

AGREEMENT NO. __ - __
(Agreement for _____)

THIS AGREEMENT (“Agreement”) is made and entered into this ____ day of _____, 20____, by and between the County of Yolo, a political subdivision of the State of California (“County”) and _____, (describe legal status, e.g. a California corporation; a Delaware corporation authorized to do business in this State; Alma Doe, an individual doing business as AD Enterprises and authorized to do business in this State and County; a California limited liability company; a California partnership consisting of general partners Maria Doe and John Smith and various limited partners; etc) (“Contractor”).

[NOTES: 1. This form is illustrative only, as it is intended to give you a framework & starting point for identifying contractual provisions that may be appropriate in any given situation. 2. Any particular contract may present a unique set of circumstances requiring identification, evaluation & discussion of the relevant issues, potential performance problems & other problem areas, etc. This involves collaboration at the program level, the departmental level, & w/other available resources (e.g., CAO, Risk Manager, County Counsel, etc.). 3. Undertaking this collaborative process early in the process of evaluating the desirability of a particular contract will enable you to better understand the relevant issues as you move forward with the project, which in turn will better enable you to provide & discuss the necessary information with vendors early in the negotiation process.]

W I T N E S S E T H

WHEREAS, the County is authorized by Government Code Section 23004 to make contracts as necessary for the exercise of its powers; and

(If applicable: **WHEREAS**, the County is authorized by Government Code Section 31000 to contract with persons specially trained, experienced, expert and competent to perform special services such as (describe special technical or professional services, such as architectural, legal, engineering, etc; for further examples, see Gov’t Code Section 31000 and notes); and)

WHEREAS, the County desires to obtain (describe services, goods, and materials that the County is seeking); and

[Note: if the Agreement is (or may be) governed (or funded in whole or in part by) another contract, a grant document, etc. (e.g., a contract with the State or another entity, a State or Federal grant, a private grant or contract, etc.), then appropriate references should be included, e.g.: “WHEREAS, the County has entered into a contract with the State [brief description], a copy of which has previously been provided to Contractor (State Agreement No _____, County Agreement No. _____, ‘State contract’; and”; there should also be appropriate references added to the substantive parts of the contract, e.g., requiring the Contractor to comply with the provisions of the State contract]

[If applicable: “WHEREAS, the State contract requires that all subcontracts be governed by and construed in accordance with all applicable laws, regulations, and contractual obligations set forth in the State contract, and that all County subcontractors (including but not limited to Contractor) comply with all terms and conditions of the State contract; and”]

WHEREAS, the County circulated and distributed a (describe method of seeking proposals, e.g., a request for proposals, a request for qualifications, a solicitation or request for bids, etc.), an excerpt of which is attached as Exhibit A; and

WHEREAS, the Contractor submitted a proposal to (describe services, goods, and materials that are the subject of the contract), an excerpt of which is attached as Exhibit B; and

WHEREAS, Contractor has represented and warrants to the County that it has the necessary training, experience, expertise and competency to provide the services, goods and materials that are described in this Agreement, at a cost to the County as herein specified; that it will be able to perform the herein described services at minimum cost to the County by virtue of its current and specialized knowledge of relevant data, issues, and conditions; and that it will do so in a manner consistent with and furthering of the Values of Yolo County, a copy of which is hereto attached as Exhibit C; and

WHEREAS, Contractor represents and warrants that neither Contractor, nor any of its officers, agents, employees, contractors, subcontractors, volunteers, or five percent owners, is excluded or debarred from participating in or being paid for participation in any Federal or State program; and

WHEREAS, Contractor further represents and warrants that no conditions or events now exist which give rise to Contractor or any of its officers, agents, employees, contractors, subcontractors, volunteers or five percent owners being excluded or debarred from any Federal or State program; and

WHEREAS, Contractor understands that the County is relying upon these representations in entering into this Agreement.

NOW, THEREFORE, the County and the Contractor agree as follows:

I. BASIC SERVICES

A. Contractor shall furnish and perform the following services in accordance with Exhibits A-__, and in a manner satisfactory to the (specify lead County Department Head, e.g., County Administrative Officer, Director of General Services, Auditor-Controller, Director of Planning and Public Works, Director of Alcohol, Drug and Mental Health Services, etc. or his/her written designee (“Director”)[note: the term “Director” is a generic term used for illustration; if the lead County official is the CAO, a manager, etc; instead of using the term “Director” it will often be simpler to refer to that person as “CAO,” “Manager.” Or some other short, descriptive term]): (describe with adequate detail and specificity the products and services that will be provided under the

agreement, including the desired end products &/or results as applicable). These services include the following tasks and subtasks:

Task 1:(Describe)	
Subtask 1.1:	\$_____00
Subtask 1.2:	\$_____00
Subtask 1.3:	\$_____00
Subtask 1.4:	\$_____00
Subtask 1.5:	\$_____00
Subtask 1.6:	\$_____00
Subtask 1.7:	\$_____00
Subtask 1.8:	\$_____00
Task 2:(Describe)	
Subtask 2.1:	\$_____00
Subtask 2.2:	\$_____00
Subtask 2.3:	\$_____00
Subtask 2.4:	\$_____00
Subtask 2.5:	\$_____00
Subtask 2.6:	\$_____00

[NOTE: In many cases this level of detailed "subtasks" may not be necessary. The foregoing is simply intended to illustrate that particular tasks can be divided into subtasks tied to a portion of the total compensation. Having more detail can avoid or reduce surprises & disputes that might otherwise concern the meaning and interpretation of the contract at a later date.]

B. More specifically, the Contractor shall provide the full range of services with regard to the project described above, with the focus on: (a) _____; (b) _____; and (c) _____. Contractor will provide all facilities, equipment, personnel, labor and materials necessary to provide the foregoing services in accordance with this Agreement.

C. The complete contract shall include the following Exhibits attached hereto and incorporated herein:

[NOTE: examples:]

Exhibit A	RFP Excerpt
Exhibit B	Proposal Excerpt
Exhibit C	Workers' Comp. Certificate

[Etc.]

In the event of any conflict between any of the provisions of this Agreement (including Exhibits), the provision that requires the highest level of performance from Contractor for the County's benefit shall prevail.

D. [the following provision may be helpful in some cases, but it will not apply in all circumstances:] Contractor shall comply with all applicable provisions of the State contract(s), and those provisions are incorporated herein as if fully set forth in this place.

E. [NOTE: (1) if the contract is with a CBO, the following may be appropriate:] Contractor shall also comply with the terms and conditions set forth in the County's Accounting Handbook for CBOs and Contract Administration Manual for CBOs (copies of which have previously been provided to Contractor).

F. [Note: this would be subpara. "D" if the above provisions are not used]The Director may approve modifications of the term, scheduling, billing rates, and allocation of funds between the tasks and subtasks (if any) set forth above, provided that there is no increase in the total compensation as set forth in Paragraph III of this Agreement.

II. ADDITIONAL SERVICES

[NOTES: 1. A provision for additional services will often not be necessary (because you have identified all required services beforehand & specified them in Paragraph I), in which case this provision (and its counter-part in Paragraph III) should be omitted. However, where the parties anticipate a real likelihood of the need for additional services this provision may provide desirable flexibility after the contract is executed. 2. Where such a provision is desired, it should be limited to services that do not fall within the scope of the basic services already required under the contract. Also, the total costs of such additional services generally should not exceed 5-10% of the cost of the basic services.]

The following services, insofar as they do not fall within the scope of the basic services required of Contractor under Paragraph I hereinabove and cause the Contractor extra expenses, and if authorized in advance in writing by the Director, shall also be provided by Contractor:

A. (Describe services that are contemplated but not included in the basic contract price; anticipate questions regarding why the services are anticipated but not included in the basic price) at a rate of \$ ___ per hour.

B. Additional work that is directly related to the services set forth in Paragraph I above and requested in writing by the Director.

III. COMPENSATION AND REIMBURSEMENT OF EXPENSES

A. For the services described in Paragraph I above, and subject to the condition that the services have been completed in a manner satisfactory to the Director or his/her designee, Contractor shall be compensated as follows:

January 1 through September 30, 2009: Seventy-five dollars (\$75.00) per hour;
October 1, 2004 through June 30, 2009: Eighty-five dollars (\$85.00) per hour.

Provided, however, that the total amount of compensation to be paid to Contractor for the services required by this Agreement shall not exceed _____ dollars (\$____.____). In the determination of hourly fees, time allotments shall be calculated to one-tenth of an hour.

B. [note: this may be applicable if the contract is funded by Medi-Cal or a similar program that may change rates during a fiscal year & those rate changes would automatically apply to the contract:] The foregoing notwithstanding, should the Federal or State payment or reimbursement rates be increased or decreased by the Federal or State government(s) during the term of this Agreement, then, upon the Director's and Auditor-Controller's determination that such increases(s) and/or decrease(s) are applicable to this Agreement, such new rates shall apply to this Agreement. In such an instance, Contractor shall be compensated according to the new rates and the maximum amount payable under this Agreement shall be adjusted accordingly.

C. [Note this would only apply if additional services are anticipated as described in Para. II above; this would be subpara. "C" if the above provision is not used] For the services described in Paragraph II above, insofar as they do not fall within the scope of the basic services required of Contractor under Paragraph I hereinabove and cause the Contractor extra expenses, Contractor shall be compensated at the rate of \$_____ per hour; provided, however, that the amount of any such compensation shall not exceed _____ dollars **[NOTE: As noted above, the total costs of the additional services generally should not exceed 5-10% of the cost of the basic services.]** In the determination of hourly fees, time allotments shall be calculated to one-tenth of an hour.

D. Contractor shall not be entitled to reimbursement for any expenses except as specifically set forth in this Paragraph. The following expenses may be reimbursed if they are incurred after prior written approval of the Director: **[NOTE: itemize the specific types of reimbursable expenses, e.g., copying, travel, etc. If travel is reimbursable, the following is generally appropriate: "Travel expenses will only be reimbursed within the limits and in the manner provided in County Policy for County employees."]** Expenses will only be reimbursed upon the presentation of paid invoices. **[OR:** The compensation set forth above includes reimbursement for all expenses incurred by Contractor in the performance of this Agreement.] **[note: where funded by an external grant, contract, etc., something like the following may also be appropriate in some circumstances:**

E. Any other provision of this Agreement notwithstanding, because this Agreement is funded by the State Contract [grant, etc.], the County's obligation to compensate Contractor pursuant to this Agreement is contingent upon, and subject to, the County's receipt of such funding from the State, and the absence or removal of any constraints imposed by the State upon such receipt and payment.

IV. METHOD OF PAYMENT

A. Within thirty (30) days of the completion of each subtask identified in Paragraph I in a manner that is satisfactory to the Director, the Contractor shall submit an invoice detailing the services provided, the person(s) providing the service, the amount of time spent by each person providing the service calculated to the one-tenth of an hour, the rate per hour charged for each person providing service, and an itemization of the actual expenses for which reimbursement is requested. Any claim for additional services pursuant to Paragraph II shall also include a copy of the Director's written approval in advance of such services being provided. If requested by the County, Contractor shall provide any further documentation to verify the compensation and reimbursement sought by Contractor.

B. Within fifteen (15) calendar days of the receipt of Contractor's detailed invoice, the Director shall either authorize payment or advise Contractor in writing of any concerns that the Director has with the invoice and any need for further documentation.

C. Within thirty (30) calendar days of the Director's authorization for payment of an invoice, the County Auditor-Controller shall either issue the payment or advise Contractor in writing of any concerns that the County Auditor-Controller has with the request and any need for further documentation.

[note: this may be appropriate in some contracts:

D. Notwithstanding anything to the contrary in this Agreement, an amount equal to five (5%) of each monthly invoice submitted by Contractor shall be withheld until completion of the project to the satisfaction of the Director. Upon such completion, and if Contractor is otherwise in full compliance with the terms of this Agreement, the County shall promptly remit all withheld monies to Contractor.

V. REPORTS

[note: this will not apply to many contracts, but it may be very helpful in some contexts; to determine its applicability to a particular contract, the individual circumstances will have to be examined]

A. Contractor shall provide such reports as are required elsewhere by this Agreement, and such additional information and reports relating to the services otherwise required by this Agreement as are reasonably requested by the Director, as the times and in the manner specified by this Agreement, or by the Director if not so specified. Any other provision of this Agreement notwithstanding, should Contractor fail to provide any report required by this Agreement in a timely manner and as otherwise set forth in this Agreement, County may withhold any payments otherwise due Contractor pursuant to this Agreement, and any other agreement between Contractor and County, until such report is properly submitted as determined by the Director.

B. County shall provide Contractor with all information pertinent to the services required of Contractor by this Agreement which is requested by Contractor and which is within County's possession. No charge will be made for these materials.

VI. OWNERSHIP OF DOCUMENTS AND WORK PRODUCTS

All professional and technical documents and information developed under this Agreement, and all work products, including writings, work sheets, reports, and related data, materials, copyrights and all other rights and interests therein, shall become the property of the County, and Contractor agrees to deliver and assign the foregoing to the County, upon completion of the services hereunder or upon any earlier termination of this Agreement. Contractor assigns the work products, as and when the same shall arise, for the full terms of protection available throughout the world. In addition, basic data prepared or obtained under this Agreement shall be made available to the County without restriction or limitation on their use.

No additional charge will be made for any of the foregoing.

VII. RECORDS; ACCESS, RETENTION

Contractor shall retain and make available for review by the County and its designees all records, documents, and general correspondence relating to this Agreement and the services required hereunder for a period of not less than five (5) years after receipt of final payment or until all pending audits and proceedings are completed, whichever is later. **[NOTES: (1) the County Auditor-Controller's CBO Accounting Handbook requires retention of certain financial records for 5 years; (2) your program may also be subject to external requirements that records be retained a longer period of time; or (3) you may want a longer retention period for internal reasons. If any of these applies, use the longer retention period instead of four (4) years.]** Contractor shall make such records available for inspection and copying by the County and its designees at any reasonable time. At least thirty (30) calendar days prior to any destruction of these records following the four years, Contractor shall notify the Director. Upon such notification, the Director shall either agree to the destruction or authorize the records to be forwarded to the County for further retention.

VIII. DISPUTES

Any dispute arising under this Agreement shall be decided by the County Administrative Officer who shall put his or her decision in writing and mail a copy thereof to the address for the notice to Contractor. The decision of the County Administrative Officer shall be final unless, within thirty (30) days from the date such copy is mailed to Contractor, Contractor appeals the decision in writing to the County Board of Supervisors. Any such written appeal shall detail the reasons for the appeal and contain copies of all documentation supporting Contractor's position. In connection with any appeal proceeding under this paragraph, Contractor shall be afforded the opportunity to be heard and offer evidence in support of its appeal to the County Board of Supervisors at a regular Board meeting. Pending a final decision of the dispute, Contractor shall proceed diligently with the performance of this Agreement and in accordance with the County Administrative Officer's decision. The decision of the County Board of Supervisors on the appeal shall be final for purposes of exhaustion of administrative remedies.

IX. TERM AND TERMINATION

A. The term of this Agreement shall be from ____ through _____ unless sooner terminated as hereinafter provided. **[NOTE: County policy generally permits contracts up to 3 years for ongoing contracts carrying out stable programs. Shorter terms may be appropriate in many instances (e.g., short-term projects), and longer terms may also be justified by a department in appropriate circumstances.]**

B. Should either party fail to substantially perform its obligations in accordance with this Agreement, the other party may notify the defaulting party of such default in writing and provide not less than thirty (30) days to cure the default. Such notice shall describe the default, and shall not be deemed a forfeiture or termination of this Agreement. If such default is not cured within said thirty day period (or such longer period as is specified in the notice or agreed to by the parties), the party that gave notice of default may terminate this Agreement upon not less than fifteen (15) days advance written notice. In the event of such termination based upon Contractor default, the County reserves the right to purchase or obtain the supplies or services elsewhere, and Contractor shall be liable for the difference between the prices set forth herein and the actual cost thereof to the County. The foregoing notwithstanding, neither party waives the right to recover damages against the other for breach of this Agreement.

C. This Agreement is subject to the County, the State of California and the United States appropriating and approving sufficient funds for the activities required of the Contractor pursuant to this Agreement. If the County's adopted budget and/or its receipts from the State of California and the United States do not contain sufficient funds for this Agreement, the County may terminate this Agreement by giving ten (10) days advance written notice thereof to the Contractor, in which event the County shall have no obligation to pay the Contractor any further funds or provide other consideration and the Contractor shall have no obligation to provide any further services pursuant this Agreement. If the County terminates the Agreement pursuant to this subparagraph, the County will pay Contractor in accordance with this Agreement for all services performed to the satisfaction of the Director before such termination and for which funds have appropriated as required by law. **[NOTE: This "non-appropriations" clause is particularly important in contracts whose term may carry over into a subsequent fiscal year.]**

[NOTE: In some cases the following may be appropriate; however, particular care should be exercised before using this provision when contracting with an individual contractor: D. This Agreement may be terminated for any reason by either party at any time during its term, by giving (e.g., 30 days, 45 days, 60 days, 180 days, etc) days' written notice to the other party. (Note: the particular period of notice that is appropriate for any given contract will vary depending upon the circumstances, including the services being provided and the term of the agreement.)]

E. If Contractor, or any of its officers, agents, employees, contractors, subcontractors, volunteers or five percent owners, becomes excluded, debarred or suspended from

participation in Federally or State funded programs, the County may terminate this Agreement by giving ten (10) days advance written notice thereof to the Contractor.

F. Upon termination of this Agreement or suspension of work by either County or Contractor, Contractor shall furnish to County all documents and drawings prepared under this Agreement, whether complete or incomplete. In the event of termination for any reason, reproducible copies of all finished or unfinished documents, drawings, maps, models, photographs, and reports prepared by Contractor shall become the sole and exclusive property of Yolo County and Contractor shall be entitled to receive compensation for any work completed on such documents and other materials determined by the Director to be of satisfactory quality and within the terms and conditions of this Agreement. All creative work undertaken by Contractor such as sketches, copy, dummies and all preparatory work for which Contractor is not compensated by the County shall remain the sole and exclusive property of the Contractor.

G. During and following the term of this Agreement, Contractor shall not use, distribute or otherwise circulate any of the materials developed pursuant to this Agreement and for which Contractor was compensated by the County without the express written permission of the Director.

X. APPLICABLE LAWS

A. In the performance of the services required by this Agreement, Contractor shall comply with all applicable Federal, State, and County statutes, ordinances, regulations, directives and laws. This Agreement is also subject to any additional restrictions or conditions that may be imposed upon the County by the Federal or State government.

B. This Agreement shall be deemed to be executed within the State of California and construed in accordance with and governed by the laws of the State of California. Any action or proceeding arising out of this Agreement shall be filed and resolved in a California State court located in Woodland, California. Contractor waives any removal rights it might have under State or Federal law.

XI. NON-DISCRIMINATION IN SERVICES AND BENEFITS

Contractor certifies that any service provided pursuant to this Agreement shall be without discrimination based on color, race, creed, national origin, religion, sex, age, sexual preferences, or physical or mental disability in accordance with all applicable Federal, State and County laws and regulations and any administrative directives established by the County Board of Supervisors or the County Administrative Officer. For the purpose of this Agreement, distinctions on the grounds of color, race, creed, national origin, religion, sex, age, sexual preferences, or physical or mental disability include but are not limited to the following: denying a participant any service or benefit which is different, or is provided in a different manner or at a different time from that provided to other participants under this Agreement; subjecting a participant to segregation or separate treatment in any way in the enjoyment or any advantage or privilege enjoyed by others

receiving any service or benefit; treating a participant differently from others in determining whether the participant has satisfied any admission, enrollment quota, eligibility, membership, or other requirement or condition which individuals must meet in order to be provided any service or benefit; and the assignment of times or places for the provision of services.

XII. CONTRACTOR'S RESPONSIBILITIES

A. Contractor shall exercise all of the care and judgment consistent with good practices in the performance of the services required by this Agreement.

B. **[the indemnification provisions that follow offer options; the first provisions is preferred from a risk management standpoint because it provides very broad protection of the County's interests; if this first provision is not acceptable, the second provision can be used with the approval of the County's Risk Manager, although it offers less protection than the first] [either:]** With the exception that this section shall in no event be construed to require indemnification by Contractor to a greater extent than permitted under the public policy of the State of California, Contractor shall indemnify, defend and hold harmless the County of Yolo, officers, agents, employees and volunteers from and against any and all claims, damages, demands, losses, defense costs, expenses (including attorney fees) and liability of any kind or nature arising out of or resulting from performance of the work, provided that any such claim, damage, demand, loss, cost, expense or liability is caused in whole or in part by any negligent or intentional act or omission of the contractor, any subcontractor, anyone directly or indirectly employed by any of them or anyone for whose acts any of them may be liable, regardless of whether or not it is caused in part by a party indemnified hereunder. Contractor and/or Subcontractor's responsibility for such defense and indemnity obligations shall survive the termination or completion of this agreement for the full period of time allowed by law. The defense and indemnification obligations of this agreement are undertaken in addition to, and shall not in any way be limited by, the insurance obligations contained in this agreement.

[or:]With the exception that this section shall in no event be construed to require indemnification by Contractor to a greater extent than permitted under the public policy of the State of California, Contractor shall indemnify, defend and hold harmless the County of Yolo, its officers, agents, employees and volunteers from and against any and all claims, damages, demands, losses, defense costs, expenses (including attorney fees) and liability of any kind or nature arising out of, or as a result of, litigation or administrative proceeding(s), alleged to arise out of:

1. any negligent act, error or omission of Contractor, its officers, agents or employees, in performing the services, responsibilities or duties required of Contractor by this Agreement; or
2. any breach of any statutory, regulatory, contractual or legal duty of any kind related, directly or indirectly, to the services, responsibilities or duties required of Contractor by this Agreement.

Responsibility for such defense and indemnity obligations shall survive the termination or completion of this agreement for the full period of time allowed by law. The defense and indemnification obligations of this agreement are undertaken in addition to, and shall not in anyway be limited by, the insurance obligations contained in this agreement.

C. [This clause should be added to all Agreements that may include the use of Subcontractor(s)]: Subcontractor agrees to be bound to the General Contractor/**or** Contractor and the County of Yolo in the same manner and to the same extent as General Contractor/**or** Contractor is bound to the County of Yolo under the Contract Documents. Subcontractor further agrees to include the same requirements and provisions of this agreement, including the indemnity and Insurance requirements, with any Sub-subcontractor to the extent they apply to the scope of the Sub-subcontractor's work. A copy of the County of Yolo Contract Document Indemnity and Insurance provisions will be furnished to the Subcontractor upon request.

In providing any defense under this Paragraph, Contractor shall use counsel reasonably acceptable to the County Counsel.

XIII. PUBLIC LIABILITY AND PROPERTY DAMAGE INSURANCE

[NOTES: 1. These provisions are illustrative only. In many cases, professional liability insurance (malpractice insurance) isn't necessary, while other situations may suggest different types of insurance. Many situations also do not require \$1M/\$2M levels of insurance. 2. Risk Management issues (including the types & amounts of recommended insurance & significant indemnification issues) should be evaluated early in the process of evaluating the desirability of a particular contract, in consultation with the County's Risk Manager & YCPARMIA as appropriate; this will enable you to provide & discuss the necessary information with vendors early in the negotiation process.]

A. During the term of this Agreement, Contractor shall at all times maintain, at its expense, the following coverages and requirements. The comprehensive general liability insurance shall include broad form property damage insurance.

1. Minimum Coverages (as applicable). Insurance coverage shall be with limits not less than the following:

[note: the following limits need to be reviewed based upon the scope of services, nature of the contractor, etc.; please review with Risk Management]

- a. **Comprehensive General Liability** – \$1,000,000/occurrence and \$2,000,000/aggregate
- b. **Automobile Liability** – \$1,000,000/occurrence (general) and \$500,000/occurrence (property) (include coverage for Hired and Non-owned vehicles)
- c. **Professional Liability/Malpractice/Errors and Omissions** – \$1,000,000/occurrence and \$2,000,000/aggregate (If any engineer, architect, attorney, accountant, medical professional, psychologist, or other licensed professional performs work under a contract, the contractor

must provide this insurance. If not, then this requirement automatically does not apply.)

d. **Workers' Compensation** – Statutory Limits/**Employers' Liability** - \$1,000,000/accident for bodily injury or disease (If no employees, this requirement automatically does not apply.)

2. The County, its officers, agents, employees and volunteers shall be named as additional insured on all but the workers' compensation and professional liability coverages. [NOTE: Evidence of additional insured may be needed as a separate endorsement due to wording on the certificate negating any additional writing in the description box.] It shall be a requirement under this agreement that any available insurance proceeds broader than or in excess of the specified minimum Insurance coverage requirements and/or limits shall be available to the Additional Insured. Furthermore, the requirements for coverage and limits shall be (1) the minimum coverage and limits specified in this Agreement; or (2) the broader coverage and maximum limits of coverage of any Insurance policy or proceeds available to the named Insured; whichever is greater.

a. The Additional Insured coverage under the Contractor's policy shall be "primary and non-contributory" and will not seek contribution from the County's insurance or self insurance and shall be at least as broad as CG 20 01 04 13.

b. The limits of Insurance required in this agreement may be satisfied by a combination of primary and umbrella or excess Insurance. Any umbrella or excess Insurance shall contain or be endorsed to contain a provision that such coverage shall also apply on a primary and non contributory basis for the benefit of the County of Yolo (if agreed to in a written contract or agreement) before the County's own Insurance or self insurance shall be called upon to protect it as a named insured.

3. Said policies shall remain in force through the life of this Agreement and, with the exception of professional liability coverage, shall be payable on a "per occurrence" basis unless the County Risk Manager specifically consents in writing to a "claims made" basis. For all "claims made" coverage, in the event that the Contractor changes insurance carriers Contractor shall purchase "tail" coverage covering the term of this Agreement and not less than three years thereafter. Proof of such "tail" coverage shall be required at any time that the Contractor changes to a new carrier prior to receipt of any payments due.

4. The Contractor shall declare all aggregate limits on the coverage before commencing performance of this Agreement, and the County's Risk Manager reserves the right to require higher aggregate limits to ensure that the coverage limits required for this Agreement as set forth above are available throughout the

performance of this Agreement.

5. Any deductibles or self-insured retentions must be declared to and are subject to the approval of the County Risk Manager. All self-insured retentions (SIR) must be disclosed to Risk Management for approval and shall not reduce the limits of liability. Policies containing any SIR provision shall provide or be endorsed to provide that the SIR may be satisfied either by the named Insured or Yolo County.

6. Each insurance policy shall be endorsed to state that coverage shall not be suspended, voided, canceled by either party, reduced in coverage or in limits except after thirty (30) days' prior written notice by certified mail, return receipt requested, has been given to the Director (ten (10) days for delinquent insurance premium payments).

7. Insurance is to be placed with insurers with a current A.M. Best's rating of no less than A:VII, unless otherwise approved by the County Risk Manager.

8. The policies shall cover all activities of Contractor, its officers, employees, agents and volunteers arising out of or in connection with this Agreement.

9. For any claims relating to this Agreement, the Contractor's insurance coverage shall be primary, including as respects the County, its officers, agents, employees and volunteers. Any insurance maintained by the County shall apply in excess of, and not contribute with, insurance provided by Contractor's liability insurance policy.

10. The Contractor shall waive all rights of subrogation against the County, its officers, employees, agents and volunteers.

B. Prior to commencing services pursuant to this Agreement, Contractor shall furnish the County with original endorsements reflecting coverage required by this Agreement. The endorsements are to be signed by a person authorized by that insurer to bind coverage on its behalf. All endorsements are to be received by, and are subject to the approval of, the County Risk Manager before work commences. Upon County's request, Contractor shall provide complete, certified copies of all required insurance policies, including endorsements reflecting the coverage required by these specifications.

C. During the term of this Agreement, Contractor shall furnish the County with original endorsements reflecting renewals, changes in insurance companies and any other documents reflecting the maintenance of the required coverage throughout the entire term of this Agreement. The endorsements are to be signed by a person authorized by that insurer to bind coverage on its behalf. Upon County's request, Contractor shall provide complete, certified copies of all required insurance

policies, including endorsements reflecting the coverage required by these specifications. Yolo County reserves the right to obtain a full certified copy of any Insurance policy and endorsements. Failure to exercise this right shall not constitute a waiver of right to exercise later.

- D.** Contractor agrees to include with all Subcontractors in their subcontract the same requirements and provisions of this agreement including the indemnity and Insurance requirements to the extent they apply to the scope of the Subcontractor's work. Subcontractors hired by Contractor agree to be bound to Contractor and the County of Yolo in the same manner and to the same extent as Contractor is bound to the County of Yolo under the Contract Documents. Subcontractor further agrees to include these same provisions with any Sub-subcontractor. A copy of the Owner Contract Document Indemnity and Insurance provisions will be furnished to the Subcontractor upon request. The General Contractor/**and or Contractor** shall require all Subcontractors to provide a valid certificate of insurance and the required endorsements included in the agreement prior to commencement of any work and General Contractor/**and or Contractor** will provide proof of compliance to the County of Yolo.

- E.** Contractor shall maintain insurance as required by this contract to the fullest amount allowed by law and shall maintain insurance for a minimum of five years following the completion of this project. In the event contractor fails to obtain or maintain completed operations coverage as required by this agreement, the County at its sole discretion may purchase the coverage required and the cost will be paid by Contractor.

XIV. WORKERS' COMPENSATION

Contractor shall provide workers' compensation coverage as required by State law, and prior to commencing services pursuant to this Agreement shall file the following statement with the County in a form substantially as set forth below.

[NOTE: The Workers' Compensation requirements in the following paragraphs don't apply if the contractor is an individual and has no employees. In such circumstances, the contractor should sign a certificate of exemption form as attached hereto.]

WORKERS' COMPENSATION CERTIFICATE

I am aware of the provisions of Section 3700 of the Labor Code that require every employer to be insured against liability for workers' compensation or to undertake self-insurance in accordance with the provisions of that Code, and I will comply with such provisions before commencing any services required by this Agreement.

The person executing this certificate on behalf of Contractor affirmatively represents that she/he has the requisite legal authority to do so on behalf of Contractor, both the person executing this Agreement on behalf of Contractor and Contractor understand that the

County is relying on this representation in entering into this Agreement.

XV. NOTICE

A. All notices shall be deemed to have been given when made in writing and delivered or mailed to the respective representatives of County and Contractor at their respective addresses as follows:

Contractor:

Attn:

County:

Attn:

B. In lieu of written notice to the above addresses, any party may provide notices through the use of facsimile machines provided confirmation of delivery is obtained at the time of transmission of the notices and provided the following facsimile telephone numbers are used:

Contractor:

County: (530)

C. Any party may change the address or facsimile number to which such communications are to be given by providing the other parties with written notice of such change at least fifteen (15) calendar days prior to the effective date of the change.

D. All notices shall be effective upon receipt and shall be deemed received through delivery if personally served or served using facsimile machines, or on the fifth (5th) day following deposit in the mail if sent by first class mail.

XVI. CONFLICT OF INTEREST

A. Contractor shall comply with the laws and regulations of the State of California and County regarding conflicts of interest, including, but not limited to, Article 4 of Chapter 1, Division 4, Title 1 of the California Government Code, commencing with Section 1090, and Chapter 7 of Title 9 of said Code, commencing with Section 87100 including regulations promulgated by the California Fair Political Practices Commission.

B. Contractor covenants that it presently has no interest and shall not acquire any interest, direct or indirect, which would conflict in any manner or degree with the performance of Contractor's obligations and responsibilities hereunder. Contractor further covenants that in the performance of this Agreement, no person having any such interest shall be employed. This covenant shall remain in force until Contractor completes performance of the services required of it under this Agreement.

C. Contractor agrees that if any fact comes to its attention that raises any question as to the applicability of any conflict of interest law or regulation, Contractor will immediately inform the County and provide all information needed for resolution of the question.

XVII. COVENANT AGAINST CONTINGENT FEES

Contractor warrants that it has not employed or retained any company or person, other than a bona fide employee working for Contractor, to solicit or secure this Agreement, and that it has not paid or agreed to pay any company or person, other than a bona fide employee, any fee, commission, percentage, brokerage fee, gift, or any other consideration, contingent upon or resulting from the award or making this agreement. For breach or violation of this warranty, the County shall have the right to annul this agreement without liability, or in its discretion to deduct from the agreement price or consideration, or otherwise recover, the full amount of such fee, commission, percentage, brokerage fee, gift or contingent fee.

XVIII. AUDITS

[note: this language may not be necessary for many contracts, but in some contexts it may be required by a State agreement or regulation, & you may find this or something similar to be helpful in some situations where it is not mandated]

A. Contractor shall be subject to examination and audit by the State or the County, or both, throughout the term of this Agreement and thereafter for a period of three years from the date that final payment is made pursuant to this Agreement. This does not preclude access to records by County, State, the Comptroller General of the United States, or any of their authorized representatives, as otherwise provided by this Agreement, the State contract, or State or Federal laws and regulations. Contractor agrees that County and/or State has the right to review, obtain, and copy all records pertaining to the performance of this Agreement, and agrees to provide County and/or State with any and all relevant information requested.

B. Any and all books, records, and facilities maintained by Contractor related to services provided under this Agreement may be audited, inspected and copied at any time during normal business hours. Unannounced visits may be made at the discretion of the County or State. Employees who might reasonably have information related to such records may be interviewed. All expenditures of State and federal funds furnished to Contractor pursuant to this Agreement are subject to audit by County, State and/or Federal

representatives. Such audits shall consider and build upon external independent audits performed pursuant to audit requirements of the Office of Management and Budget (OMB) Circular A-133 as described in Paragraph C below.

C. Should Contractor expend \$500,000 or more in Federal funds during any fiscal year, Contractor shall furnish County a certified copy of an Audit Report from an independent CPA firm covering the Contractor's preceding fiscal year of January 1 through December 31. This Audit shall be performed in accordance with OMB Circular A-133 and conducted in accordance with generally accepted government auditing standards as described in Government Auditing Standards (1994 Revision), and provided in a form satisfactory to the Director.

Contractor shall provide this Audit Report no later than July 31 of each year. In the event that this Agreement expires or is terminated on a date other than December 31, Contractor shall provide County such an Audit Report covering the preceding period of January 1 through the date of expiration or termination no later than July 31 after the date of expiration or termination. Contractor shall ensure that audit work papers supporting the report are retained for a period of three (3) years from the date of the audit report, and longer if notified by the State or County to extend the retention period, and are made available to the State and/or County upon request.

D. Should an Audit Report or any State or County audit determine that Contractor has misspent funds and been overpaid based on the requirements of this Agreement and applicable laws and regulations, County shall demand repayment from Contractor in the amount of such audit findings and withhold any payment otherwise due under this Agreement until Contractor repays such amount. Contractor shall repay County such amount within sixty (60) days of the date of the County's demand for repayment. Should Contractor fail to repay County within sixty (60) days of the date of County's demand for repayment, the County may offset the amount due from Contractor against any amounts that would otherwise be due from the County to Contractor pursuant to this Agreement or any other agreement or source.

E. Any failure or refusal by Contractor to permit access to any facilities, books, records or other information required to be provided to the State &/or the County by this Agreement &/or the State contract shall constitute an express and immediate breach of this Agreement.

XIX. ASSIGNMENT AND SUBCONTRACTS

The services and obligations required of Contractor under this Agreement are not assignable in whole or in part. In addition, Contractor shall not subcontract any portion of the services required of Contractor by this Agreement without the express written consent of the Director. If any portion of the services required of Contractor are subcontracted, the subcontractor(s) shall maintain the same insurance as required of Contractor by this Agreement and Contractor shall be fully responsible to the County for all work undertaken by subcontractors.

XX. STATUS OF CONTRACTOR

A. It is understood and agreed by all the parties hereto that Contractor is an independent contractor and that no relationship of employer-employee exists between the County and Contractor. Neither Contractor nor Contractor's assigned personnel shall be entitled to any benefits payable to employees of the County. Contractor hereby indemnifies and holds the County harmless from any and all claims that may be made against the County based upon any contention by any third party that an employer-employee relationship exists by reason of this Agreement or any services provided pursuant to this Agreement.

B. It is further understood and agreed by all the parties hereto that neither Contractor nor Contractor's assigned personnel shall have any right to act on behalf of the County in any capacity whatsoever as an agent or to bind the County to any obligation whatsoever.

C. It is further understood and agreed by all the parties hereto that Contractor must issue any and all forms required by Federal and State laws for income and employment tax purposes, including W-2 and 941 forms, for all of Contractor's assigned personnel.

XXI. AMENDMENT

This Agreement may be amended only by written instrument signed by the County and Contractor. [Note: where applicable: “; provided, however, that the County may unilaterally amend this Agreement, in whole or in part, to reflect any changes to the State Contract [or “contracts,” “grant,” etc., as appropriate].”

XXII. WAIVER

The waiver by the County or any of its officers, agents or employees or the failure of the County or its officers, agents or employees to take action with respect to any right conferred by, or any breach of any obligation or responsibility of this Agreement shall not be deemed to be a waiver of such obligation or responsibility, or subsequent breach of same, or of any terms, covenants or conditions of this Agreement.

XXIII. AUTHORIZED REPRESENTATIVE

The person executing this Agreement on behalf of Contractor affirmatively represents that she/he has the requisite legal authority to enter into this Agreement on behalf of Contractor and to bind Contractor to the terms and conditions of this Agreement. Both the person executing this Agreement on behalf of Contractor and Contractor understand that the County is relying on this representation in entering into this Agreement.

XXIV. PUBLIC RECORDS ACT

Upon its execution, this Agreement (including all exhibits and attachments) shall be subject to disclosure pursuant to the California Public Records Act.

XXV. ADDITIONAL PROVISIONS

A. Where there is a doubt as to whether a provision of this document is a covenant or a condition, the provision shall carry the legal effect of both. Should the County choose to excuse any given failure of Contractor to meet any given condition, covenant or obligation (whether precedent or subsequent), that decision will not be, or have the legal effect of, a waiver of the legal effect in subsequent circumstances of either that condition, covenant or obligation or any other found in this document. All conditions, covenants and obligations continue to apply no matter how often County may choose to excuse a failure to perform them.

B. Except where specifically stated otherwise in this document, the promises in this document benefit the County and Contractor only. They are not intended to, nor shall they be interpreted or applied to, give any enforcement rights to any other persons (including corporate) which might be affected by the performance or non-performance of this Agreement, nor do the parties hereto intend to convey to anyone any "legitimate claim of entitlement" with the meaning and rights that phrase has been given by case law.

C. [note: this language may not be necessary for many contracts, but in some contexts it may be required by a State agreement or regulation, & you may find this or something similar to be helpful in some situations where it is not mandated]

1. By signing this agreement, the Contractor agrees to comply with applicable Federal suspension and debarment regulations including, but not limited to, 7 CFR Part 3017, 45 CFR 76, 40 CFR 32 or 34 CFR 85.
2. By signing this agreement, the Contractor certifies to the best of its knowledge and belief, that it and its principals:
 - a. Are not presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded by any federal department or agency;
 - b. Have not within a three-year period preceding this application/proposal/agreement been convicted of or had a civil judgment rendered against them for commission of fraud or a criminal offense in connection with obtaining, attempting to obtain, or performing a public (Federal, State or local) transaction or contract under a public transaction; violation of Federal or State antitrust statutes or commission of embezzlement, theft, forgery, bribery, falsification or destruction of records, making false statements, or receiving stolen property;
 - c. Are not presently indicted for or otherwise criminally or civilly charged by a governmental entity (Federal, State or local) with commission of any of

the offenses enumerated in Paragraph 2(b) herein;

- d. Have not within a three-year period preceding this application/proposal/agreement had one or more public transactions (Federal, State or local) terminated for cause or default;
 - e. Shall not knowingly enter into any lower tier covered transaction with a person who is proposed for debarment under federal regulations (i.e., 48 CFR part 9, subpart 9.4), debarred, suspended, declared ineligible, or voluntarily excluded from participation in such transaction, unless authorized by the State; and
 - f. Will included a clause entitled, "Debarment and Suspension Certification" that essentially sets forth the provisions herein, in all lower tier covered transactions and in all solicitations for lower tier covered transactions.
3. If the Contractor is unable to certify to any of the statements in this certification, the Contractor shall submit an explanation to the County program funding this Agreement, and the County shall have the option of terminating this Agreement immediately or at any time thereafter, upon giving Contractor written notice of such termination, if the explanation is not found satisfactory by the County in its sole discretion.
 4. The terms and definitions herein have the meanings set out in the Definitions and Coverage sections of the rules implementing Federal Executive Order 12549.
 5. If the Contractor knowingly violates this certification, in addition to other remedies available to the Federal Government, the County may terminate this Agreement at any time upon giving Contractor written notice of such termination.

D. Contractor shall comply with, and shall ensure that its officers, agents, employees, participants and volunteers comply with, the Health Insurance Portability and Accountability Act of 1996 and its implementing regulations, and the privacy and security requirements set forth in Exhibit D attached hereto.

[note: Exhibit D represents the County's current draft of provisions complying with HIPAA's requirements where applicable; HIPAA may apply where the contractor will be receiving or creating protected health information in the course of providing services pursuant to the agreement; you should consult with your department's Privacy Liaison to determine whether HIPAA applies to a particular contract.]

XXVI. ENTIRE AGREEMENT

This Agreement constitutes the entire agreement between the County and Contractor and supersedes all prior negotiations, representations, or agreements, whether written or oral. In the event of a dispute between the parties as to the language of this Agreement or the construction or

meaning of any term hereof, this Agreement shall be deemed to have been drafted by the parties in equal parts so that no presumptions or inferences concerning its terms or interpretation may be construed against any party to this Agreement.

IN WITNESS WHEREOF, the parties have executed this Agreement as of the day and year first set forth above.

CONTRACTOR

By _____

COUNTY OF YOLO

By _____
_____, Chair
Board of Supervisors

By _____
[NOTE: Insert Name/Title]

Attest:
_____, Clerk
Board of Supervisors

By _____
Deputy (Seal)

Approved as to Form:

_____, County Counsel

EXHIBIT D
HIPAA COMPLIANCE

- (a) Contractor shall comply with, and assist the County in complying with, the privacy and security requirements of the Health Insurance Portability and Accountability Act (including but not limited to 42 U.S.C. 1320d et seq.; “HIPAA”) and its implementing regulations (including but not limited to 45 CFR Parts 142, 160, 162, and 164), hereinafter collectively referred to as the “Privacy Rule” and “Security Rule.” Terms used but not otherwise defined in this Agreement shall have the same meaning as those terms are used in the Privacy Rule and Security Rule.
- (b) Except as otherwise limited in this Agreement, Contractor may use or disclose Protected Health Information (including but not limited to Electronic Protected Health Information) to perform functions, activities, or services for or on behalf of the County as specified in this Agreement, provided that such use or disclosure would not violate the Privacy Rule if done by the County.
- (c) Contractor shall not use or further disclose Protected Health Information other than as permitted or required by this Agreement or as required by law.
- (d) Contractor shall use appropriate safeguards to prevent use or disclosure of the Protected Health Information other than as provided for by this Agreement.
- (e) Contractor shall report to the County any use or disclosure of the Protected Health Information not provided for by this Agreement.
- (f) Contractor shall mitigate, to the extent practicable, any harmful effect that is known to Contractor of a use or disclosure of Protected Health Information by Contractor in violation of the requirements of this Agreement.
- (g) Contractor shall ensure that any agent, including a subcontractor, to whom it provides Protected Health Information received from, or created or received by Contractor on behalf of the County agrees to the same restrictions and conditions that apply through this Agreement to Contractor with respect to such information.
- (h) Contractor shall provide access, at the request of the County, and in the time and manner designated by the County, to Protected Health Information in a Designated Record Set, to the County or, as directed by the County, to an Individual in order to meet the requirements under 45 CFR 164.524.
- (i) Contractor shall make any amendment(s) to Protected Health Information in a Designated Record Set that the County directs or agrees to pursuant to 45 CFR 164.526 at the request of the County or an Individual, in the time and manner designated by the County.
- (j) Contractor shall document such disclosures of Protected Health Information and information related to such disclosures as would be required for the County to respond to a request by an Individual for an accounting of disclosures of Protected Health Information in accordance with 45 CFR 164.528.
- (k) Contractor shall provide to the County or an Individual, in time and manner designated by the County, information collected in accordance with subSection (j), to permit the County to respond to a request by an Individual for an accounting of disclosures of Protected Health Information in accordance with 45 CFR 164.528.
- (l) Contractor shall make internal practices, books, and records relating to the use and disclosure of Protected Health Information received from, or created or received by Contractor on behalf of, the County available to the County, or at the request of the County to the Secretary of the United

States Department of Health and Human Services ("Secretary"), in a time and manner designated by the County or the Secretary, for purposes of the Secretary determining the County's compliance with the Privacy Rule.

(m) Contractor shall implement administrative, physical, and technical safeguards that reasonably and appropriately protect the confidentiality, integrity, and availability of the Electronic Protected Health Information that it creates, receives, maintains, or transmits on behalf of the County as required by HIPAA.

(n) Contractor shall ensure that any agent, including a subcontractor, to whom it provides Electronic Protected Health Information agrees to implement reasonable and appropriate safeguards to protect it.

(o) Contractor shall report to the County any security incident of which it becomes aware.

(p) (1) Except as provided in subparagraph (2) of this section, upon termination of this Agreement for any reason, Contractor shall return or destroy all Protected Health Information received from the County, or created or received by Contractor on behalf of the County. This provision shall apply to Protected Health Information that is in the possession of subcontractors or agents of Contractor. Contractor, its agents and subcontractors shall retain no copies of the Protected Health Information.

(2) In the event that Contractor determines that returning or destroying the Protected Health Information is infeasible, Contractor shall provide to the County notification of the conditions that make return or destruction infeasible. Upon mutual agreement of the Parties that return or destruction of Protected Health Information is infeasible, Contractor shall extend the protections of this Agreement to such Protected Health Information and limit further uses and disclosures of such Protected Health Information to those purposes that make the return or destruction infeasible, for so long as Contractor, or any of its agents or subcontractors, maintains such Protected Health Information.

(3) The respective rights and obligations of Contractor concerning the Privacy Rule and the Security Rule, including but not limited to the provisions of this Section, shall survive the termination of this Agreement.

(q) The Parties agree to take such action as is necessary to amend this Agreement from time-to-time as is necessary for the County to comply with the requirements of the Privacy Rule, Security Rule, or any other requirements of HIPAA and its implementing regulations.

NOTE: the forms that follow are provided to assist you, but they are not part of the contract]

WORKERS' COMPENSATION CERTIFICATE

I am aware of the provisions of Section 3700 of the Labor Code that require every employer to be insured against liability for workers' compensation or to undertake self-insurance in accordance with the provisions of that code, and I will comply with such provisions before commencing any services required by this Agreement.

The person executing this certificate on behalf of Contractor affirmatively represents that she has the requisite legal authority to do so on behalf of Contractor, both the person executing this Agreement on behalf of Contractor and Contractor understand that the County is relying on this representation in entering into this Agreement.

CONTRACTOR

By _____

Print Name/Title

NOTE: the forms that follow are provided to assist you, but they are not part of the contract]

CERTIFICATE OF EXEMPTION FROM WORKERS' COMPENSATION INSURANCE

I hereby certify under penalty of perjury that in the performance of the work for which this Agreement is entered into, and for the duration of this Agreement, I shall not employ any person so as to become subject to the Workers' Compensation Laws of the State of California and that, should I intend to so employ any person at any time during the term of this Agreement, I shall promptly so notify the County of Yolo and provide proof of Workers' Compensation/Employers' liability insurance in an amount of not less than \$1,000,000 for per accident for bodily injury or disease before employing any such person.

Executed this ___ day of _____, 20XX, at _____, California.

CONTRACTOR

By_____

Print Name/Title