

# **REQUEST FOR PROPOSAL**



## **LIABILITY CLAIMS ADJUSTING SERVICES**

Department of Personnel Services

Risk Management Office

**PROPOSAL DUE DATE:**

**Friday, April 24, 2015 – 3:00 p.m.**

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## TIMETABLE

Activity	Date
RFP distribution to Prospective Proposers .....	April 3, 2015
Final deadline for proposer questions .....	April 10, 2015
Response to proposer questions .....	by April 17, 2015
<b>Final Date and Time to Submit Proposals .....</b>	<b>April 24, 2015 - 3:00 p.m.</b>
Evaluation of Written Proposals .....	by May 1, 2015
Oral Interviews (if necessary) .....	by May 8, 2015
Notification to proposers.....	by May 15, 2015
Prepare draft contract .....	by May 22, 2015
Panel Recommendation to Board of Supervisors .....	by May 26, 2015
Board of Supervisors Approval .....	June 16, 2015
Execute Contract.....	July 1, 2015

# COUNTY OF SACRAMENTO - REQUEST FOR PROPOSAL

## Liability Claims Adjusting Services

### I. INVITATION

The County of Sacramento is inviting the submission of written proposals from experienced firms to provide Liability Claims Adjusting Services for the County and its added agencies and organizations in the administration of its Liability Claims Program. The firm will be required to manage various cost elements, including claims administration, claims payments, and the prosecution and defense of litigation relating to claims.

The firm selected will be requested to enter into a contract with the County for a three-year period, commencing on July 1, 2015. The contract may be renewed for an additional three years at the County's discretion, based upon this RFP process. The County reserves the right to retain additional firms in the future if deemed in the best interests of the County.

### II. BACKGROUND

The County has approximately 11,600 employees, with an estimated payroll of \$1 billion. There are 32 different departments that provide a variety of services to Sacramento County's citizens. The functions which these employees perform include water and waste water plant operation and maintenance, equipment operation and maintenance, motor vehicle maintenance and repair, janitorial services, animal care and regulation services, refuse collection, office/clerical, professional, medical, administrative, and managerial services, law enforcement and detention facility operation, building, restaurant, and other facility and other field operations, airports, parks, road maintenance and repair and various social services. In addition, the Risk Management office provides risk and loss control services for several separate but allied agencies and districts. These include a financial institution, sewer and sanitation districts, flood and water agencies, and several other smaller districts and agencies.

The County is self-insured for its Liability Claims Program and has contracted with a third party administrator since 1973. The County currently has in force a \$25 million excess insurance policy with a self-insured retention of \$2 million. The Risk Management Office oversees the administration of all liability and property claims.

In fiscal year 2012/2013, the County received 654 new claims and paid a total of \$10,661,026. In fiscal year 2013/2014, the County received 543 new claims and paid a

total of \$10,347,585. It is anticipated that the County will spend \$10,000,000 in fiscal year 2014/2015.

Presently, the Risk Management Office staff consists of a manager, a liability and property insurance supervisor, three liability and property insurance analysts, and one clerical support position.

### **III. SCOPE OF SERVICES**

The firm selected will be required to perform the necessary scope of services which includes, but is not limited to the following:

#### **A. Program Administration**

1. Claims against the County and its related agencies and districts, physical damage claims to property owned by the County and its related agencies and districts, and subrogation claims by the County and its related agencies and districts against others will be forwarded to the Contractor for review and handling at the discretion of the Risk and Loss Control Manager.
2. For all claims forwarded to the Contractor, all required actions such as denials, rejection of claims, notification of insurance carriers, etc., will be completed by, and be the responsibility of the Contractor.
3. Review with the County's, related agencies or districts representatives, program progress, identification of problem areas and recommended solutions thereto, and provide consultative services and reports, including trends reports, as necessary to assure success of the Liability Claims Program.
4. Assist in the development of policies and procedures to ensure that the Liability Claims Program is operated in a manner that meets the objectives of the County and its related agencies and districts.

#### **B. Claims Administration**

1. Provide staff, professional and clerical, as required to administer the Claims Program. All staff assigned to provide direct service to the County and its related agencies and districts shall be subject to the approval of the County's Risk and Loss Control Manager and be available twenty-four hours a day, seven days a week for the life of this contract.
2. Provide clerical assistance when requested by Risk and Loss Control Manager.

3. Review, investigate and process all claims and subrogation actions assigned to Contractor.
4. Determine the County's or its related agencies' and districts' liability for claims brought against the County or its related agencies and districts as a result of occurrences covered by the Liability Claims Program.
5. Obtain expert opinion and evaluate the nature, extent, value, and duration of injuries and property damage and report findings to the County or its related agencies and districts.
6. Maintain a claim file on each potential or actual claim or subrogation action reported to Contractor. Be responsible for the maintenance and storage of all materials related to the claims and subrogation process.
7. Process any such claim or potential claim for settlement or trial in accordance with instructions and policies of the County and its related agencies and districts.
8. Report claims to Insurance carriers as required.
9. Act as liaison between insurance carriers and the County or its related agencies and districts on matters affecting the adjustment of claims.
10. Report claims to Medicare complying with all Medicare Reporting requirements under section 111 of the Medicare, Medicaid, and SCHIP Extension Act of 2007 on all claims subject to the Act.
11. Maintain records on all claims and subrogation actions and notify the County or its related agencies and districts when the County or its related agencies or districts are entitled to reimbursements for loss in excess of retention or deductible.
12. Provide the County and its related agencies and districts with access to the County's and its related agencies' and districts' claim and subrogation files and data pertaining in any way to the Liability Claims Program referred to herein and administered by Contractor. Any system and/or file storage providing such information shall be secure and shall contain the applications necessary to prohibit access by any other third party to such information. Contractor will be responsible for any breeches thereof.
13. Attend meetings at the request of the County and its related agencies and districts.

14. Assist in special projects as requested by the Risk and Loss Control Manager.
15. Furnish, at Contractor's expense, computers (including all necessary training) and any and all other necessary equipment, in order to utilize the County's Liability Data Management Program. In addition, contractor will furnish to its employees, at its expense, all necessary equipment and supplies necessary to fulfill its obligations contained in this RFP.

**C. Investigative Services**

1. Receipt and examination of all reports of accidents, incidents, claims, lawsuits or cases which are or may be the subject of claims.
2. The investigation of accidents, incidents, claims, lawsuits or cases where the Contractor's initial examination indicates such action is warranted, or as directed by the County Counsel or Risk and Loss Control Manager. Such investigations include, but are not limited to, on-site investigation, photographs, interviewing of witnesses, determination of losses, and other such investigative services necessary to determine any losses to the County or its related agencies and districts. Contractor shall retain private experts and investigative services, as required and shall be vested with discretion to determine and approve reasonable fees and other costs associated therewith.
3. Attempting, within 48 hours of knowledge of an occurrence, claim or lawsuit by the Contractor, to contact by telephone all unrepresented claimants, ~~or~~ potential claimants or, if they are represented, their attorneys.

**D. Information**

1. Keep informed on changes or proposed changes in statutes, rules and regulations, and case law affecting the County's and its related agencies and districts responsibility under the Liability Claims Program defined herein and administered by Contractor.
2. Provide information and guidance to the County and its related agencies and districts regarding all claims and any inquiries on specified claims in accordance with policies of the County and its related agencies and districts.

**E. Notification**

The Contractor shall, on behalf of the County and its related agencies and districts, perform all duties imposed upon the County and its related agencies and districts by their insurance policies in which the County or its related agencies and districts

are a named insured.

1. Contractor shall give notice of anticipated or pending claims or litigation in compliance with policy terms.
2. In the event the Contractor believes it is unable to fulfill the County's or its related agencies and districts affirmative duties under a policy, Contractor shall immediately serve written notice thereof on the Risk and Loss Control Manager, including a specification of the reasons therefore.
3. Contractor shall conduct all negotiations and other communications with respect to settlements which penetrate excess carrier limits, unless otherwise directed by the County or its related agencies and districts through the Risk and Loss Control Manager.
4. Contractor shall also enforce, on behalf of the County and its related agencies and districts, all contractual commitments with their insurance carriers to pay amounts in excess of the County's or its related agencies and districts retentions and deductibles and covered by their insurance policies.

#### **F. Reporting Requirements**

The Contractor will ensure that a confidential Authority Request, addressed to the appropriate settlement authority (per the Liability Claims Program Settlement Authority established by Board of Supervisors Resolution #2000-0927 dated August 1, 2000, and amended with Resolution #2006-0693 dated June 6, 2006, is provided as soon as is practicable when each claim, in excess of the Contractor's authority, is tentatively settled. This request will be provided to the Risk and Loss Control Office and will contain the following information:

1. The date and description of the incident causing injury, and/or damage for which the County its related agencies or districts are responsible;
2. The alleged negligent acts of the County its related agencies or districts;
3. The reasons for the recommended settlement;
4. The recommended settlement contribution on behalf of the County or its related agencies and districts;
5. The amount of contribution by each named defendant toward the total settlement package, if applicable; and,



6. For all County and some agency or district claim settlements in excess of the Risk and Loss Control Manager's authority, a Corrective Action Memo, completed by the affected department or agency, outlining the steps taken to avoid a similar occurrence.

**G. Imprest Cash Fund**

Contractor shall pay authorized claims costs through the established imprest account provided by the County. The amount is set in agreement by the County's Finance Department, Contractor, and the Director.

1. Contractor shall maintain a daily checking account balance of the imprest cash fund and shall not generate checks if funding is not available. However, if Contractor generates checks without sufficient funding, Contractor shall pay County any and all associated bank charges.
2. Generated checks shall be supported by documentation filed with the County containing such detailed information as is prescribed by the County.
3. Contractor shall notify County, in writing and within one business day, of knowledge of any overpayment or duplication of payment.
4. Contractor shall collect any overpayments or duplication of payments from other parties paid in error by Contractor and shall return funds to the County within one business day of receipt. All reimbursements shall be payable to the County of Sacramento or shall be endorsed by the Contractor payable to the County of Sacramento. Contractor shall reimburse County for any funds Contractor is unable to obtain repayment for within 90 days of knowledge of payment error.
5. Contractor shall request replenishment to the imprest cash fund on a monthly basis and may request interim replenishments due to insufficient funds. The request shall include a check register, copies of all checks, and a cover letter summarizing the monetary replenishment. The County must receive the monthly request no later than the 5<sup>th</sup> of the following month. The County will advise Contractor when the deposit is completed.
6. Contractor shall receive a monthly reconciliation statement from the County providing information and/or requests for account adjustments as determined by the reconciliation.

**H. Business Office**

Contractor will at all times during the term of this contract, maintain a business office within the Sacramento County boundaries, and provide the claims administration services required by this Contract at that office through claims adjusters who are assigned to that office. Such office and its location shall conform to standards requires by the Americans with Disabilities Act.

**I. Subrogation**

The Board passed resolution #99-1543 authorizing the settlement of property and casualty subrogation claims.

1. Contractor shall initiate in the name and in behalf of the County and its related agencies and districts such subrogation actions as may be referred to the Contractor from time to time by the Risk and Loss Control Manager.
2. Contractor shall retain private independent counsel, experts, and investigative services, and shall be vested with discretion to determine and approve reasonable legal fees and other costs associated therewith. Prosecution of such subrogation actions rests with the retained legal counsel.
3. Contractor or any legal counsel retained by it shall not be authorized to commence in the name or in behalf of the County or any officer or employee thereof a legal action, beyond the level of small claims court for the recovery of damages, without the express advance approval by the Board of Supervisors. The same approval requirements shall apply, as necessary, to the Boards of the County's related agencies and districts.

**J. Claims Runoff**

Contractor, upon expiration or early termination of this Contract, agrees to assist with the orderly transition of open claims files to the County or its related agencies or districts or to any other party designated by the County. Contractor shall be compensated, subject to the terms and conditions as set forth herein, for all claims adjusting services performed prior to such expiration or termination.

**K. Annual Review**

Contractor shall annually prepare, file, and present to the Board of Supervisors, under the direction and control of the County Counsel, a public written report summarizing the claims experience for the preceding calendar year.

**L. Legal Services Administration**

Contractor will select, retain, prescribe the rate of compensation for, assign files to, and supervise all law firms required to defend personal injury and property damage claims. Contractor may be required to utilize the Request for Proposal (RFP) process, as prescribed by the County Counsel, for retaining legal defense attorney firms. Services of any retained law firm may be terminated by County Counsel, the Board of Supervisors, or the Contractor.

**IV. MINIMUM QUALIFICATIONS**

Any firm submitting a proposal must meet the following minimum qualifications:

1. The firm must have been in business handling liability claims for a minimum of five (5) years at the time the proposal is submitted.
2. The firm must hold a current License of Insurance Claims Adjuster issued by the State of California Department of Insurance. The County reserves the right to consider qualified administrators who possess equivalent certificates.
3. Each assigned claims adjuster must have a minimum of (5) years' experience adjusting property and casualty claims with a minimum of three (3) years of public sector claims handling.
4. The firm must currently have an office within the Sacramento County boundaries, or an office within 35 miles, driving distance, of the County Administration building located at 700 H Street, Sacramento, California.
5. Each assigned claims adjuster within the firm providing services to the County must regularly work out of the office located within the Sacramento County boundaries, or an office located 35 miles, driving distance, of the County Administration building located at 799 H Street, Sacramento, California.
6. Firm must be approved by CSAC-EIA as most Insurance policies are provided by them.
7. The firm will be required to meet the requirements outlined in Exhibits A & B.

## **V. PROPOSAL REQUIREMENTS**

Proposals must contain detailed response to all of the following questions:

- A. Provide address of your current office within the Sacramento County boundaries, or within 35 miles, driving distance, of the County Administration Building located at 700 H Street, Sacramento, California.
- B. Describe your firm's history, specifically noting how long the firm has been in business and detailing the five (5) years of minimum experience. Describe the firm's organizational structure. Include the number of claims managers, claims adjusters, and clerical personnel employed by the firm's office located within the Sacramento County boundaries, or within 35 miles, driving distance, of the County Administration Building located at 700 H Street, Sacramento, California.
- C. Identify the claims adjusters and supervisors, who would be assigned to this contract. Attach resumes detailing their experience and length of time with firm, specifically noting time and experience with public sector claims.
- D. Describe the firm's experience handling public sector claims.
- E. Describe the firm's experience with the County's Claims System, Nav Risk.
- F. Describe the firm's philosophy and approach to providing comprehensive claim management services.
- G. Describe the firm's experience in hiring and supervising law firms.
- H. Describe the firm's experience with the Mandatory Medicare Reporting and document if the firm is currently reporting for any other entity.
- I. Document if your firm is approved by CSAC-EIA.
- J. Provide a list of three (3) current references (public entities) with names and phone numbers of individual to be contacted for whom similar projects have been performed. Additionally provide a list of including the name, contact and phone number for all clients who have discontinued services with your firm over the last 36 months, and note the reason the client left your firm.
- K. Describe your experience in handling imprest or trust accounts, and your reconciliation process.
- L. Describe your normal claim review process.

- M. Describe what ongoing training and/or professional development you provide for your staff.
- N. Provide a quote on an hourly fee basis for the claims adjusting services. Your hourly rate must include the adjustment, settlement, investigation, and all other services listed in the Scope of Services. All support staff/clerical assistance is considered part of the claims adjusting services and should be included in your hourly fee basis. Any separate price quotes will not be taken into consideration with the exception of mileage, photo expenses, copies, and official reports.

Attorneys' fees and other allocated expenses will be the responsibility of the County. These costs should not be included in your hourly fees.

- O. Provide a quote on an hourly fee basis for clerical assistance when requested by the County Risk and Loss Control Manager.
- P. Document your ability to comply with the Insurance Requirements, Exhibit A
- Q. Document your ability to comply with the HIPPA Business Associate Provisions, Exhibit B.

## **VI. PROPOSAL CONDITIONS**

All proposals must be clearly identified and include a "Table of Contents" utilizing the Proposal Requirements sections. A proposal may be rejected if it is conditional or incomplete. Minor irregularities or informalities in any response which are immaterial or inconsequential in nature, and are neither affected by law nor a substantial variance with RFP conditions, may be waived at our discretion whenever it is determined to be in the County's best interest. Firms submitting proposals agree to the following conditions:

- A. Late proposals will not be accepted. Proposals must be received and stamped into our office by 3:00 p.m. on Friday, April 24, 2015. Postmarks will not be considered.
- B. All costs incurred by a proposer in preparing or submitting their proposal is the proposer's sole responsibility. The County will not reimburse any proposer for any costs incurred.
- C. The County of Sacramento reserves the right to reject any or all proposals or elect not to award any contract as a result of this competitive procurement process.
- D. The County of Sacramento reserves the right to request additional written or oral information from proposers in order to obtain clarification of their responses.

- E. Submittal of a response authorizes the Count to investigate the background and current performance of your firm.
- F. The County will treat all information submitted in a proposal as available for public inspections once a firm has been approved by the Board of Supervisors. If you believe that you have a legally justifiable basis under the California Public Records Act (Government Code Section 6250 et seq.) for protecting proprietary information contained within your proposal, you must identify any such information, together with the legal basis for your claim of confidentiality, in your proposal. In order for the County to assert the confidentiality of any such information on your behalf, you must request, execute and submit a County of Sacramento-prepared written agreement to defend and indemnify the County for any liability, costs and expenses incurred in asserting such confidentiality as part of your proposal. The final determination as to whether or not the County will assert your claim of confidentiality on your behalf shall be at the sole discretion of the County. This written agreement may be obtained by contacting Steven Page, Risk Management Office, 9616 Micron Ave., Suite 600, Sacramento, CA 95827, telephone (916) 876-5020.
- G. This is a non-exclusive agreement. Other providers may be added in the future, if appropriate.

#### **VII. RFP CLARIFICATION**

Questions regarding this RFP must be submitted in writing and be received at this office no later than 3:00 p.m. on Friday, April 10, 2015. Questions received after this deadline will not receive a response. Answers citing the collective questions, but not identifying the proposer, will be distributed simultaneously by mail to all known prospective proposers by Friday, April 17, 2015.

Questions may be submitted to:

Steven Page  
Risk & Loss Control Manager  
County of Sacramento

You may fax the questions to (916) 876-5156 or email the questions to [pages@saccounty.net](mailto:pages@saccounty.net). Proposer should confirm receipt of questions by calling Steven Page at (916) 876-5020.

#### **VIII. RFP AMENDMENT**

If it becomes evident that this RFP must be amended, we will issue a formal written amendment to all known prospective proposers.

**IX. SUBMISSION DEADLINE**

Eight (8) copies of the proposal must be received by **3:00 p.m., Pacific Standard Time**, on **Friday, April 24, 2015**, at the following address:

Risk Management Office  
County of Sacramento  
9616 Micron Ave., Suite 600  
Sacramento, CA 95827  
Attention: Steven Page

For personal delivery please contact Steven Page at (916) 876-5020 to make arrangements.

**X. SELECTION OF CONTRACTOR**

All proposals that conform to the requirements as outlined in this RFP will be evaluated by a selection panel. Selected firms will then be interviewed by the selection panel by May 8, 2015. The selection panel may interview less than the total number from among those firms submitting proposals and meeting the minimum qualifications. Firms may bring four (4) representatives to the interview process. Those representatives should include the potential claims adjusters, claims supervisor, account representative, and other. The sole purpose of the evaluation process is to determine from among the responses received which firm is best suited to meet the County's needs. Any final analysis or weighted point score does not imply that one proposer is superior to another, but simply that in the selection panel's judgment, the contractor selected appears to offer the best overall solution for our current and anticipated needs. The selection panel will formulate a recommendation to the Board of Supervisors. The Board of Supervisors will make a final determination relating to the selection. The decision of the Board is final. After final approval of the Board is granted, the County will enter into agreement with the selected contractor.

**XI. AGREEMENT REQUIREMENTS**

The selected firm will be required to agree to standard County contract stipulations which include but are not limited to the following provisions: Compliance with Laws; Licenses and Permits; Status of Contractor; Contractor identification; Compliance with Child, Family and Spousal Support Reporting Obligations; Conflict of Interest; Nondiscrimination in Employment; Service, Benefits and Facilities; Indemnification; Information Technology Assurances; Legal Advice and Training Info; Legal Services Administration; Termination; HIPPA Business Associate; et al.

## Exhibit A

### COUNTY OF SACRAMENTO INSURANCE REQUIREMENTS FOR CONTRACTORS

Without limiting contractor's indemnification, Contractor shall procure and maintain for the duration of the Agreement, insurance against claims for injuries to persons or damages to property which may arise from or in connection with the performance of the Agreement by the Contractor, its agents, representatives or employees. County shall retain the right at any time to review the coverage, form, and amount of the insurance required hereby. If in the opinion of the County Risk Manager, insurance provisions in these requirements do not provide adequate protection for County and for members of the public, County may require Contractor to obtain insurance sufficient in coverage, form and amount to provide adequate protection. County's requirements shall be reasonable but shall be imposed to assure protection from and against the kind and extent of risks that exist at the time a change in insurance is required.

#### I. VERIFICATION OF COVERAGE

Contractor shall furnish the County with certificates evidencing coverage required below. **Copies of required endorsements must be attached to provided certificates.** The County Risk Manager may approve self-insurance programs in lieu of required policies of insurance if, in the opinion of the Risk Manager, the interests of the County and the general public are adequately protected. All certificates, evidences of self-insurance, and additional insured endorsements are to be received and approved by the County before performance commences. The County reserves the right to require that Contractor provide complete, certified copies of any policy of insurance offered in compliance with these specifications.

#### II. MINIMUM SCOPE OF INSURANCE

Coverage shall be at least as broad as:

- A. GENERAL LIABILITY: Insurance Services Office's Commercial General Liability occurrence coverage form CG 0001. Including, but not limited to Premises/Operations, Products/Completed Operations, Contractual, and Personal & Advertising Injury, without additional exclusions or limitations, unless approved by the County Risk Manager.
- B. AUTOMOBILE LIABILITY: Insurance Services Office's Commercial Automobile Liability coverage form CA 0001.



1. Commercial Automobile Liability: auto coverage symbol "1" (any auto) for corporate/business owned vehicles. If there are no owned or leased vehicles, symbols 8 and 9 for non-owned and hired autos shall apply.
  2. Personal Lines automobile insurance shall apply if vehicles are individually owned.
- C. WORKERS' COMPENSATION: Statutory requirements of the State of California and Employer's Liability Insurance.
- D. PROFESSIONAL LIABILITY *or* Errors and Omissions Liability, including Identity Theft and Privacy Injury Liability coverage, appropriate to the Contractor's profession.
- E. UMBRELLA or Excess Liability policies are acceptable where the need for higher liability limits is noted in the Minimum Limits of Insurance and shall provide liability coverages that at least follow form over the underlying insurance requirements where necessary for Commercial General Liability, Commercial Automobile Liability, Employers' Liability, and any other liability coverage (other than Professional Liability) designated under the Minimum Scope of Insurance.

### III. **MINIMUM LIMITS OF INSURANCE**

CONTRACTOR shall maintain limits no less than:

- A. General Liability shall be on an Occurrence basis (as opposed to Claims Made basis). Minimum limits and structure shall be:
- |                             |             |
|-----------------------------|-------------|
| General Aggregate:          | \$2,000,000 |
| Products Comp/Op Aggregate: | \$2,000,000 |
| Personal & Adv. Injury:     | \$1,000,000 |
| Each Occurrence:            | \$2,000,000 |
| Fire Damage:                | \$50,000    |
- B. AUTOMOBILE LIABILITY:
1. Commercial Automobile Liability for Corporate/business owned vehicles including non-owned and hired, \$1,000,000 Combined Single Limit.
  2. Personal Lines Automobile Liability for Individually owned vehicles, \$250,000 per person, \$500,000 each accident, \$100,000 property damage.
- C. WORKERS' COMPENSATION: Statutory.

- D. EMPLOYER'S LIABILITY: \$1,000,000 per accident for bodily injury or disease.
- E. PROFESSIONAL LIABILITY OR ERRORS AND OMISSIONS LIABILITY WITH IDENTITY THEFT AND PRIVACY INJURY LIABILITY: \$2,000,000 per claim and aggregate.

#### **IV. DEDUCTIBLES AND SELF-INSURED RETENTION**

Any deductibles or self-insured retention that apply to any insurance required by this Agreement must be declared and approved by the County.

#### **V. CLAIMS MADE PROFESSIONAL LIABILITY INSURANCE**

If professional liability coverage is written on a Claims Made form:

- A. The "Retro Date" must be shown, and must be on or before the date of the Agreement or the beginning of Agreement performance by Contractor.
- B. Insurance must be maintained and evidence of insurance must be provided for at least one (1) year after completion of the Agreement.
- C. If coverage is cancelled or non-renewed, and not replaced with another claims made policy form with a "Retro Date" prior to the contract effective date, the Contractor must purchase "extended reporting" coverage for a minimum of one (1) year after completion of the Agreement.

#### **VI. OTHER INSURANCE PROVISIONS**

The insurance policies required in this Agreement are to contain, or be endorsed to contain, as applicable, the following provision:

- A. All Policies:
  - 1. ACCEPTABILITY OF INSURERS: Insurance is to be placed with insurers with a current A.M. Best's rating of no less than A-VII. The County Risk Manager may waive or alter this requirement, or accept self-insurance in lieu of any required policy of insurance if, in the opinion of the Risk Manager, the interests of the County and the general public are adequately protected.
  - 2. MAINTENANCE OF INSURANCE COVERAGE: The Contractor shall maintain all insurance coverages and limits in place at all times and provide the County with evidence of each policy's renewal within ten (10) days after its anniversary date.

Contractor is required by this Agreement to immediately notify County if they receive a communication from their insurance carrier or agent that any required insurance is to be canceled, non-renewed, reduced in scope or limits or otherwise materially changed. Contractor shall provide evidence that such cancelled or non-renewed or otherwise materially changed insurance has been replaced or its cancellation notice withdrawn without any interruption in coverage, scope or limits. Failure to maintain required insurance in force shall be considered a material breach of the Agreement.

**VII. COMMERCIAL GENERAL LIABILITY AND/OR COMMERCIAL AUTOMOBILE LIABILITY**

- A. **ADDITIONAL INSURED STATUS:** The County, its officers, directors, officials, employees, and volunteers are to be endorsed as additional insureds as respects: liability arising out of activities performed by or on behalf of the Contractor; products and completed operations of the Contractor; premises owned, occupied or used by the Contractor; or commercially insured automobiles owned, leased, hired or borrowed by the Contractor. The coverage shall contain no endorsed limitations on the scope of protection afforded to the County, its officers, directors, officials, employees, or volunteers.
- B. **PRIMARY INSURANCE:** For any claims related to this Agreement, the Contractor's insurance coverage shall be endorsed to be primary insurance as respects the COUNTY, its officers, officials, employees and volunteers. Any insurance or self-insurance maintained by the COUNTY, its officers, directors, officials, employees, or volunteers shall be excess of the Contractor's insurance and shall not contribute with it.
- C. **SEVERABILITY OF INTEREST:** The Contractor's insurance shall apply separately to each insured against whom claim is made or suit is brought, except with respect to the limits of the insurer's liability.
- D. **SUBCONTRACTORS:** Contractor shall be responsible for the acts and omissions of all its subcontractors, vendors, and consultants within the scope of services provided under the contract.

**VIII. WORKERS' COMPENSATION**

**Workers' Compensation Waiver of Subrogation:** The Workers' Compensation policy required hereunder shall be endorsed to state that the Workers' Compensation carrier waives its right of subrogation against the County, its officers, directors, officials, employees, agents or volunteers, which might arise by reason of payment under such policy in connection with performance under this Agreement by the Contractor. Should

Contractor be self-insured for Workers' Compensation, Contractor hereby agrees to waive its right of subrogation against County, its officers, directors, officials, employees, agents or volunteers.

**IX. NOTIFICATION OF CLAIM**

If any claim for damages is filed with Contractor or if any lawsuit is instituted against Contractor, that arise out of or are in any way connected with Contractor's performance under this Agreement and that in any way, directly or indirectly, contingently or otherwise, affect or might reasonably affect County, Contractor shall give prompt and timely notice thereof to County. Notice shall be prompt and timely if given within thirty (30) days following the date of receipt of a claim or ten (10) days following the date of service of process of a lawsuit.

## **Exhibit B**

### **COUNTY OF SACRAMENTO**

#### **HIPAA BUSINESS ASSOCIATE EXHIBIT TO CONTRACT**

WHEREAS, County, pursuant to the terms of the Agreement, wishes to disclose to Contractor and Contractor wishes to disclose to County, certain information, some of which may constitute Protected Health Information (PHI) including any in an electronic format (Electronic Protected Health Information or EPHI);

WHEREAS, in the course of the performance of the Agreement, Contractor will be provided with access to PHI;

WHEREAS, County and Contractor desire to protect the privacy and provide for the security of PHI disclosed to each other in compliance with the Health Insurance Portability and Accountability Act of 1996 (HIPAA) Title 45 Code of Federal Regulations (CFR), Title 42 CFR Section 1320d, and regulations promulgated thereunder by the U.S. Department of Health and Human Services (the HIPAA Regulations) and other applicable laws and regulations.

WHEREAS, it appears that the Contractor is a Business Associate of County as that term is defined in the HIPAA regulations; and

WHEREAS, County is willing to provide Contractor and its agents with access to PHI such that Contractor can perform under the Agreement, under the terms of this Exhibit;

WHEREAS, the purpose of this Exhibit is to satisfy certain standards and requirements of HIPAA and the HIPAA Regulations, including, but not limited to, Title 45, Section 164.504(e) of the Code of Federal Regulations (CFR), as the same may be amended from time to time.

NOW, THEREFORE, in consideration of the mutual promises made herein, the parties agree as follows:

#### **I. HIPAA REQUIREMENTS**

##### **A. Definitions:**

1. "Protected Health Information" or "PHI" means any information, whether oral or recorded in any form or medium, including electronic (EPHI) as that term is defined in the Security Rule: 1) that relates to the past, present, or future physical or mental condition of an individual; the provision of health care to an individual; or the past, present or future payment for the provision of health care to an individual, and 2) that

identifies the individual or with respect to which there is a reasonable basis to believe the information can be used to identify the individual, and shall have the meaning given to such term under HIPAA and the HIPAA Regulations, including, but not limited to, 45 CFR Section 164.501;

2. "Individual" shall have the same meaning as the term "individual" in 45 CFR Section 164.501 and shall include a person who qualifies as a personal representative in accordance with 45 CFR Section 164.502(g);
  3. "Privacy Rule" shall mean the "Standards for Privacy of Individually Identifiable Health Information", 45 CFR Part 160 and Part 164, subparts A and E, as amended from time to time.
  4. "Security Rule" shall mean the "Security Standards", 45 CFR Parts 160, 162, and 164.
- B. Permitted Uses and Disclosures: Contractor may use and/or disclose PHI received by it pursuant to the Agreement and this Exhibit solely for the purpose of performing its obligations under the Agreement and this Exhibit or as otherwise required by law. Contractor may disclose PHI to, and permit the use of PHI by, its employees, contractors, agents, or other representatives only to the extent directly related to and necessary for the performance of the Agreement and this Exhibit. Contractor shall not use or disclose PHI in any manner that would constitute a violation of HIPAA and the HIPAA regulations if so used by County.
- C. Use and Disclosure for Contractor's Purposes and Data Aggregation: Contractor may, if necessary, use and disclose PHI for the proper management and administration of Contractor's business or to carry out Contractor's legal responsibilities. Contractor may also use PHI to provide data aggregation services to County as permitted by 45 CFR Section 164.504(e)(2)(i)(B).
- D. De-Identification: Notwithstanding anything herein to the contrary, Contractor may store, analyze, access and use components of PHI that have been "de-identified" and that do not contain individually identifiable health information, provided that any such use is consistent with applicable laws and regulations.
- E. Appropriate Safeguards: Prior to receipt of PHI in connection with the Agreement and Exhibit, Contractor shall implement and maintain appropriate security safeguards to ensure that PHI is not used or disclosed by Contractor in violation of this Exhibit or applicable laws and regulations. Security measures maintained by Contractor shall include such appropriate administrative, technical and physical safeguards as are necessary to protect such PHI. Such safeguards shall be designed to protect the confidentiality and integrity of such

PHI obtained, accessed or created from or on behalf of County. Upon request by County, Contractor shall provide a written description of such safeguards. Contractor shall ensure that any sub-contract it maintains in order to meet the terms of this Agreement includes the same requirements for appropriate safeguards as found in this Agreement.

- F. Reporting Unauthorized Uses and Disclosures: As required by 45 CFR Section 164.308(a)(2), the designated HIPAA Security Officer of Contractor shall notify County in writing within five (5) working days of its discovery of any use or disclosure of PHI not permitted by the Agreement or this Exhibit of which Contractor or its officers, employees or agents become aware. Such notice shall include the name of each individual, with address or other identifiers where known, whose unsecured protected health information (PHI) has been, or is reasonably believed by the Contractor to have been, accessed, acquired, or disclosed during such unauthorized use or disclosure.

Any unauthorized use or disclosure shall be treated as discovered by the Contractor on the first day on which such access, acquisition or disclosure is known to the Contractor, including any person, other than the individual committing the unauthorized use or disclosure, that is an employee, officer or other agent of the Contractor, or who should reasonably have known such unauthorized activities had occurred.

Contractor shall promptly identify, respond to and report to County any suspected or known "security incident" of which it becomes aware. Such term is defined in the HIPAA Security Rule, 45 CFR Section 164.304: "the attempted or successful unauthorized access, use, disclosure, modification, or destruction of information or interference with system operations in an information system." Contractor's incident report shall identify the date of the security incident, the scope of the security incident, the Contractor's response to the security incident and the identification of the party responsible for causing the security incident if known.

Contractor agrees that any sub-contractor of the Contractor that provides services to the Contractor directly related to this Agreement has the same responsibilities regarding reporting unauthorized uses or disclosures as the Contractor. Contractor further agrees that it shall ensure that these responsibilities are defined in any sub-contract it enters into in order to service this Agreement.

- G. Mitigating the Effect of Unauthorized Uses and Disclosures: Contractor shall take prompt corrective action to mitigate to the greatest extent possible, any harmful effects arising from any improper use and/or disclosure of PHI and shall

take such other action pertaining to such unauthorized use or disclosure as may be required by applicable federal and state laws and regulations.

Mitigation shall include Contractor notification to each individual whose unsecured protected health information (PHI or EPHI) has been, or is reasonably believed by the Contractor to have been, accessed, acquired, or disclosed during such unauthorized use or disclosure. The standard for such notification shall comply with all notification requirements as specified in 45 CFR Subpart D.

Upon completion of such notification, the designated HIPAA Security Officer of Contractor shall provide the County Compliance Officer a report including the following: method(s) of communication used, as specified in 45 CFR Subpart D; date such notification was made; number of individuals notified; and a copy of the content of the notification.

Contractor agrees that any sub-contractor of the Contractor that provides services to the Contractor directly related to this Agreement has the same responsibilities regarding mitigating any unauthorized uses or disclosures as the Contractor. Contractor further agrees that it shall ensure that these responsibilities are defined in any sub-contract it enters into in order to service this Agreement.

- H. Individual Rights: Contractor shall comply with the following individual rights requirements as applicable to PHI obtained, used or maintained by Contractor:
1. Right of Access. Contractor shall provide access to PHI, at the request of County and in the time and manner designated by County, to County or, as directed, to an individual in order to meet the requirements under 45 CFR Section 164.524.
  2. Right of Addendum. Contractor shall make any Addendum to PHI that County directs or agrees to pursuant to 45 CFR Section 164.526 at the request of County or an individual, and in the time and manner designated by County.
  3. Documenting of Disclosures. Contractor shall document such disclosures of PHI as would be required for County to respond to a request by an Individual for an accounting of disclosures of PHI in accordance with 45 CFR Section 164.528.
  4. Right to Accounting of Disclosures. Contractor agrees to provide County or an individual, in the time and manner designated by County, such information collected in order to permit County to respond to a request



by an individual for an accounting of disclosures of PHI in accordance with 45 CFR Section 164.528.

- I. County Obligations:
  - 1. County shall notify Contractor of any limitation in its notice of privacy practices in accordance with 45 CFR Section 164.520 to the extent that such limitation may affect Contractor's use or disclosure of PHI.
  - 2. County shall notify Contractor of any changes in, or revocation of, permission by an individual to use or disclose PHI, to the extent that such changes may affect Contractor's use or disclosure of PHI.
  - 3. County shall notify Contractor of any restriction to the use or disclosure of PHI that County has agreed to in accordance with 45 CFR Section 164.522, to the extent that such restriction may affect Contractor's use or disclosure of PHI.
- J. Contractor's Agents: Contractor shall require that any agent, subcontractor or other representative that is authorized to receive, use or have access to PHI obtained or created under the Agreement or this Exhibit shall agree in writing to adhere to the same restrictions, conditions and requirements regarding the use and/or disclosure of PHI and safeguarding of PHI that apply to Contractor under this Agreement and Exhibit. Contractor shall implement and maintain sanctions against any agent, subcontractor or other representative that violates such restrictions, conditions or requirements and shall mitigate the effects of any such violation. Such agreement shall identify County as a third-part beneficiary with rights of enforcement in the event of any violations by Contractor's agents, subcontractors or other representatives. Additionally, the agent, subcontractor or other representative shall be required to notify Contractor of any instances of which it is aware in which the confidentiality of PHI has been breached.
- K. Regulatory Compliance: Contractor shall make its internal practices, books and records relating to the use and disclosure of PHI received from County, or created or received by Contractor on behalf of County, available to any state or federal agency, including the U.S. Department of Health and Human Services, for purposes of determining compliance with the HIPAA Regulations.
- L. Inspection of Records: Within ten (10) calendar days of a written request, Contractor shall make available to County for inspection during normal business hours at Contractor's place of business all records, books, agreements, data, systems, policies and procedures relating to the use and/or disclosure of PHI received from, or created or received by Contractor on behalf of County, for purposes of enabling County to determine Contractor's compliance with the

terms of this Exhibit. In the event that protected health information (PHI) has been, or is reasonably believed by the Contractor to have been, accessed, acquired, or disclosed, pursuant to (G) of this Exhibit, this advance notice by County may be waived.

- M. Audit, Inspection and Enforcement By County: With reasonable notice, County and its authorized agents or contractors may audit and/or examine Contractor's facilities, systems, policies and procedures, data and records as may be necessary to determine compliance with the terms of this Exhibit. Contractor shall promptly correct any violation of this Exhibit found by County and shall certify in writing that the correction has been made. County's failure to detect any unsatisfactory practice does not constitute acceptance of the practice or a waiver of County's enforcement rights under this Agreement and Exhibit.
- N. Compliance With Law: Contractor shall comply with all applicable federal and state laws and regulations, including, if applicable under the terms and requirements of the Agreement and this Exhibit, the HIPAA Standards for Electronic Transactions, 45 CFR Parts 160 and 162.
- O. Interpretation: Any ambiguity in this Exhibit shall be resolved in favor of a meaning that permits County to comply with HIPAA and its implementing regulations.
- P. Amendment: The parties agree to amend this Exhibit from time to time as necessary for County to comply with the requirements of HIPAA and its implementation.
- Q. Term and Termination:
  - 1. The terms of this Exhibit shall remain in effect for the duration of all services provided by Contractor and for so long as Contractor shall remain in possession of any PHI received from, or created or received by Contractor on behalf of County, unless County has agreed in accordance with this section that it is not feasible to return or destroy all PHI.
  - 2. Upon termination of the Agreement and this Exhibit, Contractor shall recover any PHI relating to the Agreement and this Exhibit in the possession of its subcontractors, agents or representatives. Contractor shall return to County, or destroy with consent of County, all such PHI plus all other PHI relating to the Agreement and this Exhibit in its possession and shall retain no copies. If Contractor believes that it is not feasible to return or destroy the PHI as described above, Contractor shall so notify County in writing. The notification shall include: i) a statement that Contractor has determined that it is not feasible to return or destroy

the PHI in its possession, and ii) the specific reasons for such determination. If County agrees in its sole discretion that Contractor cannot feasibly return or destroy the PHI, Contractor shall ensure that any and all protections, requirements and restrictions contained in this Agreement and Exhibit shall be extended to any PHI retained after the termination of the Agreement and the Exhibit, and that any further uses and/or disclosures will be limited to the purposes that make the return or destruction of the PHI infeasible.

- R. Insurance: In addition to any insurance requirements in the Agreement, Contractor shall maintain insurance, in such amounts as the County Risk Manager may deem necessary, to cover loss of PHI data and claims based upon alleged violations of privacy rights through improper use or disclosure of PHI. All such policies shall meet or exceed any minimum insurance requirements of the Agreement.