhibit "A" is a proposed PSA for review by prospective responders. Responders are not required to submit a signed copy of the County PSA, but are requested to review the PSA to ensure that the County's PSA requirements are understood. Responders should clearly note in their proposal any exception they take to any of the PSA requirements and include an explanation to the exception and alternate language for the County's review. The County reserves the right to reject any exceptions taken to the PSA language.

J. Pre Submittal Communications

Questions for clarification about this Request for Proposal are welcome. Questions shall be in writing (or by e-mail) and should be directed to:

Lisa Powers, Literacy and Volunteer Services Supervisor
Napa City-County Library LITERACY CENTER
580 Coombs Street
Napa, CA 94559
Lisa.Powers@countyofnapa.org
Phone: (707) 253-4283

Responses to communications will be shared with all responders by e-mail.
No prior, current, or post award verbal conversations or agreements with any Responder shall affect or modify any terms or obligations of this RFP or any agreement resulting from this process.

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.

Deadline for submitting proposals: Friday, April 19, 2011 at 5:00pm.
Respondents should submit one (1) original proposal (preferably PDF) and
Email it to:

Lisa Powers, Literacy and Volunteer Services Supervisor
Lisa.Powers@countyofnapa.org

Attachments

- Standard Agreement : Professional Services Agreement (Attachment A)

ATTACHMENT "A"

NAPA COUNTY AGREEMENT NO. _____

PROFESSIONAL SERVICES AGREEMENT

THIS AGREEMENT is made and entered into as of this _____ day of _____, _____, by and between the COUNTY OF NAPA, a political subdivision of the State of California, hereinafter referred to as "COUNTY", and _____ "doing business as a _____ corporation", whose mailing [or business] address is _____, hereinafter referred to as "CONTRACTOR";

RECITALS

WHEREAS, COUNTY wishes to obtain specialized services, as authorized by Government Code section 31000, in order to _____
_____; and

WHEREAS, CONTRACTOR is willing to provide such specialized services to COUNTY under the terms and conditions set forth herein;

TERMS

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

1. **Term of the Agreement.** The term of this Agreement shall commence on the date first above written and shall expire on _____, unless terminated earlier in accordance with Paragraphs 9 (Termination for Cause), 10 (Other Termination) or 23(a) (Covenant of No Undisclosed Conflict); except that the obligations of the parties under Paragraphs 7 (Insurance) and 8 (Indemnification) shall continue in full force and effect after said expiration date or early termination in relation to acts or omissions occurring prior to such dates during the term of the Agreement, and the obligations of CONTRACTOR to COUNTY shall also continue after said expiration date or early termination in relation to the obligations prescribed by Paragraphs 15 (Confidentiality), 20 (Taxes) and 21 (Access to Records/Retention).

The term of this Agreement shall be automatically renewed for an additional year at the end of each fiscal year, under the terms and conditions then in effect, 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 at the [rate of _____] [at the rates set forth in Exhibit "B", attached hereto and incorporated by reference herein].

(b) Expenses. No travel or other expenses will be reimbursed by COUNTY. Travel and other expenses will be reimbursed by COUNTY upon submission of an invoice in accordance with Paragraph 4 at the rates and/or in accordance with the policy(s) set forth in Exhibit "B".

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

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. Requests for reimbursement shall also describe the nature and cost of the expense and the date incurred. CONTRACTOR shall submit invoices not more often than _____ to the _____ who, after review and approval as to form and content, shall submit the invoice to the Napa County Auditor no later than fifteen (15) calendar days following receipt.

(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 upon request in a form satisfactory to the Napa County Auditor. Such proof shall include, but need not be limited to, a copy of any annual or other periodic filings or registrations required by the state of origin or California, the current address for service of process on the corporation or limited liability partnership, and the name of any agent designated for service of process by CONTRACTOR within the State of California.

5. **Independent Contractor.** CONTRACTOR shall perform this Agreement as an independent contractor. CONTRACTOR and the officers, agents and employees of CONTRACTOR are not, and shall not be deemed, COUNTY employees for any purpose, including workers' compensation and employee benefits. CONTRACTOR shall, at CONTRACTOR's own risk and expense, determine the method and manner by which duties imposed on CONTRACTOR by this Agreement shall be performed; provided, however, that COUNTY may monitor the work performed by CONTRACTOR. COUNTY shall not deduct or withhold any amounts whatsoever from the compensation paid to CONTRACTOR, including, but not limited to amounts required to be withheld for state and federal taxes. As 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 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 by COUNTY's Risk Manager, CONTRACTOR shall provide or arrange for the insurer to provide within thirty (30) days of the request, certified copies of the actual insurance policies or relevant portions thereof.

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

(b) Liability Insurance. Each party 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. Each party shall obtain and maintain in full force and effect during the term of this Agreement commercial or comprehensive general liability insurance coverage (personal injury and property damage) of not less than TWO MILLION DOLLARS (\$2,000,000) combined single limit per occurrence, either issued by a company admitted to do business in the State of California and having an A.M. Best Rating of no less than A:VII or by self-insurance satisfactory to the other party's risk manager or employee designated by that party to perform such function, or by a combination thereof, covering liability 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 that party under this Agreement except for

acts or omissions performed in strict compliance with express direction the other party's governing board, officers or personnel. If the coverage includes an aggregate limit, the aggregate limit shall be no less than twice the per occurrence limit.

(2) **Professional Liability.** Each party shall obtain and maintain in full force and effect during the term of this Agreement professional liability/errors and omissions insurance coverage in an amount of not less than ONE MILLION DOLLARS (\$1,000,000) combined single limit for each occurrence and, where provided through a policy of insurance, issued by a company admitted to do business in the State of California and having an A.M.Best Rating of A: VII or better, covering all professional acts or omissions of that party arising out of or in connection with this Agreement except for those acts or omissions performed in strict compliance with express direction from the other party's governing board, officers or personnel unless such direction was based upon professional advice from the first party or its personnel or other agents under this Agreement.

3) **Comprehensive Automobile Liability Insurance.** Each party shall obtain and maintain in full force and effect during the term of this Agreement a comprehensive automobile liability insurance policy (Bodily Injury and Property Damage) on owned, hired, leased and non-owned vehicles used in conjunction with that party's activities under this Agreement of not less than THREE HUNDRED THOUSAND DOLLARS (\$300,000) combined single limit per occurrence.

(c) **Certificates of Coverage.** Where the foregoing coverages are provided by insurance rather than by self-insurance (written proof of which shall be provided to the other party), the coverages shall be evidenced by one or more certificates of coverage which shall be filed with the other party's Secretary or Clerk prior to reimbursement for performance of any of the party's duties under this Agreement; shall reference this Agreement by its COUNTY number or title and department; 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 insurance coverages referenced in 7(b)(1) and (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 by the other party, the party shall provide

or arrange for the insurer to provide the other party with certified copies of the actual insurance policies or relevant portions thereof within thirty (30) days of the request.

(d) Deductibles/Retentions. Any deductibles or self-insured retentions shall be declared to COUNTY's Risk Manager.

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.

(a) In General. To the fullest extent allowed by law, CONTRACTOR shall defend, indemnify, and hold harmless the COUNTY and its officers, agents, employees and representatives from and against any and all liability, claims, actions, losses, injuries, damages or expenses of every name, kind, and description, including litigation costs and reasonable attorney's fees incurred in connection therewith, brought for or on account of, injury to or death of any person, including but not limited to COUNTY employees, and the public, or damage to the property of any person or entity, which arise out of, pertain to, or relate to the negligence, recklessness, or willful misconduct of CONTRACTOR, its officers, agents, employees, volunteers, representatives, contractors and subcontractors. This duty of CONTRACTOR includes the duty of defense, inclusive of that set forth in California Civil Code Section 2778. 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, provided

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.

(a) In General. To the full extent permitted by law, CONTRACTOR and COUNTY shall each defend, indemnify and hold harmless each other as well as their respective officers, agents and employees from any claims, suits, proceedings, loss or liability, including reasonable attorney's fees, for personal injury (including death) or damage to property, arising out of or connected with any acts or omissions of that party or its officers, agents, employees, volunteers, or other contractors or their subcontractors, when performing any activities or obligations required of that party under this Agreement. 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 _____ () days of receipt of written notice from the other party describing the nature of the breach, the non-defaulting party may, in addition to any other remedies it may have, terminate this Agreement by giving _____ () days prior written notice to the defaulting party in the manner set forth in Paragraph 13 (Notices). 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 specifying the effective date thereof at least _____ days prior to the effective date, as long as the date the notice is given and the effective date of the termination are in the same fiscal year; provided, however, that no such termination may be effected by COUNTY unless an opportunity for consultation is provided prior to the effective date of the termination. COUNTY hereby authorizes the Napa County Executive Officer to make all decisions and take all actions required under this Paragraph to terminate this Agreement on behalf of COUNTY for the convenience of COUNTY.

If, during the term of this Agreement or any extension thereof subsequent to the first fiscal year during the term, COUNTY is unable to appropriate sufficient funds to meet its obligations to CONTRACTOR under this Agreement, such funds are not otherwise available to COUNTY for this purposes, and there are no other legal procedures or available funds by or with which such obligations can be met, and such non-appropriation of funds has not resulted from any act or omission within the control of COUNTY; or, if the funds appropriated to meet such obligations were granted to COUNTY by any agency of the State of California, any federal government agency, or other source and such grant funds are discontinued or otherwise become unavailable to COUNTY during the term of the Agreement or any extension thereof, COUNTY shall have the right to terminate this Agreement by giving CONTRACTOR written notice of such termination at least thirty (30) days prior to the effective date of the termination. In the event of such

termination, COUNTY shall be obligated to CONTRACTOR only for payment of compensation and reimbursement of expenses for services satisfactorily completed or incurred and for which invoices are submitted as of the effective date of such termination. The notice of termination shall include a certification by the Napa County Executive Officer or designee thereof that sufficient funds have not been made available to COUNTY to meet COUNTY's future obligations under the Agreement. In the event of termination under this Agreement, COUNTY shall not enter into a functionally similar agreement with a third party during the remainder of the then-current term, except that if during said period, funds again become available to COUNTY for such services, COUNTY shall offer to execute a new agreement with CONTRACTOR for such services with CONTRACTOR to expire no earlier than the expiration date of this Agreement had it not been terminated under this Paragraph, and on the same terms and conditions as set forth in this Agreement.

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

(a) 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. Notwithstanding the foregoing, upon expiration or termination of this Agreement, title to, ownership of, and all applicable patents, copyrights and trade secrets in the products developed or improved under this Agreement, shall remain with CONTRACTOR or any other person or entity if such person previously owned or held such patents, copyrights, and trade secrets, and such persons shall retain complete rights to market such product; provided, however, that COUNTY shall receive, at no additional cost, a perpetual license to use such products for its own use or the use of any consortium or joint powers agency to which COUNTY is a party. If the product involves a source code, CONTRACTOR shall either provide a copy of the source code to COUNTY or shall place the source code in an escrow account, at CONTRACTOR's expense, from which the source code may be withdrawn and used by COUNTY for the sole purpose of maintaining and updating the system dependent upon such code when such use is necessary to prevent loss of service to COUNTY.

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

COUNTY

CONTRACTOR

[Name]

[Name]

[Address]

[Address]

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

16. **No Assignments or Subcontracts.**

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

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

17. **Amendment/Modification.** Except as specifically provided herein, this Agreement may be

modified or amended only in writing and with the prior written consent of both parties. 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 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 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 in all such subcontracts as obligations of the subcontractor.

(d) Notwithstanding anything to the contrary in this Agreement, pursuant to 29 CFR 97.36(i)(8) and (9), CONTRACTOR is hereby notified of, and shall comply with the following requirements and regulations imposed by the 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

(d) Prevailing Wages.

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

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

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

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

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

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

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

23. Conflict of Interest.

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

(b) Statements of Economic Interest. CONTRACTOR acknowledges and understands that COUNTY has developed and approved a Conflict of Interest Code as required by state law which requires CONTRACTOR to file with the Elections Division of the Napa County Assessor-Clerk Recorder "assuming office", "annual", and "leaving office" Statements of Economic Interest as a "consultant", as defined in section 18701(a)(2) of Title 2 of the California Code of Regulations, unless it has been determined in writing that CONTRACTOR, although holding a "designated" position as a consultant, has been hired to perform a range of duties so limited in scope as to not be required to fully comply with such disclosure obligation.

By 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 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.

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.

29. **Year 2000 Warranties and Assurances.**

(a) CONTRACTOR warrants and represents to COUNTY that any property (including any software, firmware, hardware, equipment and systems, hereinafter referred to collectively as Systems) which is developed, purchased and/or installed based upon CONTRACTOR's recommendation, or programmed by or under the direction and control of CONTRACTOR or its officers, agents, or employees as part of the provision of the services required of CONTRACTOR under this Agreement shall be Year 2000 compliant in that:

- the Systems shall be designed to be used prior to, during, and after the calendar year 2000 A.D.

- the Systems shall operate consistently, predictably and accurately, without interruption or manual intervention, and in accordance with all requirements of this Agreement, including without limitation all specification and/or functionality and performance requirements, during each such time period, and transitions between them, in relation to dates the Systems encounter or process
- all date recognition and processing by the Systems shall include the four-digit-year format and shall correctly recognize and process the date of February 29, and any related data, during any Leap Years;
- all date sorting by the Systems that includes a "year category" shall be done based on the four-digit-year format
- to the extent that the Systems will accept data from other systems and sources that are not Year 2000 compliant, the Systems shall properly recognize, calculate, sort, store, output and otherwise process such data in a manner that eliminates any century ambiguity so that the Systems remain Year 2000 compliant.

(b) CONTRACTOR hereby expressly agrees that upon notification in writing by COUNTY of the failure of the Systems or any portion thereof to comply with the requirements set forth in (a) of this Paragraph, CONTRACTOR shall, with 60 days and at no cost to COUNTY, replace or correct the non-complying Systems or portion thereof with software, firmware, hardware, equipment or systems that comply with such requirements as well as with all other requirements of this Agreement.

(c) The warranties set forth in this Paragraph shall not be subject to any disclaimer or exclusion of warranties or to any limitation of CONTRACTOR's liability under any other provision of this Agreement; provided, however, that these warranties shall not apply if the licensing rights of third parties in the Systems prohibit COUNTY or CONTRACTOR from reprogramming the Systems in such a manner as to correct any identified Year 2000 compliance problems and if CONTRACTOR, upon detection of a Year 2000 non-compliance problem notifies COUNTY of such prohibition immediately following detection.

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

"doing business as

By_____

By_____

"CONTRACTOR"

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

By _____

, Chair of the Board of Supervisors

“COUNTY”

ATTEST: GLADYS I. COIL,

Clerk of the Board of Supervisors

By: _____

APPROVED AS TO FORM
Office of County Counsel
By: _____
Date: _____

APPROVED BY THE NAPA COUNTY
BOARD OF SUPERVISORS
Date: _____
Processed by:

Deputy Clerk of the Board

Exhibit "A"

SCOPE OF WORK

CONTRACTOR shall provide COUNTY with the following services:

I. DESCRIPTION OF SERVICES

"See Attached. For purposes of this Exhibit "A", references in the Attachment to _____ shall mean _____",

II. COMPLIANCE WITH GOVERNMENT CODE SECTION 7550. As required by Government Code section 7550, each document or report prepared by CONTRACTOR for or under the direction of COUNTY pursuant to this Agreement shall contain the numbers and dollar amounts of the Agreement and all subcontracts under the Agreement relating to the preparation of the document or written report. The Agreement and subcontract dollar amounts shall be contained in a separate section of the document or written report. If multiple documents or written reports are the subject of the Agreement or subcontracts, the disclosure section may also contain a statement indicating that the total contract amount represents compensation for multiple documents or written reports.

Exhibit " B"

COMPENSATION AND EXPENSE REIMBURSEMENT