

MADERA COUNTY MASTER CONTRACT NO. 009
(Purchasing Agent Agreement)

AGREEMENT

1. **PURPOSE.** COUNTY hereby engages CONTRACTOR to provide services to COUNTY as set forth in the Master Contract Cover Sheet (hereinafter "cover sheet").

2. **SERVICES AND TERM.** The services (including any program plans and necessary exhibits) and the term of services to be provided are set forth in the cover sheet.

2.01 **Deviations from Program Plans.** Unless otherwise stated on the cover page, deviations from the program plans shall be handled as follows: no deviations from the program plans shall be made by CONTRACTOR without first obtaining written authorization from COUNTY. If it is necessary for CONTRACTOR to immediately modify its performance under this Agreement in order to provide the services contemplated herein, such changes may be implemented at the CONTRACTOR's sole risk pending approval in writing by COUNTY.

3. **COMPENSATION.** The specific terms of compensation for services to be provided are set forth in the cover page to this Agreement. The following terms of compensation apply unless specifically modified in the cover page.

3.01 **Billings and Payment.** CONTRACTOR shall submit invoices to COUNTY monthly addressed to COUNTY at the address designated on the cover page. Payments by COUNTY shall be monthly, in arrears for services provided during the preceding month, within ten (10) business days after receipt, verification and approval of CONTRACTOR's invoices by COUNTY.

3.01.01 **Basis for Claims.** Claims for payment shall be based on complete and timely documentation.

3.01.02 **Certification for Services Provided.** CONTRACTOR shall certify that all claims for payment meet reimbursement criteria as defined by applicable federal or state laws and regulations.

- 3.01.03 **Audit of Invoices/Disallowances.** Each invoice is subject to audit, and COUNTY may be making payments on invoices in advance of such audits. In the event that an invoice is disapproved for payment, COUNTY may, at its sole discretion, withhold compensation or set off from other payments due to CONTRACTOR in the amount of said disapproved invoices. COUNTY shall have the right to demand of CONTRACTOR the repayment to COUNTY of any funds disbursed to CONTRACTOR under this Agreement which, in the judgment of COUNTY, were not expended in accordance with the terms of this Agreement. CONTRACTOR shall promptly refund any such funds upon demand.
- 3.01.04 **Deviations from Budget.** Unless otherwise stated on the cover sheet, deviations from program plan or budget shall be handled as follows: No deviation from the program budget will be processed for payment until a written budget modification request form is received and approved by COUNTY. All deviations from the program plans and/or the program budget must conform to federal, state, and county contracting requirements. Any questions of conformity will be clarified prior to payment of approved costs.
- 3.01.05 **Grievance Procedure.** CONTRACTOR may appeal to COUNTY a denied or reduced request for COUNTY authorization for payment for services rendered. The written appeal shall be submitted to COUNTY within thirty (30) calendar days of the postmark date of the notification of the denial of payment. Final determination of all appeals shall be made by COUNTY. All appeals of adverse decisions shall be submitted to the address specified on the cover page.

4. **LICENSES.** CONTRACTOR shall, at all times during the term of this Agreement, maintain all necessary valid licenses to practice in the State of California and shall conform to accepted professional standards in the delivery of services pursuant to this Agreement.

5. **TERMINATION.**

5.01 **Non-Allocation of Funds.** The terms of this Agreement and the services to be provided hereunder are contingent upon the approval of funds by the appropriating government agency. Should sufficient funds not be allocated, the services to be provided may be modified or this Agreement may be terminated by COUNTY giving CONTRACTOR thirty (30) days advance written notice.

5.02 **Breach of Contract.**

5.02.01 **Suspension/Termination.** COUNTY may immediately suspend or terminate this Agreement, in whole or in part, where, in the determination of COUNTY, there is:

- (a) An illegal or improper use of funds;
- (b) A failure by CONTRACTOR to maintain all necessary licenses in the State of California in good standing;
- (c) A failure to comply with any term of the Agreement;
- (d) A substantially incorrect or incomplete report submitted to COUNTY.

5.02.02 **Waiver of Breach.** In no event shall any payment by COUNTY constitute a waiver by COUNTY of any breach of this Agreement or any default which may then exist on the part of CONTRACTOR. Neither shall such payment impair or prejudice any remedy available to COUNTY with respect to the breach or default.

5.03 **Without Cause.** Under circumstances other than those set forth above, this Agreement may be terminated by either party upon the giving of sixty (60) days advance written notice of an intention to terminate.

6. **PERFORMANCE OF WORK.** CONTRACTOR shall be solely liable for performance of the requested services and shall receive no assistance, direction or control from COUNTY. However, COUNTY reserves the right to administer this Agreement so as to verify that CONTRACTOR is performing its obligations in accordance with the terms and conditions of this Agreement.

7. **RECORDS, REPORTING, AUDITS.**

7.01 **Records.** CONTRACTOR agrees to maintain complete and accurate records with respect to the services rendered and the costs incurred under the Agreement. All such records shall be prepared in accordance with generally accepted accounting procedures, shall be clearly identified, and shall be kept readily accessible. Records shall be maintained in accordance with state and federal regulations and as required by COUNTY.

7.02 **Reports.** CONTRACTOR agrees to complete and submit all forms and reports as required by COUNTY.

7.03 **Audits and Inspections.** CONTRACTOR shall, at any time during normal business hours and as often as deemed necessary, make available to COUNTY, the Controller General of the United States, and other authorized federal and state agencies, or their duly authorized representatives, for examination all of his records and data with respect to the matters covered by this Agreement. Authorized agencies shall maintain the confidentiality of such records in accordance with applicable laws and regulations. CONTRACTOR shall make such records available for audit and inspection for a period of five (5) years from the date of final payment under this Agreement.

8. **NON-DISCRIMINATION.** During the performance of this Agreement, CONTRACTOR shall not discriminate against any employee or applicant for employment on any basis prohibited by state or federal law including race, religion, color, national origin, creed, sex, age, or disability.

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9. **INSURANCE**. At all times during this Agreement, CONTRACTOR shall obtain and maintain insurance policies as specified in the cover sheet that are issued by an insurer that is approved by COUNTY Risk Manager. If insurance is required, all specified insurance policies shall be attached to the cover sheet prior to execution of the Agreement. The required insurance policies shall not be cancelled without at least thirty (30) days advance written notice to COUNTY. All required policies are to contain, or be endorsed to contain, the following provisions:

- 9.01 The coverage is primary with respect to COUNTY and its agents, officers, and employees.
- 9.02 The coverage shall contain no special limitations on the scope of protection afforded to COUNTY, its agents, officers, and employees.
- 9.03 Any insurance or self-insurance maintained by COUNTY, its agents, officers, and employees shall be in excess of CONTRACTOR's insurance and shall not contribute with it.
- 9.04 Any failure to comply with reporting provisions of the policies shall not affect coverage provided to COUNTY, its agents, officers and employees.
- 9.05 Coverage shall state that CONTRACTOR's insurance shall apply separately to each insured against whom the claim is made or suit is brought, except with respect to the limits of the insurer's liability.

10. **INDEMNIFICATION/HOLD HARMLESS**. Notwithstanding its obtaining insurance as required above, CONTRACTOR shall save, keep, and hold harmless, defend and indemnify COUNTY, its agents, officers and employees from and against any liability, including but not limited to demands, claims, actions, fees, costs, and expenses (including attorney and expert witness fees), to the extent arising from or connected with CONTRACTOR's negligence, recklessness or willful misconduct arising from and/or relating to this Agreement.

11. **ASSIGNMENT**. Neither party shall assign this Agreement or any of the rights or duties herein without prior written consent of the other party. Assignment without prior written consent shall result in automatic termination of this Agreement.

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12. **INTEGRATION AND AMENDMENT.** This Agreement constitutes the entire agreement between the parties and supersedes all prior contracts, agreements, and negotiations, whether written or oral. This Agreement shall be amended only by written consent of both parties.

13. **SEGREGATION.** In the event that one or more provisions of this Agreement are ruled illegal or unenforceable by a court of competent jurisdiction, the remaining provisions of this Agreement shall continue in full force and effect.

14. **COMPLIANCE WITH LAW.** CONTRACTOR shall comply with all applicable federal, state, and local laws, rules, regulations, and ordinances, and all provisions required thereby to be included in this Agreement are hereby incorporated herein by reference. CONTRACTOR shall indemnify and hold harmless COUNTY from and against any and all liability, damages, costs, and expenses, including, but not limited to, defense costs and attorneys' fees, arising from or related to any violation on the part of CONTRACTOR or its employees, agents, officers, or subcontractors of any such laws, rules, regulations, or ordinances.

15. **CONFIDENTIALITY OF INFORMATION.**

15.01 **Protection of Confidential Information.** Notwithstanding any other provision of this Agreement, names identifying numbers, symbols, or other identifying particulars of persons receiving public social services, mental health services, and substance abuse treatment services are confidential and are to be protected from unauthorized disclosure in accordance with applicable federal and state law and regulation. For the purpose of this Agreement, all information, records, data and data elements collected and maintained for the operation of this Agreement and pertaining to recipients of services shall be protected by CONTRACTOR from unauthorized disclosure.

15.02 **Use of Confidential Information.** With respect to any identifiable recipient information obtained by CONTRACTOR under this Agreement, CONTRACTOR shall:

15.02.01 not use any such information for any purpose other than carrying out the express terms of this Agreement;

- 15.02.02 promptly transmit to COUNTY all requests for disclosure of such information;
- 15.02.03 not disclose, except as otherwise specifically permitted by this Agreement, any such information to any party without prior written authorization by COUNTY specifying that the information may be released; and
- 15.02.04 at the discretion of COUNTY, return all such information to COUNTY or maintain such information according to written procedures obtained from COUNTY, at the expiration or termination of this Agreement.

16. **COMPLIANCE WITH HIPAA.** If otherwise required and marked as such on the cover sheet, CONTRACTOR shall comply with the provisions of the Health Insurance Portability and Accountability Act of 1996 (HIPAA) for maintenance and transmission of health information that identifies individual clients. Information which is protected by HIPAA includes all medical records and other individually identifiable health information held or disclosed in any form, whether communicated electronically, on paper, or orally. CONTRACTOR will employ appropriate safeguards to prevent the use or disclosure of any information which is protected by HIPAA in any manner not set forth under this Agreement or for purposes other than treatment, consultation, referral or payment. It is understood by CONTRACTOR and COUNTY that any part of the privacy or security regulations contained in HIPAA may, during the term of this Agreement, be modified by Congress or by the United States Department of Health and Human Services or may be interpreted by a court in a manner impacting compliance. Should such an event occur, the HIPAA privacy and security regulations as modified or interpreted shall be incorporated into this Agreement and shall become the standard for compliance with the regulations. The provisions of this section are self-executing upon change(s) to the HIPAA privacy or security regulations by any event referenced above.

17. **PUBLIC RECORDS ACT.** Any documents submitted by CONTRACTOR, all information obtained in connection with COUNTY's right to audit and inspect CONTRACTOR's documents, books, and accounting records, and those documents which were required to be submitted in response to the solicitation process for this Agreement become the exclusive property of COUNTY and shall be regarded as public

records under the California Public Records Act, Government Code section 6250 et seq. (hereinafter "CPRA"). Exceptions to disclosure will be those provided in the CPRA and which are marked "trade secret," "confidential," or "proprietary." COUNTY shall not in any way be liable or responsible for the disclosure of any such records including, without limitation, those so marked, if disclosure is required by law, or by an order issued by a court of competent jurisdiction. In the event COUNTY is required to defend an action on a CPRA request for any of the aforementioned documents, information, books, records, and/or contents of a proposal marked "trade secret," "confidential," or "proprietary," CONTRACTOR agrees to defend and indemnify COUNTY from all costs and expenses, including reasonable attorney's fees, in action or liability arising under the CPRA.

18. **COMPLIANCE WITH MEDI-CAL DATA PRIVACY AND SECURITY.**

Personally Identifiable Information, or "PII" is the information which can be used, alone or in conjunction with any other information, to identify a specific individual. PII includes any information that can be used to search for or identify individuals, or can be used to access their files. COUNTY requires that CONTRACTOR and any agents, including contractors and subcontractors, which assist the COUNTY Department in its Medi-Cal functions and to which the COUNTY Department provides either direct or tangential access to PII agree to the same privacy and security safeguards as are contained in the Agreement between the Department of Health Care Services and the COUNTY, known as Madera County Contract Number 8728-C-2008 (available on-line at the County of Madera website). A true and correct copy of the required confidentiality statement shall be attached to the cover page. The cover page to this Agreement shall specify whether the provisions of this section shall apply.

19. **ENTIRE AGREEMENT.** These Standard Contractual Clauses and Master Contract Cover Sheet, and any exhibits specified in the Master Contract Cover Sheet and attached thereto and incorporated by reference, shall constitute the entire agreement between CONTRACTOR and COUNTY with respect to the subject matter hereof and supersedes in its entirety all previous negotiations, proposals, commitments, writings, advertisements, publications, and understandings of any nature whatsoever unless expressly included in this Agreement. No other agreement, oral or otherwise,

regarding the subject matter of this Agreement shall be deemed to exist or to bind either of the parties hereto.

20. **GOVERNING LAW AND VENUE.** This Agreement shall be governed by and interpreted under the laws of the State of California. The parties agree that this Agreement was executed in and shall be performed in Madera County, California, and that all disputes regarding this Agreement shall be resolved in Madera County Superior Court. CONTRACTOR waives the removal provisions of California Code of Civil Procedure section 394.

21. **ATTORNEY'S FEES.** In the event of a dispute between the parties, the prevailing party shall be entitled to reasonable attorney's fees from the losing party.

22. **TIME OF THE ESSENCE.** Time is of the essence to this Agreement.

23. **NOTICES.** Except as may be otherwise required by law, any notice to be given shall be written and shall be either personally delivered or sent by first-class mail, postage prepaid and addressed as follows:

COUNTY

John Sears, Purchasing Agent
County of Madera
200 West 4th Street
Madera, CA 93637

CONTRACTOR

(As Specified on the Cover Page
incorporating this Master Agreement)

With copy to

Tanna G. Boyd, Chief Clerk
Madera County Board of Supervisors
200 West 4th Street
Madera, CA 93637

Notice delivered personally is deemed to be received upon receipt. Notice sent by first-class mail shall be deemed received on the fourth day after the date of mailing. Either party may change the above address by giving written notice pursuant to this paragraph.

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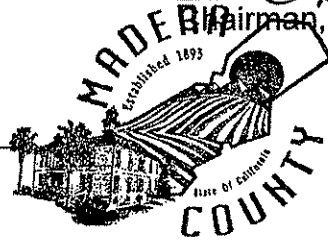
IN WITNESS WHEREOF, the parties have executed this Agreement effective on the day and year first above-written.

COUNTY OF MADERA

Ma. P. De...
Chairman, Board of Supervisors

ATTEST:

Annunzio Boyd
Clerk, Board of Supervisors



06/16/09

Approved as to Form:
RISK MANAGEMENT

By: *D. M. ...*

Approved as to Legal Form:
COUNTY COUNSEL

By: *Wendy ...*

ACCOUNT NUMBER(S)

