

HUMAN SERVICES MASTER CONTRACT

THIS CONTRACT is made and entered into by and between the **COUNTY OF ALAMEDA**, , hereinafter referred to as "**County**," and «CBO», a **services provider** doing business at «SiteAddress», «SiteCity State Zip», hereinafter referred to as "**Contractor**".

WITNESSETH:

WHEREAS, Contractor is willing and able to perform duties and render services which are determined by the Board of Supervisors to be necessary or appropriate for the welfare of residents of County; and

Whereas, County desires to obtain services which are more fully described in Exhibit A hereto; and

Whereas, Contractor provides direct services which meet the basic, fundamental needs of the community such as health, welfare, and/or housing of a society or group, such as those of the poor, sick, or elderly; and is willing to provide same to County;

Now, therefore it is agreed that County does hereby retain Contractor to provide such services and Contractor accepts such engagement, on the General Terms and Conditions hereinafter specified in this Agreement, the Additional Provisions attached hereto, and the following described exhibits, all of which are incorporated into this Agreement by this reference:

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|-----------|---|
| Exhibit A | Services |
| Exhibit B | Payment Provisions |
| Exhibit C | Insurance Requirements |
| Exhibit D | Audit Requirement |
| Exhibit E | Business Associate Provisions (if applicable) |
| Exhibit F | Debarment and Suspension Certification |

GENERAL TERMS AND CONDITIONS

NOW, THEREFORE, IT IS HEREBY MUTUALLY AGREED as follows:

- 1) **TERM OF AGREEMENT:** The Term of this Agreement begins on the **1st** day of _____, _____ and shall continue as specified in the attached Exhibit A and B and any additional Exhibit As and Bs.

Contractor understands and agrees that there is no representation, implication, or understanding that the services provided by Contractor under this Agreement will be

purchased by County from Contractor under a new or amended Agreement or additional Exhibit A(s) and B(s), following expiration or termination of this Agreement. Contractor waives all rights or claims to notice or hearing respecting any failure by County to continue to purchase all or any such service from Contractor following the expiration or termination of this Agreement.

2) AMENDMENTS FOR ADDITIONAL SERVICES AND PAYMENT:

(a) **Additional Services:** This Agreement may be amended to include additional services by completion of additional Exhibit A(s) specifying the County agency or department adding services and the execution of an amendment to services. These additional services shall be performed in compliance with all terms of this Agreement. Any amendment to include additional Exhibit A(s) shall be further specified in a “Master Contract Exhibit A and B Coversheet” executed by authorized parties for the County and Contractor and incorporated as part of this Agreement.

(b) **Payment for Additional Services:** If this Agreement is amended to include additional services through additional Exhibit A(s), the amount allocated for performance of those services shall be set forth in corresponding additional Exhibit B(s) as further specified in a Master Contract Exhibit A and B Coversheet. County shall under no circumstances be required to pay in excess of the amount specified in the additional Exhibit B(s). Payment for additional services shall be made pursuant to the terms and conditions set forth in the additional Exhibit A(s) and additional B(s).

3) SERVICES TO BE PERFORMED -- Exhibit A(s): Contractor agrees to comply with all provisions, perform all work, and meet all obligations and provide the services set forth in Exhibit A(s) (“Services”) in a professional and diligent manner.

4) PAYMENT TERMS – Exhibit B(s):

(a) **Terms and Conditions of Payment:** County has allocated the sum indicated in Exhibit B(s), to be expended as described in this Agreement. That amount shall in no event be exceeded by Contractor, and County shall under no circumstances be required to pay in excess of that amount. Payment shall be made pursuant to the terms and conditions set forth in Exhibits A(s) and B(s), attached hereto and by this reference made a part hereof. Sums not so paid shall be retained by County.

(b) **Time for Submission of Invoices:** Contractor shall submit all invoices and other claims for payment and reimbursement under the Agreement within ninety (90) days after the ending date of the Agreement. All claims submitted after ninety (90) days following the

ending date of the Agreement will not be subject to reimbursement by the County. Any "obligations incurred" included in claims for reimbursements and paid by the County that remain unpaid by the Contractor more than ninety (90) days following the ending date of the Agreement will be disallowed under audit by the County.

(c) **Funding Requirements:** Contractor agrees to comply with all requirements that are now, or may hereafter be, imposed by any funding source, including but not limited to federal and state government funding with respect to the receipt and disbursement of the funds, as well as such requirements as may be imposed by County. Without limiting the generality of the foregoing, Contractor agrees that it will not use funds received pursuant to this Agreement, either directly or indirectly, as a contribution in order to obtain any Federal funds under any Federal programs without prior written approval of County.

- 5) **INSURANCE - Exhibit C:** Contractor shall maintain in force, at all times during the term of this Agreement, insurance and bonding documentation described in Exhibit C, attached hereto and made a part of this Agreement, and shall comply with all other requirements set forth in that Exhibit. Contractor shall provide Worker's Compensation insurance at Contractor's own cost and expense, and neither Contractor nor its carrier shall be entitled to recover from the County any costs, settlements, or expenses of Worker's Compensation claims arising out of this Agreement. If this Agreement is amended to include additional services and additional Exhibit A(s), County reserves the right to require additional and/or other insurance and bonding documentation as set forth in Exhibit C.
- 6) **AUDIT REQUIREMENT – Exhibit D:** Contractor shall comply with the audit requirements set forth in Exhibit D.
- 7) **HIPAA BUSINESS ASSOCIATE PROVISIONS – Exhibit E:** If applicable, Contractor shall comply with the HIPAA business associate provisions set forth in Exhibit E.
- 8) **DEBARMENT AND SUSPENSION CERTIFICATION – Exhibit F:** Contractor shall comply with the debarment and suspension certification requirements set forth in Exhibit F.
- 9) **ADDITIONAL FISCAL PROVISIONS:** Contractor shall not claim payment or reimbursement from County for (or apply sums received from County with respect to) that portion of its obligations that have been paid by another source of revenue. Sums received as a result of applications for funds from public or private organizations shall be considered such revenue insofar as such sums are or can be applied to the work to be performed by Contractor pursuant to this Agreement. County may demand and Contractor will provide an itemized account of all funds received from any source.

Unrestricted or undesignated private charitable donations and contributions shall not be considered revenue applicable to this Agreement; Contractor is not restricted in planning for the usage of such resources in expanding and enriching programs, or in providing for such other operating contingencies as it may desire. Nothing herein shall be deemed to prohibit Contractor from contracting with more than one entity to perform additional work similar to or the same as that herein contracted for.

10) NON-APPROPRIATION:

It is mutually understood between the parties that this Agreement may have been written before ascertaining the availability of local, state, or federal government appropriation of funds, for the mutual benefit of both parties, in order to avoid program and fiscal delays which would occur if the Agreement were executed after that determination was made. This agreement is valid and enforceable only if sufficient local, state, and federal funds are made available to the County for the term of this Agreement. It is mutually agreed that if local, state, or federal government does not appropriate sufficient funds for the program, this Agreement shall be amended to reflect any reduction in funds. County has the option to invalidate or cancel this Agreement with 30-days advance written notice or to amend the Agreement to reflect any reduction in funds.

11) INDEPENDENT CONTRACTOR: No relationship of employer and employee is created by this Agreement; it being understood and agreed that Contractor is an independent contractor. Contractor is not the agent or employee of the County in any capacity whatsoever, and County shall not be liable for any acts or omissions by Contractor nor for any obligations or liabilities incurred by Contractor.

Contractor shall have no claim under this Agreement or otherwise, for seniority, vacation time, vacation pay, sick leave, personal time off, overtime, health insurance medical care, hospital care, retirement benefits, social security, disability, Workers' Compensation, or unemployment insurance benefits, civil service protection, or employee benefits of any kind.

Contractor shall be solely liable for and obligated to pay directly all applicable payroll taxes (including federal and state income taxes) or contributions for unemployment insurance or old age pensions or annuities which are imposed by any governmental entity in connection with the labor used or which are measured by wages, salaries or other remuneration paid to its officers, agents or employees and agrees to indemnify and hold County harmless from any and all liability which County may incur because of Contractor's failure to pay such amounts.

In carrying out the work contemplated herein, Contractor shall comply with all applicable federal and state workers' compensation and liability laws and regulations with respect to the officers, agents and/or employees conducting and participating in the work; and agrees that such officers, agents, and/or employees will be considered as independent

contractors and shall not be treated or considered in any way as officers, agents and/or employees of County.

Contractor does, by this Agreement, agree to perform his/her said work and functions at all times in strict accordance with currently approved methods and practices in his/her field and that the sole interest of County is to insure that said service shall be performed and rendered in a competent, efficient, timely and satisfactory manner and in accordance with the standards required by the County agency concerned.

Notwithstanding the foregoing, if the County determines that pursuant to state and federal law Contractor is an employee for purposes of income tax withholding, County may upon two week's notice to Contractor, withhold from payments to Contractor hereunder federal and state income taxes and pay said sums to the federal and state governments

12) SUBCONTRACTING/ASSIGNMENT:

Contractor shall not subcontract, assign or delegate any portion of this Agreement or any duties or obligations hereunder without the County's prior written approval.

Neither party shall, on the basis of this Agreement, contract on behalf of or in the name of the other party. Any agreement that violates this Section shall confer no rights on any party and shall be null and void.

Contractor shall remain fully responsible for compliance by its subcontractors with all the terms of this Agreement, regardless of the terms of any agreement between Contractor and its subcontractors.

13) TRAVEL EXPENSES: Contractor shall not be allowed or paid travel expenses unless set forth in this Agreement.

14) TAXES: Payment of all applicable federal, state, and local taxes shall be the sole responsibility of the Contractor.

15) INDEMNIFICATION: To the fullest extent permitted by law, Contractor shall hold harmless, defend and indemnify the County of Alameda, its Board of Supervisors, employees and agents from and against any and all claims, losses, damages, liabilities and expenses, including but not limited to attorneys' fees, arising out of or resulting from Contractor's performance of services under this Agreement. The County may participate in the defense of any such claim without relieving Contractor of any obligation hereunder.

In the event that Contractor or any employee, agent, or subcontractor of Contractor providing services under this Agreement is determined by a court of competent jurisdiction or the Alameda County Employees' Retirement Association (ACERA) or California Public Employees' Retirement System (PERS) to be eligible for enrollment in ACERA and PERS as an employee of County, Contractor shall indemnify, defend, and

hold harmless County for the payment of any employee and/or employer contributions for ACERA and PERS benefits on behalf of Contractor or its employees, agents, or subcontractors, as well as for the payment of any penalties and interest on such contributions, which would otherwise be the responsibility of County.

Contractor agrees to indemnify County for any costs incurred as a result of Contractor's failure to properly account for or document any expenditures and costs, including but not limited to those found in any audit by the County, the federal government or the State of California.

16) PREVAILING WAGES:

Pursuant to Labor Code sections 1770 et seq., Contractor shall pay to persons performing labor in and about work provided for in this Agreement not less than the general prevailing rate of per diem wages for work of a similar character in the locality in which the work is performed, and not less than the general prevailing rate of per diem wages for legal holiday and overtime work in said locality, which per diem wages shall not be less than the stipulated rates contained in a schedule thereof which has been ascertained and determined by the Director of the State Department of Industrial Relations to be the general prevailing rate of per diem wages for each craft or type of worker or mechanic needed to execute this contract.

17) EQUAL EMPLOYMENT OPPORTUNITY PRACTICES PROVISIONS:

Contractor assures that it will comply with Title VII of the Civil Rights Act of 1964 and that no person shall, on the grounds of race, creed, color, disability, sex, sexual orientation, national origin, age, religion, Vietnam era Veteran's status, political affiliation, or any other non-merit factor, be excluded from participation in, be denied the benefits of, or be otherwise subjected to discrimination under this Agreement.

- a. Contractor shall, in all solicitations or advertisements for applicants for employment placed as a result of this Agreement, state that it is an "Equal Opportunity Employer" or that all qualified applicants will receive consideration for employment without regard to their race, creed, color, disability, sex, sexual orientation, national origin, age, religion, Vietnam era Veteran's status, political affiliation, or any other non-merit factor.
- b. Contractor shall, if requested to so do by the County, certify that it has not, in the performance of this Agreement, discriminated against applicants or employees because of their race, creed, color, disability, sex, sexual orientation, national origin, age, religion, Vietnam era Veteran's status, political affiliation, or any other non-merit factor.
- c. If requested to do so by the County, Contractor shall provide the County with access to copies of all of its records pertaining or relating to its employment

practices, except to the extent such records or portions of such records are confidential or privileged under state or federal law.

- d. Contractor shall recruit vigorously and encourage minority - and women-owned businesses to bid its subcontracts.
- e. Nothing contained in this Agreement shall be construed in any manner so as to require or permit any act, which is prohibited by law.
- f. The Contractor shall include the provisions set forth in paragraphs A through E (above) in each of its subcontracts.

18) IRAN CONTRACTING ACT CERTIFICATION:

The Iran Contracting Act of 2010 requires a person that submits a bid or proposal to, or otherwise proposes to enter into or renew a contract with, a public entity with respect to a contract for goods or services of one million dollars (\$1,000,000) or more to certify, at the time the bid is submitted or the contract is renewed, that the person is not identified as a person engaging in investment activities in Iran. A person who “engages in investment activities in Iran” is defined in either of two ways:

- a. The person provides goods or services of twenty million dollars (\$20,000,000) or more in the energy sector of Iran, including a person that provides oil or liquefied natural gas tankers, or products used to construct or maintain pipelines used to transport oil or liquefied natural gas, for the energy sector of Iran; or
- b. The person is a financial institution (as that term is defined in 50 U.S.C. § 1701) that extends twenty million dollars (\$20,000,000) or more in credit to another person, for 45 days or more, if that person will use the credit to provide goods or services in the energy sector in Iran and is identified on a list created by the California Department of General Services (DGS) pursuant to California Public Contract Code section 2201(b) as a person engaging in the investment activities described in paragraph 1 above.

By entering this Agreement, Contractor hereby certifies that as of the time of bidding or proposing for a new contract, entering into a contract or renewal of an existing contract, the Contractor is not identified on the Department of General Services list of ineligible persons and the Contractor is not engaged in investment activities in Iran in violation of the Iran Contracting Act of 2010.

19) CONFORMITY WITH LAW AND SAFETY:

- a. In performing services under this Agreement, Contractor shall observe and comply with all applicable laws, ordinances, codes and regulations of governmental agencies, including federal, state, municipal, and local governing bodies, having jurisdiction over the scope of services, including all applicable provisions of the California Occupational Safety and Health Act. Contractor shall

indemnify and hold County harmless from any and all liability, fines, penalties and consequences from any of Contractor's failures to comply with such laws, ordinances, codes and regulations.

- b. Accidents: If a death, serious personal injury or substantial property damage occurs in connection with Contractor's performance of this Agreement, Contractor shall immediately notify the Department Director and Alameda County Risk Manager's Office by telephone. Contractor shall promptly submit to County a written report, in such form as may be required by County of all accidents which occur in connection with this Agreement. This report must include the following information: (1) name and address of the injured or deceased person(s); (2) name and address of Contractor's subcontractor, if any; (3) name and address of Contractor's liability insurance carrier; and (4) a detailed description of the accident and whether any of County's equipment, tools, material, or staff were involved.
 - c. Contractor further agrees to take all reasonable steps to preserve all physical evidence and information which may be relevant to the circumstances surrounding a potential claim, while maintaining public safety, and to grant to the County the opportunity to review and inspect such evidence, including the scene of the accident.
- 18) DRUG-FREE WORKPLACE:** Contractor and Contractor's employees, agents, and subcontractors shall comply with the County's policy of maintaining a drug-free workplace. Neither Contractor nor Contractor's employees, agents, or subcontractors shall unlawfully manufacture, distribute, dispense, possess or use controlled substances, as defined in 21 U.S. Code § 812, including, but not limited to, marijuana, heroin, cocaine, and amphetamines, at any County facility or work site. If Contractor or any employee, agent, or subcontractor of Contractor is convicted or pleads nolo contendere to a criminal drug statute violation occurring at a County facility or work site, the Contractor within five days thereafter shall notify the head of the County department/agency for which the contract services are performed. Violation of this provision shall constitute a material breach of this Agreement.
- 19) ADVERTISING OR PUBLICITY:** Contractor shall not use the name of County, its officers, directors, employees or agents, in advertising or publicity releases or otherwise without securing the prior written consent of County.
- 20) CONFLICT OF INTEREST:** Contractor covenants that it presently has no interest, and shall not have any interest, direct or indirect, which would conflict in any manner with the performance of services required under this Agreement. Without limitation, Contractor represents to and agrees with the County that Contractor has no present, and will have no future, conflict of interest between providing the County services hereunder and any other person or entity (including but not limited to any federal or state wildlife, environmental or regulatory agency) which has any interest adverse or potentially

adverse to the County, as determined in the reasonable judgment of the Board of Supervisors of the County.

If Contractor has entered into this Agreement as a not-for-profit organization as defined by state and federal law, and is in receipt of funds from County based on such status, Contractor shall at all times conduct its business in a manner consistent with that required of a not-for-profit organization by applicable laws.

Contractor, whether or not a not-for-profit organization, shall not permit any member of its governing board to perform for compensation any administrative or operational functions for the Contractor with respect to the performance of this contract, be it in the capacity as director, officer or employee, (including, but not by way of limitation, fiscal, accounting, or bookkeeping functions) without first obtaining the written consent of the County.

No administrative employee, officer or director of Contractor may do any of the following without first having given advanced written notice to the County:

- a. receive funds from County other than those funds provided pursuant to the Agreement;
- b. simultaneously serve as a Director of another governing board or commission which could have influence over the operations of Contractor.

Contractor shall not, without having given advanced written notice to County of its intention, do any of the following:

- a. Contract for the acquisition of goods or services for more consideration than would be paid for equivalent goods or services on the open market from any person who is related by blood or marriage to a manager or a member of the governing board of the Contractor; or
- b. contract for the acquisition of goods or services for more consideration than would be paid for equivalent goods or services on the open market from any organization in which any person who is related by blood or marriage to a manager or member of the governing board of the Contractor has a substantial personal financial interest.

Contractor shall not, during the term of this Agreement, permit any member of the governing board of the Contractor to have or acquire, directly or indirectly, any personal financial interest in the performance of the Agreement, as by providing goods or services for compensation, or otherwise, without having first disclosed the same to the board and

the County, and said member shall not participate in board discussion or action on such matter.

Should the County object to such employment or contracting then the act of proceeding on such employment or contracting shall constitute grounds for immediate termination of this Agreement for cause.

Contractor shall observe and comply with all applicable laws, ordinances, codes and regulations of governmental agencies, including federal, state, municipal and local governing bodies regarding conflicts of interest.

- 21) **CONFIDENTIALITY:** The Contractor agrees that any information, whether proprietary or not, made known to or discovered by it during the performance of or in connection with this Agreement for the County will be kept confidential and not be disclosed to any other person. The Contractor agrees to immediately notify the County in writing, if it is requested to disclose any information made known to or discovered by it during the performance of or in connection with this Agreement. These confidentiality provisions and limitations shall remain fully effective five (5) years after termination of services to the County hereunder.
- 22) **PATIENTS' RIGHTS:** Patients' rights shall be assured in compliance with Welfare and Institutions Code, Division 5, Section 5325; and California Code of Regulations, Title 9, Article 6. Contractor's safeguarding of patient records must be in compliance with all appropriate state and federal requirements.
- 23) **COUNTY PROPERTY:** Contractor shall not use County property (including equipment, instruments and supplies) or personnel for any purpose other than in the performance of his/her obligations under this Agreement.

Title to all personal property having a unit purchase price of over \$1,000 acquired by Contractor in connection with this Agreement or the services rendered pursuant thereto shall vest in County, and shall be returned and delivered to County at the expiration or termination of the Agreement.

- 24) **OWNERSHIP OF DOCUMENTS:** Contractor hereby assigns to the County and its assignees all copyright and other use rights in any and all proposals, plans, specification, designs, drawings, sketches, renderings, models, reports and related documents (including computerized or electronic copies) created through this Agreement, whether prepared by the County, the Contractor, the Contractor's subcontractors or third parties at the request of the Contractor (collectively, "Documents and Materials"). This explicitly includes the electronic copies of all above stated documentation.

Contractor also hereby assigns to the County and its assignees all copyright and other use rights in any Documents and Materials including electronic copies stored in Contractor's Information System, created through this Agreement.

Contractor shall be permitted to retain copies, including reproducible copies and computerized copies, of said Documents and Materials. Contractor agrees to take such further steps as may be reasonably requested by County to implement the aforesaid assignment. If for any reason said assignment is not effective, Contractor hereby grants the County and any assignee of the County an express royalty – free license to retain and use said Documents and Materials. The County's rights under this paragraph shall apply regardless of the degree of completion of the Documents and Materials and whether or not Contractor's services as set forth in Exhibit "A" of this Agreement have been fully performed or paid for.

In Contractor's contracts with other Contractors, Contractor shall expressly obligate its subcontractors to grant the County the aforesaid assignment and license rights as to that Contractor's Documents and Materials. Contractor agrees to defend, indemnify and hold the County harmless from any damage caused by a failure of the Contractor to obtain such rights from its Contractors and/or subcontractors.

Contractor shall pay all royalties and license fees which may be due for any patented or copyrighted materials, methods or systems selected by the Contractor and incorporated into the work as set forth in Exhibit "A", and shall defend, indemnify and hold the County harmless from any claims for infringement of patent or copyright arising out of such selection. The County's rights under this Paragraph shall not extend to any computer software used to create such Documents and Materials.

25) PATENT AND COPYRIGHT INDEMNITY: Contractor represents that it knows of no allegations, claims, or threatened claims that the materials, services, hardware or software ("Contractor Products") provided to County under this Agreement infringe any patent, copyright or other proprietary right. Contractor shall defend, indemnify and hold harmless County of, from and against all losses, claims, damages, liabilities, costs expenses and amounts (collectively, "Losses") arising out of or in connection with an assertion that any Contractor Products or the use thereof, infringe any patent, copyright or other proprietary right of any third party. County will: (1) notify Contractor promptly of such claim, suit or assertion; (2) permit Contractor to defend, compromise, or settle the claim; and, (3) provide, on a reasonable basis, information to enable Contractor to do so. Contractor shall not agree without County's prior written consent, to any settlement, which would require County to pay money or perform some affirmative act in order to continue using the Contractor Products.

a. If Contractor is obligated to defend County pursuant to this Section and fails to do so after reasonable notice from County, County may defend itself and/or settle such proceeding, and Contractor shall pay to County any and all losses, damages and expenses (including attorney's fees and costs) incurred in relationship with County's defense and/or settlement of such proceeding.

- b. In the case of any such claim of infringement, Contractor shall either, at its option, (1) procure for County the right to continue using the Contractor Products; or (2) replace or modify the Contractor Products so that that they become non-infringing, but equivalent in functionality and performance.
- c. Notwithstanding this Section, County retains the right and ability to defend itself, at its own expense, against any claims that Contractor Products infringe any patent, copyright, or other intellectual property right.

26) DOCUMENTS AND MATERIALS:

- a. **Financial Records:** Contractor shall maintain on a current basis complete financial records including, but not necessarily limited to, books of original entry, source documents in support of accounting transactions, a general ledger, personnel and payroll records, cancelled checks, and related documents in accordance with generally accepted accounting principles and any specific requirements of the applicable funding source.
- b. **Service Records:** Contractor shall maintain on a current basis complete records pertaining to the provision of services and eligibility, including, but not limited to, medical records, client files, participant records, patient logs or other service related documentation in accordance with instructions provided by County.
- c. **Organizational Records:** Contractor shall maintain on a current basis complete records pertaining to Contractor's organizational structure and activities, including, but not limited to, bylaws, articles of incorporation, documentation of tax exempt status, Board of Directors roster, minutes of meetings of the Board of Directors and committees, administrative program policies and procedures and any other documents required by County or the State or federal government or the applicable funding source.
- d. **Reporting Cooperation:** Contractor will cooperate with County in the preparation of, and will promptly furnish any and all information required for, reports to be prepared by County and/or Contractor as may be required by the rules, regulations, or requirements of County of any other governmental entity or applicable funding source. County shall specify in detail the cooperation required.
- e. **Record Retention:** Records shall be retained by Contractor, and shall be made available for auditing and inspection, for no less than five (5) years following the provision of any services or any payment or reimbursement pursuant to this Agreement, or for a longer period as required by the applicable funding source. If Contractor enters into any County-approved agreement with any related

organization to provide services such agreement shall contain a clause to the effect that the related records of that organization shall be retained, and shall be made available for auditing and inspection, for no less than five (5) years following its provision of services pursuant to the agreement, or for a longer period as required by the applicable funding source. Contractor shall maintain records for a longer period of time, if required or specified in the Exhibits to this Agreement, if required by state, federal or County regulation or policy, or requested in writing by the County.

- f. **Funding and Auditing:** County reserves the right to issue further instructions regarding the extent of records required to be kept, the format to be used, and record retention and access requirements as is necessary to perform audits and to otherwise comply with requirements set forth by applicable funding sources.

27) **ASSURANCE OF PERFORMANCE:** If at any time County believes Contractor may not be adequately performing its obligations under this Agreement or that Contractor may fail to complete the services as required by this Agreement, County may request from Contractor prompt written assurances of performance and a written plan acceptable to County, to correct the observed deficiencies in Contractor's performance. Contractor shall provide such written assurances and written plan within ten (10) calendar days of its receipt of County's request and shall thereafter diligently commence and fully perform such written plan. Contractor acknowledges and agrees that any failure to provide such written assurances and written plan within the required time is a material breach under this Agreement.

28) **NOTICES:** All notices, requests, demands, or other communications under this Agreement shall be in writing. Notices shall be given for all purposes as follows:

Personal delivery: When personally delivered to the recipient, notices are effective on delivery.

First Class Mail: When mailed first class to the last address of the recipient known to the party giving notice, notice is effective three (3) mail delivery days after deposit in a United States Postal Service office or mailbox.

Certified Mail: When mailed certified mail, return receipt requested, notice is effective on receipt, if delivery is confirmed by a return receipt.

Overnight Delivery: When delivered by overnight delivery (Federal Express/Airborne/United Parcel Service/DHL WorldWide Express/United States Postal Service) with charges prepaid or charged to the sender's account, notice is effective on delivery, if delivery is confirmed by the delivery service.

Facsimile transmission: When sent by facsimile to the last facsimile number of the recipient known to the party giving notice, notice is effective on receipt, provided that (a) a duplicate copy of the notice is promptly given by first-class or certified mail or by overnight delivery, or (b) the receiving party delivers a written confirmation of receipt. Any notice given by facsimile shall be deemed received on the next business day if it is received after 5:00 p.m. (recipient's time) or on a non-business day.

Addresses for purpose of giving notice are as follows:

To County: COUNTY OF ALAMEDA

Attn: _____

To Contractor: _____

Attn: _____

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

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

- 29) **DESIGNATION OF AUTHORIZED PERSONNEL.** Contractor shall provide County with a list of Contractor's employees, officers, and members of Contractor's Board of Directors who have been authorized to act of behalf of Contractor in its dealings with County. An "act" on behalf of Contractor includes but is not necessarily limited to, execution of Agreement, Agreement amendments and exhibits, signing of claims, and authorization of payment on invoices. The list shall be updated as necessary to accurately reflect such authorizations.

- 30) **TIME OF ESSENCE:** Time is of the essence in respect to all provisions of this Agreement that specify a time for performance; provided, however, that the foregoing shall not be construed to limit or deprive a party of the benefits of any grace or use period allowed in this Agreement.

- 31) **TERMINATION:** Termination for Cause -- If County determines that Contractor has failed, or will fail, through any cause, to fulfill in a timely and proper manner its obligations under the Agreement, or if County determines that Contractor has violated or will violate any of the covenants, agreements, provisions, or stipulations of the Agreement, County shall

thereupon have the right to terminate the Agreement by giving written notice to Contractor of such termination and specifying the effective date of such termination, which may be the same date as the notice.

Termination Without Cause -- County shall have the right to terminate this Agreement without cause at any time upon giving at least 30 calendar days written notice prior to the effective date of such termination.

Termination By Mutual Agreement -- County and Contractor may otherwise agree in writing to terminate this Agreement.

Without prejudice to the foregoing, Contractor agrees that if prior to or subsequent to the termination or expiration of the Agreement upon any final or interim audit by County, Contractor shall have failed in any way to comply with any requirements of this Agreement, then Contractor shall pay to County forthwith whatever sums are so disclosed to be due to County (or shall, at County's election, permit County to deduct such sums from whatever amounts remain undisbursed by County to Contractor pursuant to this Agreement or from whatever remains due Contractor by County from any other contract between Contractor and County).

- 32) **CHOICE OF LAW:** This Agreement shall be governed by the laws of the State of California.
- 33) **WAIVER:** No waiver of a breach, failure of any condition, or any right or remedy contained in or granted by the provisions of this Agreement shall be effective unless it is in writing and signed by the party waiving the breach, failure, right or remedy. No waiver of any breach, failure, right or remedy shall be deemed a waiver of any other breach, failure, right or remedy, whether or not similar, nor shall any waiver constitute a continuing waiver unless the writing so specifies.
- 33) **ENTIRE AGREEMENT:** This Agreement, including all attachments, exhibits, and any other documents specifically incorporated into this Agreement, shall constitute the entire agreement between County and Contractor relating to the subject matter of this Agreement. As used herein, Agreement refers to and includes any documents incorporated herein by reference and any exhibits or attachments, including additional Exhibit As and Bs. This Agreement supersedes and merges all previous understandings, and all other agreements, written or oral, between the parties and sets forth the entire understanding of the parties regarding the subject matter thereof. The General Terms and Conditions of this Agreement supersede any previously executed versions of the General Terms and Conditions. The Agreement may not be modified except by a written document signed by both parties.
- 34) **MODIFICATION OF AGREEMENT:** This Agreement may be supplemented, amended or modified only by the mutual agreement of the parties. No supplement,

amendment or modification of this Agreement, including any additional Exhibit A(s) and B(s), shall be binding unless it is in writing and signed by authorized representatives of both parties.

- 35) **SURVIVAL:** The obligations of this Agreement, which by their nature would continue beyond the termination on expiration of the Agreement, including without limitation, the obligations regarding Indemnification, Ownership of Documents, and Conflict of Interest, shall survive termination or expiration.
- 36) **SEVERABILITY:** If a court of competent jurisdiction holds any provision of this Agreement to be illegal, unenforceable, or invalid in whole or in part for any reason, the validity and enforceability of the remaining provisions, or portions of them, will not be affected, unless an essential purpose of this Agreement would be defeated by the loss of the illegal, unenforceable, or invalid provision.
- 37) **PRIORITY OF CONTRACT TERMS:** To the fullest extent possible, all contract terms and provisions in this Agreement shall be interpreted so that they are all fully applicable. However, in the event of any conflict between any of the provisions of this Agreement including provisions contained in the Exhibits and any amendments, the more stringent and specific contract terms and provisions providing the County with the broader scope of services shall prevail.
- 38) **SIGNATORY:** By signing this agreement, signatory warrants and represents that he/she executed this Agreement in his/her authorized capacity and that by his/her signature on this Agreement, he/she or the entity upon behalf of which he/she acted, executed this Agreement

IN WITNESS WHEREOF, the parties hereto have executed this Agreement on the date referenced below.

COUNTY OF ALAMEDA

CONTRACTOR

President
Board of Supervisors

«CBO»
Contractor

Date

«Street»
Street Address

«CityStateZip»
City, State, Zip Code

Approved as to form:
Office of County Counsel

«FedID»
Federal ID No.

By _____
Signature

By _____
Authorized Signature of Contractor

Printed Name

Title

Date