

County of Monterey Board Policy Manual

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Monterey County Contracts/Purchasing Manual	A-31	1 of 38
Policy Category Accounting, Financing and Purchasing		

I. Purpose

1. It is the policy of the County of Monterey to centralize the purchasing of goods and services, to the extent possible, under the administration of an authorized purchasing agent. Authorized purchasing agents may include the Chair of the Board of Supervisors, the Chief Administrative Officer, the Contracts/Purchasing Officer or Deputy Purchasing Agents. Except as otherwise noted in this manual, no purchase of personal property by any person other than the purchasing agent shall be binding on the county or constitute a lawful charge against county funds.

II. Background

III. Policy

IV. Procedure

1. Please see next pages.

V. Review Date

1. This Policy will be reviewed for continuance by April 24, 2013.

VI. Board Action

1. Legistar File Number: not available



MONTEREY COUNTY

Contracts/Purchasing Manual

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PROCUREMENT POLICY

It is the policy of the County of Monterey to centralize the purchasing of goods and services, to the extent possible, under the administration of an authorized purchasing agent. Authorized purchasing agents may include the Chair of the Board of Supervisors, the Chief Administrative Officer, the Contracts/Purchasing Officer or Deputy Purchasing Agents.

Except as otherwise noted in this manual, no purchase of personal property by any person other than the purchasing agent shall be binding on the county or constitute a lawful charge against county funds.

The Contracts/Purchasing Division is charged with the responsibility of administering the procurement of goods and services for use by all county agencies and departments. The laws of the State of California and the Monterey County code and its ordinances govern its procedures.

The Contracts/Purchasing Division provides a resource of information and procurement solutions. A staff of professional Buyers, Management Analysts and Clerical Staff provide purchasing services. Buyers and Management Analysts shall endeavor to become knowledgeable in the various commodities assigned to them as required to perform transactions in a fair and objective manner.

It is the Contracts/Purchasing Divisions policy to provide procurement and contract services to county agencies and departments in the most cost effective manner. Quality, value and service shall be emphasized, through the use of active competition, good governmental business practices and efficient administration.

It is the policy of the Contracts/Purchasing Division to seek competitive quotations before committing county funds to the extent reasonably possible. It is not mandatory to accept the lowest bid, or to use the competitive bidding process if such action is determined by the Contracts/Purchasing Officer to be in the best interest of the County.

The Contracts/ Purchasing Division is considered to be the liaison between the county and the vendor community. It is the responsibility of the Contracts/Purchasing Division to administer procurement of goods and services for County departments from qualified, registered, responsible vendors at the lowest possible cost in a timely manner. Contracts/Purchasing staff will correspond with the user departments and vendors as needed in order to see that the departments have current information for required products or services.

All County employees are required to avoid conflicts of interest in matters of procurement and contracting for goods or services, and are subject to remedies provided by law or policy in the event a conflict of interest situation arises.

Updated:
April 3, 2008

CONTRACTOR AND VENDOR RELATIONSHIPS

It is the responsibility of the Contracts/Purchasing Division to identify and discourage practices by county departments that may adversely affect vendor relationships, or bargaining position. Some of these practices may include:

- Implied or inferred purchase commitments to vendors.
- Acceptance of sample materials for use or testing without authorization.
- Persistent insistence on special brands of materials.
- Acceptance of gifts or entertainment from county vendors.
- Agreement to accept materials other than those specified on the purchase order.

In all matters of procurement, County officials shall follow sensible and ethical business practices while complying with existing statutes and policy.

County departments shall make their vendor contracts through a member of the Contracts/Purchasing Division. The Contracts/Purchasing Division shall serve as knowledgeable, responsive source of information for the county departments to use in the acquisition of goods and services.

MONTEREY COUNTY CODE

Chapter 2.32

PURCHASING AGENT

Sections:

- 2.32.010 Office established
- 2.32.020 General duties
- 2.32.030 Specific duties
- 2.32.035 Preference for local suppliers
- 2.32.040 Emergency purchases
- 2,32,050 Revolving fund
- 2.32.060 Purchasing procedure
- 2.32.070 Competitive bidding not required
- 2.32.080 Posting notices of sales
- 2.32.090 Advertising proposed sale
- 2.32.100 Surplus pool
- 2.32.110 Standards committees

2.32.010. OFFICE ESTABLISHED.

Pursuant to the provisions of Government Code Section 25500, et seq., the office of the Purchasing Agent is hereby established. The duties of the office of the Purchasing Agent shall be performed by the County Administrative Officer or it's designee of the County Administrative Officer. The term "Purchasing Agent" as used in this chapter shall mean the County Administrative Officer or the designee of the County Administrative Officer. (Ord. 3610 Section 12, 1992;Ord. 1030 Section 1, 1958.)

2.32.020 GENERAL DUTIES.

The Purchasing Agent shall have the duties and powers prescribed by laws of the State of California relating to county purchasing agents, and as limited or specifically authorized by this chapter. (Ord.3610 Section 13, 1992;Ord 3536 Section 1, 1991;Ord. 1030 Section 2, 1958.)

2.32.030 SPECIFIC DUTIES.

The Purchasing agent shall:

- A. Purchase for the County of Monterey and its offices all materials, supplies, furnishings, equipment, livestock and other personal property of whatever kind and nature. Except in cases of emergency as provided in this chapter and excepting the purchase of road equipment which the Public Works Director is authorized by law to purchase, no purchase of personal property by any person

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April 3, 2008

other than the Purchasing Agent shall be binding upon the County or constitute a lawful charge against any County funds.

- B. Rent for the County and its offices, furnishings, equipment, and livestock; excepting, however, such road equipment as the Public Works Director is authorized by law to rent.
- C. Negotiate and execute in the name of the county all equipment service contracts and lease-purchase agreements of personal property.
- D. Negotiate in the name of the county as lessee subject to approval by the Board of Supervisors all rentals of real property, which the county may require.
- E. Sell any personal property belonging to the county and found by the Board of Supervisors not to be required for public use, or he may, when purchasing personal property for which it is not necessary to advertise for bids, solicit and accept advantages trade-in allowances for county personal property which has a scrap value of less than ten thousand dollars and which has been previously determined by the purchasing agent to be not further required for public use.
- F. Engage independent contractors to perform services for the County and the offices thereof with or without the furnishing of material where the aggregate cost does not exceed \$100,000 (one hundred thousand dollars); provided, however, that the foregoing shall not apply to the construction or repair of any building or structure enumerated in Section 25450 of the Government Code, nor shall the same apply to contracts to do work upon the public roads of the County, contracts to print legal transcripts, contracts for election supplies, contracts for expert services to be rendered the offices of the District Attorney, County Counsel, or Sheriff, contracts for appraisers' services, contracts for consultants and other experts employed directly by the Board of Supervisors, or contracts for other services which, by law, some other officer or body is specifically charged with obtaining, unless and until the officer, body or Board has requested the purchasing agent to enter into such contract, and in such event the contract limits shall be that limit imposed by law upon the officer, body, or Board. (Government Code Section 25505.5) (Ord. 3679, Section 1, 1993)
- G. Engage independent contractors through the use of informal or formal bidding procedures to construct repair or furnish any building or structure enumerated in Section 25450 of the Government Code of the State of California when the cost thereof does not exceed \$10,000 (ten thousand dollars.) (Public Contract Code Section 20150.4) (Ord. 3679, Section 1, 1993.)
- H. When specifically authorized by law, purchase for the superintendent of schools or other public officer or agency personal property.
- I. When specifically authorized by law, sell or dispose of personal property of any special district and pay the proceeds thereof into the treasury of the district, or if an exchange or trade is made, return the proceeds to the special district.

- J. Perform such other services as the Board of Supervisors may from time to time by resolution require. (Ord. 3610 Section 14, 1992; Ord. 3536 Section 2, 1991; Ord 2504 Section 1, 1979; Ord. 2157 1976; Ord. 2022, 1979; Ord 1664, 1969; Ord. 1030 Section 3, 1958.0)

2.32.035. PREFERENCE FOR LOCAL SUPPLIERS.

A. **General Requirements:** Each local supplier funded in whole or in part by County funds, or funds, which the County expends or administers, shall be eligible for a local preference as provided in this section.

B. **Rights of First Refusal:** Each local supplier who is within five percent of the lowest responsible bid and who is otherwise responsive and responsible to the call for bids shall be provided the opportunity to reduce the local supplier's bid to the amount equal to the amount of the lowest responsible bid, if the lowest responsible bid is submitted by other than a local supplier. The opportunity to reduce the amount of the bid shall be provided first to the lowest eligible local supplier and, if not accepted by such local supplier within five business days of the opening of bids, who is within five percent of the lowest responsible bid. In the event an eligible local supplier reduces the bid to the amount of the lowest responsible bid, the eligible local supplier shall be deemed to have provided the lowest responsible bid and shall be awarded the contract.

1. The foregoing provisions apply only to competitive bids that require that contracts be awarded to the lowest responsible bidder. For contracts awarded to the lowest responsible bidder. For contracts awarded pursuant to requests for proposals or requests for quotations, the awarding authority may consider, as one of the factors in determining the most suitable proposal or quotation, whether or not the proposal or quotation is submitted by a local supplier.

C. **Definitions:** For the purpose of this Section, the following terms have the meanings indicated:

1. "Area" means Monterey County, San Benito County, and Santa Cruz County.
2. "Bid" includes any competitive bid, whether formal or informal.
3. "Local Supplier" shall mean a supplier doing business in the Area for not less than the past five consecutive years.
4. "Supplier" shall mean a business or resident providing goods, supplies, or professional services.

2.32.040 EMERGENCY PURCHASES.

Emergency purchases may be made by any person or official authorized to sign requisitions when the purchasing agent or any of his assistants in the purchasing division authorized to make purchases is not immediately available and the item or items so purchased are immediately necessary for the continued operation of the office or department involved, or are immediately necessary for the preservation of life or property. Such emergency purchases shall be subsequently approved and confirmed by the purchasing agent or, if he refuses such confirmation, the Board of Supervisors may subsequently approve and confirm such purchase by a four-fifths vote of the entire Board. Unless such purchases are so approved and confirmed by either the purchasing agent or the Board of Supervisors, the costs thereof shall not constitute a legal charge against the county. (Ord. 1030 Section 4, 1958.)

2.32.050 REVOLVING FUND

There is established from the un-appropriated funds of the county a revolving fund in such an amount as the Board of Supervisors may from time to time by resolution establish such fund to be known as the purchasing department revolving fund. The purchasing agent may purchase supplies, materials and equipment in quantity to be issued to the several offices and departments of the county as needed and shall make payments therefore out of the funds of such revolving fund. As such supplies, materials and equipment are issued to an office or department, the fund shall be reimbursed from the budgeted funds of the requisitioning department. The auditor shall certify availability of funds in the appropriate budget account of the department before such issues are made. (Ord. 1030 Section 5, 1958.)

2.32.060 PURCHASING PROCEDURE.

Except as to purchases from the revolving fund, all purchases, rentals and contracts shall be made only upon proper written requisitions, the forms of which shall be supplied by the purchasing agent to the various county offices. No purchase order shall be issued until the county auditor shall have certified that sufficient money is available in the proper budgeted fund of the department to pay for the purchase. The head of any county office, department or institution or his duly designated assistant is authorized to draw a requisition for purchases for such office, department or institution in accordance with current budget accounts. Such head may delegate such authority to one or more of his deputies, assistants or employees within the department by filing a written authorization therefore with the purchasing agent and the auditor. (Ord. 1030 Section 6, 1958.)

2.32.070 COMPETITIVE BIDDING NOT REQUIRED.

Except as otherwise provided by ordinance or general law, the purchasing agent may, without notice, advertisement or the securing of competitive bids or quotations, make any purchase of personal property, or do any other thing which he is authorized to do in this chapter. (Ord. 1030 Section 7, 1958.)

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2.32.080 POSTING NOTICES OF SALES.

Notices of sales of surplus personal property shall be posted for not less than five business days preceding the day of sale in the county courthouse and in the office of the purchasing agent and in such other public place within the county as the purchasing agent may deem advisable. (Ord. 1030 Section 8, 1958.)

2.32.090 ADVERTISING PROPOSED SALE.

In the disposition of any surplus personal property and upon approval of the Board of Supervisors, the purchasing agent may purchase advertising space and may advertise the proposed sale or other disposition of the personal property in such newspapers, magazines and other periodicals as in his judgment will best publicize the proposed sale or other disposition to those persons most likely to bid for the purchase of the personal property. Within the limitation of the order of the Boards of Supervisors approving the advertising, the purchasing agent shall decide upon the amount, nature, makeup and content of the advertising. (Ord. 1030 Section 9, 1958.)

2.32.100 SURPLUS POOL.

Whenever any item of personal property is no longer needed by the office, department or institution in possession thereof, such fact shall be reported to the purchasing agent who may transfer such item to a surplus pool to be maintained under the supervision of the purchasing agent. Whenever any office, department or institution is in need of an article, which has been placed in such surplus pool or has requisitioned the purchase of a similar article, the purchasing agent, upon a properly drawn request for transfer or requisition approved by the administrative officer, may transfer the article to such department. (Ord. 1030 Section 10, 1958.)

2.32.110 STANDARDS COMMITTEES.

The purchasing agent may organize standards committees as needed to establish standards with respect to the type, design, quality or brand of a certain article or group of related articles or services purchased by the county. The membership of the committee shall be the purchasing agent, who shall be chairman, the county administrative officer and the heads of each county office, department or institution that is a primary user of the item or group of items for which the committee is appointed. Any member of the committee may act through a representative appointed by him. (Ord. 1030 Section 11, 1958.)

2.32.35. PREFERENCE FOR LOCAL SUPPLIERS.

A. **General Requirements:** Each local supplier funded in whole or in part by County funds, or funds which the County expends or administers, shall be eligible for a local preference as provided in this section.

B. **Rights of First Refusal:** Each local supplier who is within five percent of the lowest responsible bid and who is otherwise responsive and responsible to the call for bids shall be provided the opportunity to reduce the local supplier's bid to the amount equal to the amount of the lowest responsible bid, if the lowest responsible bid is submitted by other than a local supplier. The opportunity to reduce the amount of the bid shall be provided first to the lowest eligible local supplier and, if not accepted by such local supplier within five business days of the opening of bids, who is within five percent of the lowest responsible bid. In the event an eligible local supplier reduces the bid to the amount of the lowest responsible bid, the eligible local supplier shall be deemed to have provided the lowest responsible bid and shall be awarded the contract.

1. The foregoing provisions apply only to competitive bids that require that contracts be awarded to the lowest responsible bidder. For contracts awarded to the lowest responsible bidder. For contracts awarded pursuant to requests for proposals or requests for quotations, the awarding authority may consider, as one of the factors in determining the most suitable proposal or quotation, whether or not a local supplier submits the proposal or quotation.

C. **Definitions:** For the purpose of this Section, the following terms have the meanings indicated:

1. "Area" means Monterey County, San Benito County, and Santa Cruz County.
2. "Bid" includes any competitive bid, whether formal or informal.
3. "Local Supplier" shall mean a supplier doing business in the Area for not less than the past five consecutive years.
4. "Supplier" shall mean a business or resident providing goods, supplies, or professional services.

REVENUE AND FINANCE

5.08.010 Purpose.

The purpose of this Chapter is to comply with Public Contract Code Sections 20150--20150.14. (Ord. 3490, 1990; Ord. 1862 § 1, 1972)

5.08.020 Definition.

As used in this Chapter, "Public Project" means:

- A. A project for the erection, improvement, and repair of public buildings and works;
- B. Work in or about streams, bays, waterfronts, embankments, or other work for protection against overflow, except maintenance, repair, or reconstruction work;
- C. Supplies and materials used in maintenance, repair, or reconstruction work in or about streams, bays, waterfronts, embankments; or other maintenance, repair, or reconstruction work for protection against overflow. (Ord. 1862 § 2(a), 1972)

5.08.030 Procedure--Type designated for certain purchases.

- A. Public projects between four thousand dollars (\$4,000.00) and ten thousand dollars (\$10,000.00) shall be let to contract by informal or formal bidding procedures.
- B. Public projects of ten thousand dollars (\$10,000.00) and more shall, in all instances, be let to contract by formal bidding procedure. (Ord. 1862 § 3, 1972)

5.08.040 Procedure--Notice to contractors.

Before any provisions of this Chapter relating to informal bidding procedures may be utilized, the County shall notify each contractor in the County of the opportunity to register with the County to be subsequently notified of informal bidding proceedings. (Ord. 1862 § 4, 1972)

**CALIFORNIA CODES
PUBLIC CONTRACT CODE
SECTION 7100-7200**

- 7100.** Provisions in public works contracts with public entities, which provide that acceptance of a payment otherwise due a contractor is a waiver of all claims against the public entity arising out of the work performed under the **contract** or which condition the right to payment upon submission of a release by the contractor of all claims against the public entity arising out of performance of the public work are against public policy and null and void. This section shall not prohibit a public entity from placing in a public works **contract** and enforcing a **contract** provision which provides that payment of undisputed **contract** amounts is contingent upon the contractor furnishing the public entity with a release of all claims against the public entity arising by virtue of the public works **contract** related to those amounts. Disputed **contract** claims in stated amounts may be specifically excluded by the contractor from the operation of the release.
- 7101.** The state or any other public entity in any public works **contract** awarded to the lowest bidder, may provide for the payment of extra compensation to the contractor for the cost reduction changes in the plans and specifications for the project made pursuant to a proposal submitted by the contractor. The extra compensation to the contractor shall be 50 percent of the net savings in construction costs as determined by the public entity. For projects under the supervision of the Department of Transportation or local or regional transportation entities, the extra compensation to the contractor shall be 60 percent of the net savings, if the cost reduction changes significantly reduce or avoid traffic congestion during construction of the project, in the opinion of the public entity. The contractor may not be required to perform the changes contained in an eligible change proposal submitted in compliance with the provisions of the **contract** unless the proposal was accepted by the public entity.
- 7102.** **Contract** provisions in construction contracts of public agencies and subcontracts thereunder which limit the contractee's liability to an extension of time for delay for which the contractee is responsible and which delay is unreasonable under the circumstances involved, and not within the contemplation of the parties, shall not be construed to preclude the recovery of damages by the contractor or subcontractor.

No public agency may require the waiver, alteration, or limitation of the applicability of this section. Any such waiver, alteration, or limitation is void. This section shall not be construed to void any provision in a construction **contract** which requires notice of delays, provides for arbitration or other procedure for settlement, or provides for liquidated damages.

7103 (a) Every original contractor to who is awarded a **contract** by a state entity, as defined in subdivision (d), involving an expenditure in excess of five thousand dollars (\$5,000) for any public work shall, before entering up the performance of the work, file a payment bond with and approved by the officer or state entity by who the **contract** was awarded. The bond shall be in a sum not less than one hundred percent of the total amount payable by the terms of the **contract**.

The state entity shall state in its call for bids for any **contract** that a payment bond is required in the case of such an expenditure.

(b) A payment bond filed and approved in accordance with this section shall be sufficient to enter upon the performance of work under a duly authorized **contract** which supplements the **contract** for which the payment bond was filed if the requirement of a new bond is waived by the state entity.

(c) For purposes of this section, providers of architectural, engineering and land surveying services pursuant to a **contract** with a state entity for a public work shall not be deemed an original contractor and shall not be required to post or file the payment bond required in subdivisions (a) and (b).

(d) For purposes of this section, "state entity" means every state office department, division, bureau, board, or commission, but does not include the Legislature, the courts, any agency in the judicial branch of government, or the University of California. All other public entities shall be governed by the provisions of Section 3247 of the Civil **Code**.

(e) For purposes of this section, "public work" includes the erection, construction, alteration, repair or improvement of any state structure, building, road, or other state improvement of any kind.

7103.5 (a) As used in this section:

(1) "Public works **contract**" means a **contract** awarded through competitive bids by the state or any of its political subdivisions or public agencies, on whose behalf the Attorney General may bring an action pursuant to subdivision (c) of Section 16750 of the Business and Professions **Code**, for the erection, construction, alteration, repair, or improvement of any structure, building, road, or other improvement of any kind.

(2) "Awarding body" means the state or the subdivision or agency awarding a public works **contract**.

(b) In entering into a public works **contract** or a subcontract to supply goods, services, or materials pursuant to a public works **contract**, the contractor or subcontractor offers and agrees to assign to the awarding body all rights, title, and interest in and to all causes of action it may have under Section 4 of the Clayton Act (15 U.S.C. Sec. 15) or under the Cartwright Act (Chapter 2 (commencing

with Section 16700) of Part 2 of Division 7 of the Business and Professions **Code**), arising from purchases of goods, services, or materials pursuant to the public works **contract** or the subcontract. This assignment shall be made and become effective at the time the awarding body tenders final payment to the contractor, without further acknowledgment by the parties.

(c) Subdivision (b) shall be included in full in the specifications for the public works **contract** or in the general provisions incorporated therein and shall be included in full in the public works **contract** or in the general provisions incorporated therein.

7104. Any public works **contract** of a local public entity which involves digging trenches or other excavations that extend deeper than four feet below the surface shall contain a clause which provides the following:

(a) That the contractor shall promptly, and before the following conditions are disturbed, notify the public entity, in writing, of any:

- (1) Material that the contractor believes may be material that is hazardous waste, as defined in Section 25117 of the Health and Safety **Code**, that is required to be removed to a Class I, Class II, or Class III disposal site in accordance with provisions of existing law.
- (2) Subsurface or latent physical conditions at the site differing from those indicated.
- (3) Unknown physical conditions at the site of any unusual nature, different materially from those ordinarily encountered and generally recognized as inherent in work of the character provided for in the **contract**.

(b) That the public entity shall promptly investigate the conditions, and if it finds that the conditions do materially so differ, or do involve hazardous waste, and cause a decrease or increase in the contractor's cost of, or the time required for, performance of any part of the work shall issue a change order under the procedures described in the **contract**.

(c) That, in the event that a dispute arises between the public entity and the contractor whether the conditions materially differ, or involve hazardous waste, or cause a decrease or increase in the contractor's cost of, or time required for, performance of any part of the work, the contractor shall not be excused from any scheduled completion date provided for by the **contract**, but shall proceed with all work to be performed under the **contract**. The contractor shall retain any and all rights provided either by **contract** or by law, which pertain to the resolution of disputes and protests between the contracting parties.

7105. (a) Construction contracts of public agencies shall not require the contractor to be responsible for the cost of repairing or restoring damage to the work, which damage is determined to have been proximately caused by an act of God, in excess of 5 percent of the contracted amount, provided, that the work damaged is built in accordance with accepted and applicable building standards and the plans and specifications of the awarding authority. However, contracts may include provisions for terminating the **contract**. The requirements of this section shall not be mandatory as to construction contracts financed by revenue bonds. This section shall not prohibit a public agency from requiring that a contractor obtain insurance to indemnify the public agency for any damage to the work caused by an act of God if the insurance premium is a separate bid item. If insurance is required, requests for bids issued by public agencies shall set forth the amount of the work to be covered and the **contract** resulting from the requests for bids shall require that the contractor furnish evidence of satisfactory insurance coverage to the public agency prior to execution of the **contract**.

(b) For the purposes of this section:

(1) "Public agency" shall include the state, the Regents of the University of California, a city, county, district, public authority, public agency, municipal utility, and any other political subdivision or public corporation of the state.

(2) "Acts of God" shall include only the following occurrences or conditions and effects: earthquakes in excess of a magnitude of 3.5 on the Richter Scale and tidal waves.

(c) Public agencies may make changes in construction contracts for public improvements in the course of construction to bring the completed improvements into compliance with environmental requirements or standards established by state and federal statutes and regulations enacted after the **contract** has been awarded or entered into. The contractor shall be paid for the changes in accordance with the provisions of the **contract** governing payment for changes in the work or, if no provisions are set forth in the **contract**, payment shall be as agreed to by the parties.

(d) (1) Where authority to **contract** is vested in any public agency, excluding the state, the authority shall include the power, by mutual consent of the contracting parties, to terminate, amend, or modify any **contract** within the scope of such authority.

(2) Paragraph (1) shall not apply to contracts entered into pursuant to any statute expressly requiring that contracts be let or awarded on the basis of competitive bids. Contracts of public agencies, excluding the state, required to be let or awarded on the basis of competitive bids pursuant to

any statute may be terminated, amended, or modified only if the termination, amendment, or modification is so provided in the **contract** or is authorized under provision of law other than this subdivision. The compensation payable, if any, for amendments and modifications shall be determined as provided in the **contract**. The compensation payable, if any, in the event the **contract** is so terminated shall be determined as provided in the **contract** or applicable statutory provision providing for the termination.

(3) Contracts of public agencies may include provisions for termination for environmental considerations at the discretion of the public agencies.

7106. Any public works **contract** of a public entity shall include an affidavit, in the following form:

"NONCOLLUSION AFFIDAVIT TO BE EXECUTED BY BIDDER
AND SUBMITTED WITH BID

State of California)
County of _____) ss.
)

_____, being first duly sworn, deposes and says that he or she is ____ of ____ the party making the foregoing bid that the bid is not made in the interest of, or on behalf of, any undisclosed person, partnership, company, association, organization, or corporation; that the bid is genuine and not collusive or sham; that the bidder has not directly or indirectly induced or solicited any other bidder to put in a false or sham bid, and has not directly or indirectly colluded, conspired, connived, or agreed with any bidder or anyone else to put in a sham bid, or that anyone shall refrain from bidding; that the bidder has not in any manner, directly or indirectly, sought by agreement, communication, or conference with anyone to fix the bid price of the bidder or any other bidder, or to fix any overhead, profit, or cost element of the bid price, or of that of any other bidder, or to secure any advantage against the public body awarding the **contract** of anyone interested in the proposed **contract**; that all statements contained in the bid are true; and, further, that the bidder has not, directly or indirectly, submitted his or her bid price or any breakdown thereof, or the contents thereof, or divulged information or data relative thereto, or paid, and will not pay, any fee to any corporation, partnership, company association, organization, bid depository, or to any member or agent thereof to effectuate a collusive or sham bid."

7107. (a) This section is applicable with respect to all contracts entered into on or after January 1, 1993, relating to the construction of any public work of improvement.

(b) The retention proceeds withheld from any payment by the public entity from the original contractor, or by the original contractor from any subcontractor, shall be subject to this section.

(c) Within 60 days after the date of completion of the work of improvement, the retention withheld by the public entity shall be released. In the event of a dispute between the public entity and the original contractor, the public entity may withhold from the final payment an amount not to exceed 150 percent of the disputed amount. For purposes of this subdivision, "completion" means any of the following:

(1) The occupation, beneficial use, and enjoyment of a work of improvement, excluding any operation only for testing, startup, or commissioning, by the public agency, or its agent, accompanied by cessation of labor on the work of improvement.

(2) The acceptance by the public agency, or its agent, of the work of improvement.

(3) After the commencement of a work of improvement, a cessation of labor on the work of improvement for a continuous period of 100 days or more, due to factors beyond the control of the contractor.

(4) After the commencement of a work of improvement, a cessation of labor on the work of improvement for a continuous period of 30 days or more, if the public agency files for record a notice of cessation or a notice of completion.

(d) Subject to subdivision (e), within seven days from the time that all or any portion of the retention proceeds are received by the original contractor, the original contractor shall pay each of its subcontractors from whom retention has been withheld, each subcontractor's share of the retention received. However, if a retention payment received by the original contractor is specifically designated for a particular subcontractor, payment of the retention shall be made to the designated subcontractor, if the payment is consistent with the terms of the subcontract.

(e) The original contractor may withhold from a subcontractor its portion of the retention proceeds if a bona fide dispute exists between the subcontractor and the original contractor. The amount withheld from the retention payment shall not exceed 150 percent of the estimated value of the disputed amount.

(f) In the event that retention payments are not made within the time periods required by this section, the public entity or original contractor withholding the unpaid amounts shall be subject to a charge of 2 percent per month on the improperly withheld amount, in lieu of any interest otherwise due. Additionally,

in any action for the collection of funds wrongfully withheld, the prevailing party shall be entitled to attorney's fees and costs.

(g) If a state agency retains an amount greater than 125 percent of the estimated value of the work yet to be completed pursuant to Section 10261, the state agency shall distribute undisputed retention proceeds in accordance with subdivision (c). However, notwithstanding subdivision (c), if a state agency retains an amount equal to or less than 125 percent of the estimated value of the work yet to be completed, the state agency shall have 90 days in which to release undisputed retentions.

(h) Any attempted waiver of the provisions of this section shall be void as against the public policy of this state.

7108. Any **contract** of a public entity to provide train service shall require compliance with the personnel requirements of Chapter 2 (commencing with Section 6900) of Part 2 of Division 5 of the Labor **Code**.

7109. (a) For purposes of this section:

(1) "Antigraffiti technology" means landscaping, paint, or other covering resistant to graffiti, or other procedures to deter graffiti.

(2) "Graffiti" means any unauthorized inscription, work, figure, or design that is marked, etched, scratched, drawn, or painted on any structural component of any building, structure, or other facility regardless of its content or nature and regardless of the nature of the material of the structural component.

(3) "Project" means the erection, construction, alteration, repair, or improvement of any public structure, building, road, or other public improvement of any kind.

(b) If a public entity determines that a project may be vulnerable to graffiti and the public entity will be awarding a public works **contract** after January 1, 1996, for that project, it is the intent of the Legislature that the public entity may do one or more of the following:

(1) Include a provision in the public works **contract** that specifies requirements for anti-graffiti technology in the plans and specifications for the project.

(2) Establish a method to finance a graffiti abatement program.

(3) Establish a program to deter graffiti.

7110. (a) It is the policy of this state that anyone who enters into a **contract** with a state agency shall recognize the importance of child and family support obligations and shall fully comply with all applicable state and federal laws relating to child and family support enforcement, including, but not limited to, disclosure of information and compliance with earnings assignment orders, as provided in Chapter 8 (commencing with Section 5200) of Part 5 of Division 9 of the Family Code.

(b) Every written **contract** in excess of one hundred thousand dollars (\$100,000) executed between a contractor and a state agency shall contain the following:

(1) An acknowledgment by the contractor of the policy of the state set forth in subdivision (a).

(2) An acknowledgment by the contractor that to the best of its knowledge it is fully complying with the earnings assignment orders of all employees and is providing the names of all new employees to the New Hire Registry maintained by the Employment Development Department.

7200. (a) (1) This section shall apply with respect to all contracts entered into on or after January 1, 1999, between a public entity and an original contractor, between an original contractor and a subcontractor, and between all subcontractors thereunder, relating to the construction of any public work of improvement.

(2) For purposes of this section, "public entity" means the state, including every state agency, office, department, division, bureau, board, or commission, a city, county, city and county, including chartered cities and chartered counties, district, special district, public authority, political subdivision, public corporation, or nonprofit transit corporation wholly owned by a public agency and formed to carry out the purposes of the public agency.

(b) In a **contract** between the original contractor and a subcontractor, and in a **contract** between a subcontractor and any subcontractor thereunder, the percentage of the retention proceeds withheld may not exceed the percentage specified in the **contract** between the public entity and the original contractor.

(c) When a performance and payment bond is required in the solicitation for bids, subdivision (b) shall not apply to either of the following:

(1) The original contractor, if the subcontractor fails or refuses to provide a performance and payment bond, issued by an admitted surety insurer, to the original contractor.

(2) The subcontractor, if a subcontractor thereunder fails or refuses to provide a performance and payment bond, issued by an admitted surety insurer, to the subcontractor.

(d) No party identified in subdivision (b) shall require any other party to waive any provision of this section.

(e) In the event that the contractor elects to substitute securities in lieu of retentions, the contractor may withhold from his or her subcontractors, who have not elected to substitute securities in lieu of retentions, the amount of retentions that would have otherwise been withheld.

**CALIFORNIA CODES
PUBLIC CONTRACT CODE
SECTION 20104-20104.6**

- 20104.** (a) (1) This article applies to all public works claims of three hundred seventy-five thousand dollars (\$375,000) or less which arise between a contractor and a local agency.
- (2) This article shall not apply to any claims resulting from a **contract** between a contractor and a public agency when the public agency has elected to resolve any disputes pursuant to Article 7.1 (commencing with Section 10240) of Chapter 1 of Part 2.
- (b) (1) "Public work" has the same meaning as in Sections 3100 and 3106 of the Civil Code, except that "public work" does not include any work or improvement contracted for by the state or the Regents of the University of California.
- (2) "Claim" means a separate demand by the contractor for (A) a time extension, (B) payment of money or damages arising from work done by, or on behalf of, the contractor pursuant to the **contract** for a public work and payment of which is not otherwise expressly provided for or the claimant is not otherwise entitled to, or (C) an amount the payment of which is disputed by the local agency.
- (c) The provisions of this article or a summary thereof shall be set forth in the plans or specifications for any work which may give rise to a claim under this article.
- (d) This article applies only to contracts entered into on or after January 1, 1991.

20104.2. For any claim subject to this article, the following requirements apply:

- (a) The claim shall be in writing and include the documents necessary to substantiate the claim. Claims must be filed on or before the date of final payment. Nothing in this subdivision is intended to extend the time limit or supersede notice requirements otherwise provided by **contract** for the filing of claims.
- (b) (1) For claims of less than fifty thousand dollars (\$50,000), the local agency shall respond in writing to any written claim within 45 days of receipt of the claim, or may request, in writing, within 30 days of receipt of the claim, any additional documentation supporting the claim or relating to defenses to the claim the local agency may have against the claimant.

- (2) If additional information is thereafter required, it shall be requested and provided pursuant to this subdivision, upon mutual agreement of the local agency and the claimant.
 - (3) The local agency's written response to the claim, as further documented, shall be submitted to the claimant within 15 days after receipt of the further documentation or within a period of time no greater than that taken by the claimant in producing the additional information, whichever is greater.
- (c)
- (1) For claims of over fifty thousand dollars (\$50,000) and less than or equal to three hundred seventy-five thousand dollars (\$375,000), the local agency shall respond in writing to all written claims within 60 days of receipt of the claim, or may request, in writing, within 30 days of receipt of the claim, any additional documentation supporting the claim or relating to defenses to the claim the local agency may have against the claimant.
 - (2) If additional information is thereafter required, it shall be requested and provided pursuant to this subdivision, upon mutual agreement of the local agency and the claimant.
 - (3) The local agency's written response to the claim, as further documented, shall be submitted to the claimant within 30 days after receipt of the further documentation, or within a period of time no greater than that taken by the claimant in producing the additional information or requested documentation, whichever is greater.
- (d) If the claimant disputes the local agency's written response, or the local agency fails to respond within the time prescribed, the claimant may so notify the local agency, in writing, either within 15 days of receipt of the local agency's response or within 15 days of the local agency's failure to respond within the time prescribed, respectively, and demand an informal conference to meet and confer for settlement of the issues in dispute. Upon a demand, the local agency shall schedule a meet and confer conference within 30 days for settlement of the dispute.
- (e) Following the meet and confer conference, if the claim or any portion remains in dispute, the claimant may file a claim as provided in Chapter 1 (commencing with Section 900) and Chapter 2 (commencing with Section 910) of Part 3 of Division **3.6** of Title 1 of the Government **Code**. For purposes of those provisions, the running of the period of time within which a claim must be filed shall be tolled from the time the claimant submits his or her written claim pursuant to subdivision (a) until the time that claim is denied as a result of the meet and confer process, including any period of time utilized by the meet and confer process.

- (f) This article does not apply to tort claims and nothing in this article is intended nor shall be construed to change the time periods for filing tort claims or actions specified by Chapter 1 (commencing with Section 900) and Chapter 2 (commencing with Section 910) of Part 3 of Division **3.6** of Title 1 of the Government **Code**.

20104.4. The following procedures are established for all civil actions filed to resolve claims subject to this article:

- (a) Within 60 days, but no earlier than 30 days, following the filing or responsive pleadings, the court shall submit the matter to nonbinding mediation unless waived by mutual stipulation of both parties. The mediation process shall provide for the selection within 15 days by both parties of a disinterested third person as mediator, shall be commenced within 30 days of the submittal, and shall be concluded within 15 days from the commencement of the mediation unless a time requirement is extended upon a good cause showing to the court or by stipulation of both parties. If the parties fail to select a mediator within the 15-day period, any party may petition the court to appoint the mediator.
- (b) (1) If the matter remains in dispute, the case shall be submitted to judicial arbitration pursuant to Chapter 2.5 (commencing with Section 1141.10) of Title 3 of Part 3 of the **Code** of Civil Procedure, notwithstanding Section 1141.11 of that **code**. The Civil Discovery Act of 1986 (Article 3 (commencing with Section 2016) of Chapter 3 of Title 3 of Part 4 of the **Code** of Civil Procedure) shall apply to any proceeding brought under this subdivision consistent with the rules pertaining to judicial arbitration.

(2) Notwithstanding any other provision of law, upon stipulation of the parties, arbitrators appointed for purposes of this article shall be experienced in construction law, and, upon stipulation of the parties, mediators and arbitrators shall be paid necessary and reasonable hourly rates of pay not to exceed their customary rate, and such fees and expenses shall be paid equally by the parties, except in the case of arbitration where the arbitrator, for good cause, determines a different division. In no event shall these fees or expenses be paid by state or county funds.

(3) In addition to Chapter 2.5 (commencing with Section 1141.10) of Title 3 of Part 3 of the **Code** of Civil Procedure, any party who after receiving an arbitration award requests a trial de novo but does not obtain a more favorable judgment shall, in addition to payment of costs and fees under that chapter, pay the attorney's fees of the other party arising out of the trial de novo.
- (c) The court may, upon request by any party, order any witnesses to participate in the mediation or arbitration process.

20104.4. The following procedures are established for all civil actions filed to resolve claims subject to this article:

(a) Within 60 days, but no earlier than 30 days, following the filing or responsive pleadings, the court shall submit the matter to nonbinding mediation unless waived by mutual stipulation of both parties. The mediation process shall provide for the selection within 15 days by both parties of a disinterested third person as mediator, shall be commenced within 30 days of the submittal, and shall be concluded within 15 days from the commencement of the mediation unless a time requirement is extended upon a good cause showing to the court or by stipulation of both parties. If the parties fail to select a mediator within the 15-day period, any party may petition the court to appoint the mediator.

(b) (1) If the matter remains in dispute, the case shall be submitted to judicial arbitration pursuant to Chapter 2.5 (commencing with Section 1141.10) of Title 3 of Part 3 of the **Code** of Civil Procedure, notwithstanding Section 1141.11 of that **code**. The Civil Discovery Act (Title 4 (commencing with Section 2016.010) of Part 4 of the **Code** of Civil Procedure) shall apply to any proceeding brought under this subdivision consistent with the rules pertaining to judicial arbitration.

(2) Notwithstanding any other provision of law, upon stipulation of the parties, arbitrators appointed for purposes of this article shall be experienced in construction law, and, upon stipulation of the parties, mediators and arbitrators shall be paid necessary and reasonable hourly rates of pay not to exceed their customary rate, and such fees and expenses shall be paid equally by the parties, except in the case of arbitration where the arbitrator, for good cause, determines a different division. In no event shall these fees or expenses be paid by state or county funds.

(3) In addition to Chapter 2.5 (commencing with Section 1141.10) of Title 3 of Part 3 of the **Code** of Civil Procedure, any party who after receiving an arbitration award requests a trial de novo but does not obtain a more favorable judgment shall, in addition to payment of costs and fees under that chapter, pay the attorney's fees of the other party arising out of the trial de novo.

(c) The court may, upon request by any party, order any witnesses to participate in the mediation or arbitration process.

20104.6. (a) No local agency shall fail to pay money as to any portion of a claim which is undisputed except as otherwise provided in the **contract**.

(b) In any suit filed under Section 20104.4, the local agency shall pay interest at the legal rate on any arbitration award or judgment. The interest shall begin to accrue on the date the suit is filed in a court of law.

**CALIFORNIA CODES
PUBLIC CONTRACT CODE
SECTION 20104.70**

20104.70. (a) (1) The second lowest bidder, and any person, firm, association, trust, partnership, labor organization, corporation, or other legal entity which has, prior to the letting of the bids on the public works project in question, entered into a **contract** with the second lowest bidder, may bring an action in superior court if that entity suffers damages as a result of the bid of the second lowest bidder for any **contract** subject to this part not being accepted due to the successful bidder's violation, as evidenced by the conviction of the successful bidder therefor, of any provision of Division 4 (commencing with Section 3200) of the Labor **Code** or of the Unemployment Insurance **Code**, or of both.

(2) There shall be a rebuttable presumption that a successful bidder who has been convicted of a violation of any provision of Division 4 (commencing with Section 3200) of the Labor **Code** or of the Unemployment Insurance **Code**, or of both, was awarded the bid because that successful bidder was able to lower the bid due to this violation or these violations occurring on the **contract** for public work awarded by the public agency.

(b) In an action brought pursuant to this section, the court may award costs and reasonable attorney's fees, in an amount to be determined in the court's discretion, to the prevailing party.

(c) For purposes of an action brought pursuant to this section:

(1) Employee status shall be determined pursuant to Division 4 (commencing with Section 3200) of the Labor **Code** with respect to alleged violations of that division, pursuant to the Unemployment Insurance **Code** with respect to alleged violations of that **code**, or pursuant to Section 2750.5 of the Labor **Code** with respect to alleged violations of either Division 4 (commencing with Section 3200) or of the Unemployment Insurance **Code**, or of both.

(2) "Second lowest bidder" means the second lowest qualified bidder deemed responsive by the public agency awarding the **contract** for public work.

(3) The "second lowest bidder" and the "successful bidder" may include any person, firm, association, corporation, or other legal entity.

(d) A second lowest bidder who has been convicted of a violation of any provision of Division 4 (commencing with Section 3200) of the Labor **Code** or of

the Unemployment Insurance **Code**, or both, within one year prior to filing the bid for public work, and who has failed to take affirmative steps to correct that violation or those violations, is prohibited from taking any action authorized by this section.

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April 3, 2008

**CALIFORNIA CODES
PUBLIC CONTRACT CODE
SECTION 20120-20145**

- 20120.** This article applies to public works contracts awarded by counties subject to Title 3 (commencing with Section 23000) of the Government **Code**. For purposes of this article, the population of a county shall be the most recent estimate determined by the Population Research Unit of the Department of Finance.
- 20121.** Whenever the estimated cost of construction of any wharf, chute, or other shipping facility, or of any hospital, almshouse, courthouse, jail, historical museum, aquarium, county free library building, branch library building, art gallery, art institute, exposition building, stadium, coliseum, sports arena or sports pavilion or other building for holding sports events, athletic contests, contests of skill, exhibitions, spectacles and other public meetings, or other public building or the cost of any painting, or repairs thereto exceeds the sum of four thousand dollars (\$4,000), inclusive of the estimated costs of materials or supplies to be furnished pursuant to Section 20131, the work shall be done by **contract**. Any such **contract** not let pursuant to this article is void.
- 20121.1.** Notwithstanding Section 20121, a county board of supervisors need not **contract** for grading, drainage, pipe laying, fencing, landscaping, instrument installation, and similar construction and repair work necessary to maintain day-to-day landfill operations.
- 20122.** In counties containing a population of 500,000 or over, the work referred to in Section 20121 need not be done by **contract** if the estimated cost thereof is less than six thousand five hundred dollars (\$6,500), exclusive of the estimated cost of materials or supplies to be furnished pursuant to Section 20133.
- 20123.** In counties containing a population of 2,000,000 or over, as determined by the last federal or special census or subsequent estimate validated by the Population Research Unit of the Department of Finance, Sections 20121 and 20122 do not apply to alteration or repair work upon county-owned buildings, if the cost of the work is under fifty thousand dollars (\$50,000).
- 20123.5.** In any county, it is unlawful to split or separate into smaller work orders or projects any public work project for the purpose of evading the provisions of this article requiring public work to be done by **contract** after competitive bidding. Every person who willfully violates the provisions of this section is guilty of a misdemeanor.
- 20124.** The board of supervisors shall adopt plans, specifications, strain sheets, and working details for the work.

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- 20125.** The board shall cause an advertisement for bids for the performance of the work to be published pursuant to Section 6062 of the Government **Code** in a daily newspaper, or pursuant to Section 6066 of the Government **Code** in a weekly newspaper, of general circulation published in the county. If there is no such newspaper published in the county, the notice shall be given by posting in three public places for at least two weeks.
- 20126.** Any notice inviting bids which specifies locations of possible materials, such as a borrow pit or gravel bed, for use in the proposed construction project which would be subject to Section 1601 or Section 1603 of the Fish and Game **Code** shall include any conditions or modifications established pursuant to Section 1601 of the Fish and Game **Code**.
- 20127.** All bidders shall be afforded opportunity to examine the plans, specifications, strain sheets, and working details.
- 20128.** The board shall award the **contract** to the lowest responsible bidder, and the person to whom the **contract** is awarded shall perform the work in accordance with the plans, specifications, strain sheets, and working details, unless the **contract** is modified by a four-fifths vote of the board.
- 20128.5.** Notwithstanding any other provisions of this article, the board of supervisors may award individual annual contracts, none of which shall exceed three million dollars (\$3,000,000), adjusted annually to reflect the percentage change in the California Consumer Price Index, for repair, remodeling, or other repetitive work to be done according to unit prices. No annual contracts may be awarded for any new construction. The contracts shall be awarded to the lowest responsible bidder and shall be based on plans and specifications for typical work. No project shall be performed under the **contract** except by order of the board of supervisors, or an officer acting pursuant to Section **20145**. For purposes of this section, "unit price" means the amount paid for a single unit of an item of work, and "typical work" means a work description applicable universally or applicable to a large number of individual projects, as distinguished from work specifically described with respect to an individual project. For purposes of this section, "repair, remodeling, or other repetitive work to be done according to unit prices" shall not include design or **contract** drawings.
- 20129.** (a) All bids for construction work shall be presented under sealed cover and shall be accompanied by one of the following forms of bidder's security:
- (1) Cash.
 - (2) A cashier's check made payable to the county.
 - (3) A certified check made payable to the county.
 - (4) A bidder's bond executed by an admitted surety insurer, made payable to the county.

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Upon an award to the lowest bidder, the security of an unsuccessful bidder shall be returned in a reasonable period of time, but in no event shall that security be held by the county beyond 60 days from the time the award is made.

- (b) The person to whom the **contract** is awarded shall execute a bond to be approved by the board for the faithful performance of the **contract**.

20130. If the board of supervisors is advised by the county surveyor or engineer that any wharf, chute, or other shipping facility can be constructed or repaired for a sum less than the lowest responsible bid, it may reject all bids and order the work done by day's work under the supervision and direction of the surveyor or engineer.

20131. Counties which employ purchasing agents may:

- (a) Authorize the agent to employ state-licensed independent contractors and purchase materials, furnishings, and supplies used in the construction or repair of public works estimated as costing not more than six thousand five hundred dollars (\$6,500) without the formality of obtaining bids, letting contracts, preparing specifications, and the other things required by this article.
- (b) In counties containing a population of 500,000 or more, authorize the agent to purchase materials and supplies used in the construction or repair of public works estimated as costing not more than three thousand five hundred dollars (\$3,500) without the formality of obtaining bids, letting contracts, preparing specifications, and the other things required by this article.
- (c) Authorize the agent to purchase or **contract** for medical or surgical equipment or supplies, or for professional services, for a county hospital without competitive bidding, so long as an appropriation for the costs of those purchases or contracts is included in the county budget.

As used in this subdivision, "medical or surgical equipment or supplies" means only equipment or supplies commonly, necessarily, and directly used by or under the direction of a physician and surgeon in caring for or treating a patient in a hospital.

20132. The board of supervisors of any county may delegate to the county administrative officer or the county executive officer in an equivalent position, the power to enter into and execute on behalf of the county any contracts, which do not involve the expenditure of more than five thousand dollars (\$5,000), which relate to purposes previously approved and budgeted by the board of supervisors, subject to ratification of such approval and execution by the board of supervisors. This section shall not apply to:

- (a) Matters within the purview of Section 20131.
- (b) Contracts for the construction of public improvements.
- (c) Contracts, which must be awarded after public notice and competitive bidding.

20133. (a) (1) This section provides for an alternative procedure on bidding on building construction projects in excess of ten million dollars (\$10,000,000) applicable only in the Counties of Alameda, Contra Costa, Sacramento, Santa Clara, Solano, Sonoma, and Tulare, upon approval of the appropriate board of supervisors.

(2) For projects with costs ranging from ten million dollars (\$10,000,000) to twenty million dollars (\$20,000,000), inclusive, the **contract** shall be awarded to the lowest responsible bidder. For projects costing over twenty million dollars (\$20,000,000), the county may award the project using either the lowest responsible bidder or by best value.

(b) (1) It is the intent of the Legislature to enable these counties to utilize cost-effective options for building and modernizing public facilities. The Legislature also recognizes the national trend, including authorizations in California, to allow public entities to utilize design-build contracts as a project delivery method.

(2) The Legislature also finds and declares that utilizing a design-build **contract** requires a clear understanding of the roles and responsibilities of each participant in the design-build process. The benefits of a design-build **contract** project delivery system include an accelerated completion of the projects, cost containment, reduction of construction complexity, and reduced exposure to risk for the county. The Legislature also finds that the cost-effective benefits to the counties are achieved by shifting the liability and risk for cost containment and project completion to the design-build entity.

(3) It is the intent of the Legislature to provide an alternative and optional procedure for bidding and building construction projects for these counties.

(4) The design-build approach may be used, but is not limited to use when it is anticipated that it will: reduce project cost, expedite project completion, or provide design features not achievable through the design-bid-build method.

(5) If the board of supervisors elects to proceed under this section, the board of supervisors shall establish and enforce for design-build projects a labor compliance program containing the requirements outlined in Section 1771.5 of the Labor **Code**, or it shall **contract** with a third party to operate a labor

compliance program containing the requirements outlined in Section 1771.5 of the Labor **Code**. This requirement shall not apply to any project where the county or the design-build entity has entered into any collective bargaining agreement or agreements that bind all of the contractors performing work on the projects.

(c) As used in this section:

(1) "Best value" means a value determined by objective criteria and may include, but is not limited to, price, features, functions, life-cycle costs, and other criteria deemed appropriate by the county.

(2) "Design-build" means a procurement process in which both the design and construction of a project are procured from a single entity.

(3) "Design-build entity" means a partnership, corporation, or other legal entity that is able to provide appropriately licensed contracting, architectural, and engineering services as needed pursuant to a design-build **contract**.

(d) Design-build projects shall progress in a four-step process, as follows:

(1) (A) The county shall prepare a set of documents setting forth the scope of the project. The documents may include, but are not limited to, the size, type and desired design character of the buildings and site, performance specifications covering the quality of materials, equipment, and workmanship, preliminary plans or building layouts, or any other information deemed necessary to describe adequately the county's needs. The performance specifications and any plans shall be prepared by a design professional who, is duly licensed and registered in California.

(B) Any architect or engineer retained by the county to assist in the development of the project specific documents shall not be eligible to participate in the preparation of a bid with any design-build entity for that project.

(2) (A) Based on the documents prepared in paragraph (1), the county shall prepare a request for proposals that invites interested parties to submit competitive sealed proposals in the manner prescribed by the county. The request for proposals shall include, but is not limited to, the following elements:

(i) Identification of the basic scope and needs of the project or **contract**, the expected cost range, and other information deemed necessary by the county to inform interested parties of the contracting opportunity, to include the methodology that will be

used by the county to evaluate proposals and specifically if the **contract** will be awarded to the lowest responsible bidder.

(ii) Significant factors which the county reasonably expects to consider in evaluating proposals, including cost or price and all nonprice, related factors.

(iii) The relative importance of weight assigned to each of the factors identified in the request for proposals.

(B) With respect to clause (iii) of paragraph (A), if a non-weighted system is used, the agency shall specifically disclose whether all evaluation factors other than cost or price when combined are:

(i) Significantly more important than cost or price.

(ii) Approximately equal in importance to cost or price.

(iii) Significantly less important than cost or price.

(C) If the county chooses to reserve the right to hold discussions or negotiations with responsive bidders, it shall so specify in the request for proposal and shall publish separately or incorporate into the request for proposal applicable rules and procedures to be observed by the county to ensure that any discussions or negotiations are conducted in good faith.

(3) (A) The county shall establish a procedure to pre-qualify design-build entities using a standard questionnaire developed by the county. In preparing the questionnaire, the county shall consult with the construction industry, including representatives of the building trades and surety industry. This questionnaire shall require information including, but not limited to, all of the following:

(i) If the design-build entity is a partnership, limited partnership, or other association, a listing of all of the partners, general partners, or association members known at the time of bid submission who will participate in the design-build **contract**, including, but not limited to, mechanical subcontractors.

(ii) Evidence that the members of the design-build entity have completed, or demonstrated the experience, competency, capability, and capacity to complete projects of similar size, scope, or complexity, and that proposed key personnel have sufficient experience and training to competently manage and complete the design and construction of the project, as well as

a financial statement that assures the county that the design-build entity has the capacity to complete the project.

- (iii) The licenses, registration, and credentials required to design and construct the project, including information on the revocation or suspension of any license, credential, or registration.
- (iv) Evidence that establishes that the design-build entity has the capacity to obtain all required payment and performance bonding, liability insurance, and errors and omissions insurance.
- (v) Any prior serious or willful violation of the California Occupational Safety and Health Act of 1973, contained in Part 1 (commencing with Section 6300) of Division 5 of the Labor **Code** or the federal Occupational Safety and Health Act of 1970 (Public Law 91-596), settled against any member of the design-build entity, and information concerning workers' compensation experience history and worker safety program.
- (vi) Information concerning any debarment, disqualification, or removal from a federal, state, or local government public works project. Any instance where an entity, its owners, officers, or managing employees submitted a bid on a public works project and were found to be non-responsive, or were found by an awarding body not to be a responsible bidder.
- (vii) Any instance where the entity, its owner, officers, or managing employees defaulted on a construction **contract**.
- (viii) Any violations of the Contractors' State License Law (Chapter 9 (commencing with Section 7000) of Division 3 of the Business and Professions **Code**), excluding alleged violations of federal or state law including the payment of wages, benefits, apprenticeship requirements, or personal income tax withholding, or of Federal Insurance Contribution Act (FICA) withholding requirements settled against any member of the design-build entity.
- (ix) Information concerning the bankruptcy or receivership of any member of the design-build entity, including information concerning any work completed by a surety.
- (x) Information concerning all settled adverse claims, disputes, or lawsuits between the owner of a public works project and any member of the design-build entity during the five years

preceding submission of a bid pursuant to this section, in which the claim, settlement, or judgment exceeds fifty thousand dollars (\$50,000). Information shall also be provided concerning any work completed by a surety during this period.

- (xi) In the case of a partnership or other association, that is not a legal entity, a copy of the agreement creating the partnership or association and specifying that all partners or association members agree to be fully liable for the performance under the design-build **contract**.

(B) The information required pursuant to this subdivision shall be verified under oath by the entity and its members in the manner in which civil pleadings in civil actions are verified. Information that is not a public record pursuant to the California Public Records Act (Chapter 3.5, Division 7, Title 1 of the Government **Code**) shall not be open to public inspection.

- (4) The county shall establish a procedure for final selection of the design-build entity. Selection shall be based on either of the following criteria:

(A) A competitive bidding process resulting in lump-sum bids by the pre-qualified design-build entities. Awards shall be made to the lowest responsible bidder.

(B) A county may use a design-build competition based upon best value and other criteria set forth in paragraph (2) of subdivision (d). The design-build competition shall include the following elements:

- (i) Competitive proposals shall be evaluated by using only the criteria and selection procedures specifically identified in the request for proposal. However, the following minimum factors shall collectively represent at least 50 percent of the total weight of consideration given to all criteria factors; price, technical design and construction expertise, life cycle costs over 15 years or more, skilled labor force availability, and acceptable safety record.
- (ii) Once the evaluation is complete, the top three responsive bidders shall be ranked sequentially from the most advantageous to the least.
- (iii) The award of the **contract** shall be made to the responsible bidder whose proposal is determined, in writing, to be the most advantageous.

- (iv) Notwithstanding any provision of this **code**, upon issuance of a **contract** award, the county shall publicly announce its award, identifying the contractor to whom the award is made, along with a written decision supporting its **contract** award and stating the basis of the award. The notice of award shall also include the county's second and third ranked design-build entities.
 - (v) For the purposes of this paragraph, "skilled labor force availability" shall be determined by the existence of an agreement with a registered apprenticeship program, approved by the California Apprenticeship Council, which has graduated apprentices in each of the preceding five years. This graduation requirement shall not apply to programs providing apprenticeship training for any craft that has been deemed by the Department of Labor and the Department of Industrial Relations to be an apprenticeable craft in the five years prior to enactment of this act.
 - (vi) For the purposes of this paragraph, a bidder's "safety record" shall be deemed "acceptable" if their experience modification rate for the most recent three-year period is an average of 1.00 or less, and their average Total Recordable Injury/Illness rate and average lost work rate for the most recent three-year period does not exceed the applicable statistical standards for its business category or if the bidder is a party to an alternative dispute resolution system as provided for in Section 3201.5 of the Labor **Code**.
- (e) (1) Any design-build entity that is selected to design and build a project pursuant to this section shall possess or obtain sufficient bonding to cover the **contract** amount for nondesign services, and errors and omission insurance coverage sufficient to cover all design and architectural services provided in the **contract**. This section does not prohibit a general or engineering contractor from being designated the lead entity on a design-build entity for the purposes of purchasing necessary bonding to cover the activities of the design-build entity.
- (2) Any payment or performance bond written for the purposes of this section shall be written using a bond form developed by the county.
- (f) All subcontractors that were not listed by the design-build entity in accordance with clause (i) of subparagraph (A) of paragraph (3) of subdivision (d) shall be awarded by the design-build entity in accordance with the design-build process set forth by the county in the design-build package. All subcontractors bidding on contracts pursuant

to this section shall be afforded the protections contained in Chapter 4 (commencing with Section 4100) of Part 1. The design-build entity shall do both of the following:

(1) Provide public notice of the availability of work to be subcontracted in accordance with the publication requirements applicable to the competitive bidding process of the county.

(2) Provide a fixed date and time on which the subcontracted work will be awarded in accordance with the procedure established pursuant to this section.

(g) The minimum performance criteria and design standards established pursuant to paragraph (1) of subdivision (d) shall be adhered to by the design-build entity. Any deviations from those standards may only be allowed by written consent of the county.

(h) The county may retain the services of a design professional or construction project manager, or both, throughout the course of the project in order to ensure compliance with this section.

(i) Contracts awarded pursuant to this section shall be valid until the project is completed.

(j) Nothing in this section is intended to affect, expand, alter, or limit any rights or remedies otherwise available at law.

(k) (1) If the county elects to award a project pursuant to this section retention proceeds withheld by the county from the design-build entity shall not exceed 5 percent if a performance and payment bond, issued by an admitted surety insurer, is required in the solicitation of bids.

(2) In a **contract** between the design-build entity and the subcontractor, and in a **contract** between a subcontractor and any subcontractor thereunder, the percentage of the retention proceeds withheld may not exceed the percentage specified in the **contract** between the county and the design-build entity. If the design-build entity provides written notice to any subcontractor who is not a member of the design-build entity, prior to or at the time the bid is requested, that a bond may be required and the subcontractor subsequently is unable or refuses to furnish a bond to the design-build entity, then the design-build entity may withhold retention proceeds in excess of the percentage specified in the **contract** between the county and the design-build entity from any payment made by the design-build entity to the subcontractor.

(l) Each county that elects to proceed under this section and uses the design-build method on a public works project shall submit to the Legislative Analyst's office, the Senate Committee on Local Government, and the Assembly Committee on Local Government before December 1, 2004, a report containing a description of each public works project procured through the design-build process, and completed on or before November 1, 2004. The report shall include, but shall not be limited to, all of the following information:

- (1) The type of facility.
 - (2) The gross square footage of the facility.
 - (3) The design-build entity who was awarded the project.
 - (4) The estimated and actual length of time to complete the project.
 - (5) The estimated and actual project costs.
 - (6) A description of any written protests concerning any aspect of the solicitation, bid, proposal, or award of the design-build project, including the resolution of the protests.
 - (7) An assessment of the prequalification process and criteria.
 - (8) An assessment of the impact of retaining 5 percent retention on the project.
 - (9) A description of the Labor Force Compliance program and an assessment of the project impact, where required.
 - (10) A description of the method used to award the **contract**. If best value was the method, the factors used to evaluate the bid shall be described, including the weighting of each factor and an assessment of the effectiveness of the methodology.
 - (11) An assessment of the project impact of "skilled labor force availability".
 - (12) An assessment of the design-build dollar limits on county projects. This shall include projects where the county wanted to use design-build and was precluded by the dollar limitation. It shall also include projects where the best value method of awarding contracts was not used, due to dollar limitations.
 - (13) An assessment of the most appropriate uses for the design-build approach.
- (m) Any county named in this section that elects to not use the authority granted herein may also submit a report to the entities named and in accordance with the schedule in subdivision (l). This report may include an analysis of why the authority granted herein was not used by the county.
- (n) On or before January 1, 2005, the Legislative Analyst shall report to the Legislature on the use of the design-build method by counties pursuant to this section, including the information listed in subdivision

(l). The report may include recommendations for modifying or extending this section.

(o) This section shall remain in effect only until January 1, 2006, and as of that date is repealed, unless a later enacted statute, that is enacted before January 1, 2006, deletes or extends that date.

20134. (a) In cases of emergency, when repair or replacements are necessary to permit the continued conduct of county operations or services, the board of supervisors, by majority consent, may proceed at once to replace or repair any and all structures without adopting the plans, specifications, strain sheets, or working details or, subject to Chapter 2.5 (commencing with Section 22050), giving notice for bids to let contracts. If notice for bids to let contracts will not be given, the board shall comply with Chapter 2.5 (commencing with Section 22050). The work may be done by day labor under the direction of the board, by **contract**, or by a combination of the two. If the work is done wholly or in part by **contract**, the contractor shall be paid the actual cost of the use of machinery and tools and of material, and labor and of workers' compensation insurance expended by him or her in doing the work, plus not more than 15 percent to cover all profits and administration. No more than the lowest current market prices shall be paid for materials whenever possible.

(b) In a county of the first, second, third, or fourth class, which is under court order to relieve jail overcrowding or in which the sheriff certifies that the inmate capacity of the county jail system is exceeded by more than 20 percent and that the over population is likely to continue and poses a threat to public safety, health, and welfare, the board of supervisors may **contract** for the construction or expansion of jail facilities without the formality of obtaining bids, adopting plans and specifications, or complying with other requirements of this article, except as required by this subdivision. The person to whom the **contract** is awarded shall execute a bond for faithful performance in accordance with Section 20129. Any plans and specifications adopted by the board may only be altered or changed in accordance with Section 20135 and all contracts awarded pursuant to this subdivision may only be altered or changed in accordance with Sections 20136, 20137, and 20138. The award of the **contract** shall be made after a public hearing on the basis of a request for proposals advertised in accordance with Section 6062 or 6062a of the Government **Code**. The **contract** may be awarded only to a contractor who has responded to the request for proposals and who is licensed to do the work in accordance with Chapter 9 (commencing with Section 7000) of Division 3 of the Business and Professions **Code**. The **contract** shall be upon terms, which the board determines are necessary for the expeditious completion of the work. A **contract** shall not be entered into unless at least three proposals to do the work have been evaluated by a competitive process established by the board. If the board does not select

the lowest bid, it shall make a finding stating the reasons that the lowest bid was not selected.

(c) In any county that has agreed to permit the transfer of prisoners or parole violators under Section 2910 or 2910.5 of the Penal **Code** or of wards under Section 1753.3 of the Welfare and Institutions **Code**, the board of supervisors may **contract** for the construction or expansion of the facilities to be used for that purpose without the formality of obtaining bids, adopting plans and specifications, or complying with other requirements of this article, except as required by this subdivision. The person to whom the **contract** is awarded shall execute a bond for faithful performance in accordance with Section 20129. Any plans and specifications adopted by the board may only be altered or changed in accordance with Section 20135 and all contracts awarded pursuant to this subdivision may only be altered or changed in accordance with Sections 20136, 20137, and 20138. The award of the **contract** shall be made after a public hearing on the basis of a request for proposals advertised in accordance with Section 6062 or 6062a of the Government **Code**. The **contract** may be awarded only to a contractor who has responded to the request for proposals and who is licensed to do the work in accordance with Chapter 9 (commencing with Section 7000) of Division 3 of the Business and Professions **Code**. The **contract** shall be upon terms which the board determines are necessary for the expeditious completion of the work. A **contract** shall not be entered into unless at least three proposals to do the work have been evaluated by a competitive process established by the board and the lowest bid is selected.

(d) Proposed construction or expansion of jail or return-to-custody facilities as authorized under subdivision (b) or (c) shall not commence in a county of the third class without the affirmative vote of a majority of the city council of the incorporated city within which the construction or expansion is proposed.

(e) The board of supervisors may waive the requirements of Title 15 (commencing with Section 3082) of Part 4 of Division 3 of the Civil **Code** for work performed pursuant to subdivision (b) or (c).

(f) If any county that is under court order to relieve overcrowding in a county juvenile facility, as defined by subdivision (c) of Section 4481 of the Penal **Code** or in which the chief probation officer certifies that the juvenile detention capacity of the county juvenile facilities is exceeded by more than 20 percent and that the overpopulation is likely to continue and poses a threat to public safety, health, and welfare, the board of supervisors may **contract** for the construction or expansion of county juvenile facilities without the formality of obtaining bids, adopting plans and specifications, or complying with other requirements of this article, except as required by this subdivision. The person to whom the **contract** is awarded shall execute a bond for faithful performance in accordance with Section 20129. Any plans and specifications adopted by the board may only be altered or changed in accordance with Section 20135 and all

contracts awarded pursuant to this subdivision may only be altered or changed in accordance with Sections 20136, 20137, and 20138. The award of the **contract** shall be made after a public hearing on the basis of a request for proposals advertised in accordance with Section 6062 or 6062a of the Government **Code**. The **contract** may be awarded only to a contractor who has responded to the request for proposals and who is licensed to do the work in accordance with Chapter 9 (commencing with Section 7000) of Division 3 of the Business and Professions **Code**. The **contract** shall be upon terms which the board determines are necessary for the expeditious completion of the work. A **contract** shall not be entered into unless at least three proposals to do the work have been evaluated by a competitive process established by the board. If the board does not select the lowest bidder, it shall make a finding stating the reasons that the lowest bidder was not selected.

(g) In a county of the third class in which there are no available courtrooms to accommodate all authorized judicial positions or in which the board of supervisors certifies that there is a significant need to expeditiously construct new court and court support facilities, the board of supervisors may **contract** for the construction or expansion of court and court support facilities without the formality of obtaining bids, adopting plans and specifications, or complying with other requirements of this article, except as required by this subdivision. The person to whom the **contract** is awarded shall execute a bond for faithful performance in accordance with Section 20129. Any plans and specifications adopted by the board may only be altered or changed in accordance with Section 20135 and all contracts awarded pursuant to this subdivision may only be altered or changed in accordance with Sections 20136, 20137, and 20138. The award of the **contract** shall be made after a public hearing on the basis of a request for proposals advertised in accordance with Section 6062 or 6062a of the Government **Code**. The **contract** may be awarded only to a contractor who has responded to the request for proposals and who is licensed to do the work in accordance with Chapter 9 (commencing with Section 7000) of Division 3 of the Business and Professions **Code**. The **contract** shall be upon terms, which the board determines are necessary for the expeditious completion of the work. A **contract** shall not be entered into unless at least three proposals to do the work have been evaluated by a competitive process established by the board and the lowest bid is selected. This subdivision shall remain in effect until December 31, 1994.

20135. The plans and specifications adopted by the board for the erection, alteration, construction, or repair of any public building or other public structure shall not be altered or changed in any manner, which increases its cost, except by a vote of two-thirds of the members of the board of supervisors.

- 20136.** Whenever the board enters into a **contract** for the erection, construction, alteration, or repair of any public building or other structure, the **contract** shall not be altered or changed in any manner, except:
- (a) As provided in Section 20142.
 - (b) As provided for in the **contract** itself, or specifications.
 - (c) By order adopted by a vote of two-thirds of the board, and the consent of the contractor.
- 20137.** If any change or alteration of the **contract** is ordered, it shall be specified in writing by a duly authorized officer of the county. The cost of such change or alteration must be agreed upon between the board and the contractor unless the **contract** includes a provision to determine a fair and equitable price for the change or alteration. Such a provision may provide for any method of determining the price common in commercial transactions, including, but not limited to, arbitration or cost plus a fixed fee. If the cost so agreed upon:
- (a) Does not exceed the amounts specified in Sections 20121 and 21031, or
 - (b) Does not exceed 10 percent of the original **contract** price, the board may authorize the contractor to proceed with the change or alteration without the formality of obtaining bids therefore. No change or alteration shall be authorized the amount of which is within the limitation specified in subdivision (b) and in excess of the limitation specified in subdivision (a) except by four-fifths vote of the board.
- 20138.** If the cost of the work is reduced by reason of any modification of the **contract**, compensation shall be made to the county therefor.
- 20139.** The board shall not pay or become liable for any extra work done on, or extra material furnished for, any building or structure in the course of performance of a **contract** let pursuant to this article except in accordance with Section 20142, unless the **contract** specifically provides for such payment or the **contract** is changed or modified in the manner provided for in this article.
- 20140.** The method of payment for construction contracts shall be determined by the board, including progress payments for completed portions of the work and for materials delivered on the ground or stored subject to the control of the board and unused.
- 20141.** The provisions of this article shall not apply to the construction of any public building used for facilities of juvenile forestry camps or juvenile homes, ranches or camps established under Article 15 (commencing with Section 880) of Chapter 2 of Part 1 of Division 2 of the Welfare and Institutions **Code**, if a major portion of the construction work is to be performed by wards of the juvenile court assigned to such camps, ranches, or homes.

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- 20142.** (a) The board of supervisors may, by ordinance, resolution, or board order, authorize the county engineer, or other county officer, to order changes or additions in the work being performed under construction contracts. When so authorized, any change or addition in the work shall be ordered in writing by the county engineer, or other designated officer, and the extra cost to the county for any change or addition to the work so ordered shall not exceed five thousand dollars (\$5,000) when the total amount of the original **contract** does not exceed fifty thousand dollars (\$50,000), nor 10 percent of the amount of any original **contract** that exceeds fifty thousand dollars (\$50,000), but does not exceed two hundred fifty thousand dollars (\$250,000).
- (b) For contracts whose original cost exceeds two hundred fifty thousand dollars (\$250,000), the extra cost for any change or addition to the work so ordered shall not exceed twenty-five thousand dollars (\$25,000), plus 5 percent of the amount of the original **contract** cost in excess of two hundred fifty thousand dollars (\$250,000). In no event shall any such change or alteration exceed one hundred fifty thousand dollars (\$150,000).
- 20143.** The board may cause the insertion of provisions in any **contract** for the erection, construction, alteration, or repair of any public building or structure, or in the specifications therefor, for the performance of such extra work and the furnishing of materials therefor by the contractor as the board, county engineer, or other duly authorized officer requires for the proper completion or construction of the whole work contemplated.
- 20144.** The provisions of this article do not apply to any **contract**, which is entered into between Napa County and the State of California or any agency of the executive department of the State of California, for the alteration or repair of the structure located in Napa County and known as the Old Bale Mill.
- 20145.** In counties containing a population of 6,000,000 or over, the board of supervisors may by ordinance authorize such county officer as is deemed appropriate to take or perform any or all acts or actions permitted or required of the board by this article, including the authority to adopt and advertise plans and specifications, award contracts, approve bonds, or order the change or alteration of contracts, with respect to original contracts which do not exceed the total amount of seventy-five thousand dollars (\$75,000), or with respect to changes or alterations to original contracts entered into by the board where the changes or alterations do not exceed 10 percent of the amount of the original **contract** or seventy-five thousand dollars (\$75,000), whichever is less. The aggregate total amount of such changes or alterations to an original **contract** may not exceed 25 percent of the amount of the original **contract**. Any authorization pursuant to this section shall include detailed procedures governing the county officer in the exercise of such authority.

**CALIFORNIA CODES
PUBLIC CONTRACT CODE
SECTION 22300**

22300. (a) Provisions shall be included in any invitation for bid and in any **contract** documents to permit the substitution of securities for any moneys withheld by a public agency to ensure performance under a **contract**; however, substitution of securities provisions shall not be required in contracts in which there will be financing provided by the Farmers Home Administration of the United States Department of Agriculture pursuant to the Consolidated Farm and Rural Development Act (7 U.S.C. Sec. 1921 et seq.), and where federal regulations or policies, or both, do not allow the substitution of securities. At the request and expense of the contractor, securities equivalent to the amount withheld shall be deposited with the public agency, or with a state or federally chartered bank in this state as the escrow agent, who shall then pay those moneys to the contractor. Upon satisfactory completion of the **contract**, the securities shall be returned to the contractor.

(b) Alternatively, the contractor may request and the owner shall make payment of retentions earned directly to the escrow agent at the expense of the contractor. At the expense of the contractor, the contractor may direct the investment of the payments into securities and the contractor shall receive the interest earned on the investments upon the same terms provided for in this section for securities deposited by the contractor. Upon satisfactory completion of the **contract**, the contractor shall receive from the escrow agent all securities, interest, and payments received by the escrow agent from the owner, pursuant to the terms of this section.

(c) Securities eligible for investment under this section shall include those listed in Section 16430 of the Government **Code**, bank or savings and loan certificates of deposit, interest-bearing demand deposit accounts, standby letters of credit, or any other security mutually agreed to by the contractor and the public agency. The contractor shall be the beneficial owner of any securities substituted for moneys withheld and shall receive any interest thereon. Failure to include these provisions in bid and **contract** documents shall void any provisions for performance retentions in a public agency **contract**. For purposes of this section, the term "public agency" shall include, but shall not be limited to, chartered cities.

(d) (1) Any contractor who elects to receive interest on moneys withheld in retention by a public agency shall, at the request of any subcontractor, make that option available to the subcontractor regarding any moneys withheld in retention by the contractor from the subcontractor. If the contractor elects to receive interest on any moneys withheld in retention by a public agency, then the subcontractor shall receive the identical rate of interest received by the contractor on any retention moneys withheld from the subcontractor by the

contractor, less any actual pro rata costs associated with administering and calculating that interest. In the event that the interest rate is a fluctuating rate, the rate for the subcontractor shall be determined by calculating the interest rate paid during the time that retentions were withheld from the subcontractor. If the contractor elects to substitute securities in lieu of retention, then, by mutual consent of the contractor and subcontractor, the subcontractor may substitute securities in exchange for the release of moneys held in retention by the contractor.

(2) This subdivision shall apply only to those subcontractors performing more than five percent of the contractor's total bid.

(3) No contractor shall require any subcontractor to waive any provision of this section.

(e) The Legislature hereby declares that the provisions of this section are of statewide concern and are necessary to encourage full participation by contractors and subcontractors in public **contract** procedures.

(f) The escrow agreement used hereunder shall be null, void, and unenforceable unless it is substantially similar to the following form:

ESCROW AGREEMENT FOR
SECURITY DEPOSITS IN LIEU OF RETENTION

This Escrow Agreement is made and entered into by and
between _____

_____ whose address is _____
_____ hereinafter called "Owner,"
_____ whose address is _____
_____ hereinafter called "Contractor" and
_____ whose address is _____
_____ hereinafter called "Escrow Agent."

For the consideration hereinafter set forth, the Owner, Contractor, and Escrow Agent agree as follows:

(1) Pursuant to Section **22300** of the Public **Contract Code** of the State of California, Contractor has the option to deposit securities with Escrow Agent as a substitute for retention earnings required to be withheld by Owner pursuant to the Construction **Contract** entered into between the Owner and Contractor for ____ in the amount of ____ dated ____ (hereinafter referred to as the "**Contract**"). Alternatively, on written request of the Contractor, the Owner shall make payments of the retention earnings directly to the Escrow Agent. When the Contractor deposits the securities as a substitute for **Contract** earnings, the Escrow Agent shall notify the Owner within 10 days of the

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deposit. The market value of the securities at the time of the substitution shall be at least equal to the cash amount then required to be withheld as retention under the terms of the **Contract** between the Owner and Contractor. Securities shall be held in the name of _____, and shall designate the Contractor as the beneficial owner.

(2) The Owner shall make progress payments to the Contractor for those funds which otherwise would be withheld from progress payments pursuant to the **Contract** provisions, provided that the Escrow Agent holds securities in the form and amount specified above.

(3) When the Owner makes payment of retentions earned directly to the Escrow Agent, the Escrow Agent shall hold them for the benefit of the Contractor until the time that the escrow created under this **contract** is terminated. The Contractor may direct the investment of the payments into securities. All terms and conditions of this agreement and the rights and responsibilities of the parties shall be equally applicable and binding when the Owner pays the Escrow Agent directly.

(4) Contractor shall be responsible for paying all fees for the expenses incurred by Escrow Agent in administering the Escrow Account and all expenses of the Owner. These expenses and payment terms shall be determined by the Owner, Contractor, and Escrow Agent.

(5) The interest earned on the securities or the money market accounts held in escrow and all interest earned on that interest shall be for the sole account of Contractor and shall be subject to withdrawal by Contractor at any time and from time to time without notice to the Owner.

(6) Contractor shall have the right to withdraw all or any part of the principal in the Escrow Account only by written notice to Escrow Agent accompanied by written authorization from the Owner to the Escrow Agent that Owner consents to the withdrawal of the amount sought to be withdrawn by Contractor.

(7) The Owner shall have a right to draw upon the securities in the event of default by the Contractor. Upon seven days' written notice to the Escrow Agent from the owner of the default, the Escrow Agent shall immediately convert the securities to cash and shall distribute the cash as instructed by the Owner.

(8) Upon receipt of written notification from the Owner certifying that the **Contract** is final and complete, and that the Contractor has complied with all requirements and procedures applicable to the **Contract**, Escrow Agent shall release to Contractor all securities and interest on deposit less escrow fees and charges of the Escrow Account. The escrow shall be closed immediately upon disbursement of all moneys and securities on deposit and payments of fees and charges.

(9) Escrow Agent shall rely on the written notifications from the Owner and the Contractor pursuant to Sections (5) to (8), inclusive, of this Agreement and the Owner and Contractor shall hold Escrow Agent harmless from Escrow Agent's release and disbursement of the securities and interest as set forth above.

(10) The names of the persons who are authorized to give written notice or to receive written notice on behalf of the Owner and on behalf of Contractor in connection with the foregoing, and exemplars of their respective signatures are as follows:

On behalf of Owner:

Title

Name

Signature

Address

On behalf of Contractor:

Title

Name

Signature

Address

On behalf of Escrow Agent:

Title

Name

Signature

Address

At the time the Escrow Account is opened, the Owner and Contractor shall deliver to the Escrow Agent a fully executed counterpart of this Agreement.

IN WITNESS WHEREOF, the parties have executed this Agreement by their proper officers on the date first set forth above.

Owner

Title

Name

Signature

Contractor

Title

Name

Signature

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April 3, 2008

CALIFORNIA CODES
GOVERNMENT CODE
SECTION **25500-25509**

- 25500.** The board of supervisors may employ a purchasing agent and such assistants as are necessary for him properly to fulfill his duties.
- 25501.** The purchasing agent may:
- (a) Purchase for the county and its offices all materials, supplies, furnishings, equipment, livestock, and other personal property.
 - (b) Rent for the county and its offices furnishings, equipment, and livestock.
 - (c) Contract for services pursuant to this article and contract for public works projects pursuant to Article 3.5 (commencing with Section 20120) of Chapter 1 of Part 3 of Division 2 of the Public Contract **Code**. The purchasing agent shall make purchases, rentals and contracts only upon proper written requisition. For purposes of this article, the population of a county shall be the most recent estimate determined by the Population Research Unit of the Department of Finance.
- 25501.5.** The board of supervisors may authorize the destruction or disposition of any written requisition received by the purchasing agent, which is more than three years old. Such requisitions need not be photographed, reproduced, or microfilmed prior to destruction and no copy thereof need be retained.
- 25502.** Whenever the board of supervisors employs a purchasing agent it shall not be necessary for it to advertise for bids for furnishing county supplies as required in Section 25480, with the exception of advertising.
- 25502.3.** In counties having a population of less than 200,000, the board of supervisors may authorize the purchasing agent to engage independent contractors to perform services for the county or county officers, with or without the furnishing of material, when the aggregate cost does not exceed fifty thousand dollars (\$50,000), except that this amount shall be adjusted annually by any annual increase in the California Consumer Price Index as determined pursuant to Section 2212 of the Revenue and Taxation **Code**.
- 25502.5.** (a) In counties having a population of 200,000 or more, the board of supervisors may authorize the purchasing agent to engage independent contractors to perform services for the county or county officers, with or without the furnishing of material, when the aggregate cost does not exceed one hundred thousand dollars (\$100,000).
- (b) The board of supervisors may establish rules and regulations to effectuate the purposes of this section.

25502.6. It is unlawful for the purchasing agent in any county having a population of 900,000 or more to split or separate into smaller work orders or projects any public work project for the purpose of evading the provisions of this chapter or of any other law requiring public work to be done by contract after competitive bidding. Every purchasing agent who violates the provisions of this section is guilty of a misdemeanor.

25502.7. Notwithstanding the provisions of Sections 25502.3 and

25502.5. The board of supervisors may, whenever it has proclaimed a local emergency pursuant to Section 8630, direct the purchasing agent to engage independent contractors to perform services related to the local emergency for the county and officers thereof, with or without the furnishing of materials, within the amounts the board of supervisors may establish. The board of supervisors may establish rules and regulations to effectuate the purposes of this section. Those rules and regulations shall include provisions for informal bidding procedures to the extent that such procedures are feasible under emergency circumstances.

25503. When purchasing personal property for which it is not necessary to advertise for bids, the board may authorize the county purchasing agent by ordinance to solicit and accept advantageous trade-in allowances for county personal property which has scrap value of less than ten thousand dollars (\$10,000) and which has been previously determined by the purchasing agent to be not further required for public use.

25504. The county purchasing agent may by direct sale or otherwise sell, lease, or dispose of any personal property belonging to the county not required for public use, subject to such regulations as may be provided by the board of supervisors. He shall pay the proceeds into the county treasury for the use of the county. Where the property is exchanged or traded in he shall secure its value in behalf of the county.

25504.5. The county purchasing agent, with the approval of the board of supervisors, and after publishing notice of his or her intended action pursuant to Section 6061, may, by direct sale or otherwise, sell to a purchaser any personal property owned by or to be owned by the county, provided the purchaser agrees to lease the equipment back to the county for use by the county following the sale. The approval by the board of supervisors of the sale and leaseback shall be given only if the board of supervisors finds, by resolution, that the sale and leaseback is the most economical means for providing such personal property to the county.

- 25505.** Where specifically authorized by law the purchasing agent may sell, lease, or dispose of the personal property of any special district, and pay the proceeds into the treasury of the district, or, if an exchange or trade-in is made, return the proceeds to the special district.
- 25506.** Notices of sales shall be posted for not less than five business days preceding the day of sale in the courthouse of the county and in the office of the purchasing agent.
- 25507.** In the disposition of any personal property pursuant to this article and upon approval by the board, the purchasing agent may purchase advertising space and may advertise the proposed sale or other disposition of the personal property in such newspapers, magazines, and other periodicals as in his judgment will best publicize the proposed sale or other disposition to those persons most likely to bid for or purchase the personal property. Within the limits of the order of the board approving the advertising, the purchasing agent shall decide upon the amount, nature, make-up, and content of the advertising.
- 25508.** The board of supervisors may by ordinance establish rules and regulations requiring the purchasing agent to obtain quotations by the use of formal or informal bids, in connection with the purchase of materials, supplies, furnishings, equipment, livestock and other personal property which such purchasing agent is authorized to purchase for the county and its offices. The purchasing agent shall comply with such rules and regulations.
- 25508.8.** (a) The board of supervisors of any county may, by resolution, authorize the purchasing agent to procure construction materials pursuant to Section 25508 for the construction of facilities to be utilized by a regional opportunity program.
- (b) A county shall be exempt from requirements of the Public Contract **Code** with respect to the construction of a facility if the majority of labor utilized for the construction of the facility pursuant to subdivision (a) is provided by the regional opportunity program or volunteer labor, the facility is to be constructed for use by the regional opportunity program, and the land on which the facility is to be constructed is currently used by a county jail.
- 25509.** In any county which employs a purchasing agent the board of supervisors may by ordinance create and maintain a purchasing agent's stores account for the purchase and maintenance of a stock of general supplies and materials for the county. The board shall determine the amount of said account and shall fix the same in the ordinance creating the account; said ordinance shall also prescribe the method of administration of the account and the manner of accounting therefor. The board may also by ordinance authorize the purchasing agent to establish a checking account in a bank for the payment of miscellaneous and emergency purchases of services and supplies by purchase order check not to

exceed an amount fixed by such ordinance. The procedures for the issuance of such purchase order checks and the administration, including replenishment of such account, shall be established by resolution of the board. Any loss, not caused by negligence of any officer or employee of the county, incurred by reason of the issuance of any check on such checking account shall be charged against the general fund of the county. The authority of this section shall be in addition to and not a limitation upon any revolving fund of the purchasing agent otherwise provided for by law.

Updated:
April 3, 2008

DUTIES OF THE CONTRACTS/PURCHASING DIVISION

The principal duty of the Contracts/Purchasing Division is to provide professional purchasing services in accordance with applicable codes to all county agencies, departments, and special districts as requested. Duties shall be delivered in a fair, accurate and forthright manner.

Except as otherwise noted in this manual, no purchase of personal property by any person other than the purchasing agent shall be binding on the county or constitute a lawful charge against county funds.

It is the duty and policy of the Contracts/Purchasing Division to seek competitive quotations before committing county funds to the extent reasonably possible. It is not mandatory to accept the lowest bid, or to use the competitive bidding process if such action is determined by the Contracts/Purchasing Officer to be in the best interest of the county.

The Contracts/Purchasing Division serves as the liaison between the county and the vendor community. It is the responsibility of the Contracts/Purchasing Division to administer procurement of goods and services for County departments from qualified, registered, responsible vendors at the lowest possible cost in a timely manner. Staff will correspond with the user departments and vendors as needed in order to see that the departments have current information for required products or services.

The Contracts/Purchasing Division shall provide service in the development, execution and recording of contracts for the County. The department shall also serve as a central repository of County contracts, including maintenance of an electronic database.

It is the responsibility of the Contracts/Purchasing Division to discourage practices by county departments that may adversely affect vendor relationships, or bargaining position. Some of these practices may include:

- Implied or inferred purchase commitments to vendors.
- Acceptance of sample materials for use or testing without authorization.
- Persistent insistence on special brands of materials.
- Acceptance of gifts or entertainment from county vendors.
- Agreement to accept materials other than those specified on the purchase order.

It is the responsibility of the Contracts/Purchasing Division staff to follow sound, ethical business practices while complying with existing statutes and policy.

Employees of the Contracts/Purchasing Division shall make every effort to provide service as a knowledgeable, responsive source of information for County departments to use in the procurement of goods and services.

Updated:
April 3, 2008

SOURCE OF FUNDS AND BUDGET ISSUES

In most instances, the funds to purchase goods and services for the county's operating departments reside in the various operating funds and are identified in the approved annual budget by department and account object codes.

It is the user department's responsibility to ensure that expenditures are applied to existing account codes that contain adequate funding. In the event a particular account code needs to be created for a new category, user department is required to contact the Auditor-Controllers Office.

CAPITAL EQUIPMENT

Capital equipment items shall be defined as having a value in excess of **\$5,000** and have a minimum useful life of 1 year or longer. These items may be identified as a specific line item, or included within the category of fixed assets in the approved budget.

THE REQUISITION PROCESS

The requisition is the recognized legal document authorizing the purchase from a departmental budget. It can be considered as the worksheet to document internal approvals, specification information and account codes. It is the informational link between the using department and the Contracts/Purchasing Division. The ordering department completes the requisition and forwards it to Contracts/Purchasing to give notice that materials and/or services are required. The requisition is a two-part form. The original, only, is sent to Contracts/Purchasing and the ordering department retains the copy.

Contracts/Purchasing furnishes the requisition form. Each requisition is preprinted with a five digit sequential number.

In the upper right hand corner, fill in the department number and the fiscal year identifier (0-9) and the prefix:

Prefix		←-Department→		FY		←	Preprinted	→		
		Number								

The Prefix will indicate whether the purchase order to be produced is:

- Regular = "R"
- Blanket = "B"
- Confirming = "K"
- Maintenance = "M"
- Warrant = "W"

In the upper left-hand corner, provide the name and current address of a suggested vendor (if known), and under the vendor section, fill in the ship to address in the appropriate space.

In the "date needed" space, provide the actual date you require the materials being requisitioned. Avoid vague terms such as *"as soon as possible"*, *"now"* or *"rush"*. Be realistic and anticipate needs with regard to the delivery of materials. Special shipping or special delivering charges to meet specific delivery requirements may add to the cost of the requested materials.

In the upper-middle portion of the form, please fill in the appropriation account numbers as called for so that the Auditor/Controller may accurately account for the funds to be disbursed to cover the costs of requested materials. If all materials are to be charged to the same account or, if the charges are to be allocated to more than one account, so indicate in this section.

Fill in the information for **quantities, units, and item descriptions** in the body of the requisition as completely as possible with the information you have. If these items have been ordered before, refer to previous purchase orders.

Quantity, defined: specific number of units required for the order.

Example: “6 ea.” Instead of “1 box”

Unit, defined: industry standard of measure. Manufacturers typically use a common unit of measure such as:

Each (ea.) when sold by the piece

Case (cs) may be used when the description includes the number of units within each case, for example: 2 cases of folders, packed 5000 sheets per case

Reams – commonly used for paper products, indicating 500 sheets

Lot – a term used to indicate a bulk amount agreed upon in advance, for example, the purchase of the contents of an office, where specification of each item is impractical or immaterial. When using the “Lot” unit of measure the description should define the parameters.

The above are only a few commonly used units of measure. It is important to know what the accepted industry standard is for the commodity.

Unit Cost should always correspond to the cost of each unit. Unit cost is multiplied by the quantity should extend to the total cost for that line item.

Provide the name and phone number of the requestor so that Contracts/Purchasing may contact that person for additional information, if necessary.

Obtain the appropriate signature approvals as required by the user department.

Pricing information is not necessary at this time, however, an estimated amount or a “*not to exceed*” amount will be helpful to the buyer. Users may contact the Contracts/Purchasing Division for cost estimates for a particular item or service.

Describe the ordering description as best you can find and, if necessary, Contracts/Purchasing will contact the department or person placing the order if further information is necessary.

THE CONFIRMING PURCHASE REQUISITION

A procedure for processing confirming and emergency requisitions has been implemented to streamline the flow of transactions through the accounting process. Confirming requisitions are to be used for emergencies and to fulfill unanticipated needs under \$1000 unless specifically approved by the Contracts/Purchasing Officer or Agent. Confirming requisitions are designated and referred to by the prefix "K".

Typical purchases, which may be handled with a "confirming" requisition, are:

- Unexpected repairs to equipment.
- One time non-repetitive purchase when no formal bidding is required.
- Emergency orders when there is no time for formalized purchasing procedures.
- Unanticipated advertising expenses.
- Certain short-term equipment rentals when the total price is not determined until the equipment is returned.
- Unanticipated one time installation charges outside the scope of the original agreement.

The following is the approved procedure for processing confirming requisitions:

1. The user determines a need for a "*confirming*" type of purchase.
2. The user completes the vendor and pricing information on the requisition, and obtains departmental approval from the manager or designated official.
3. The user must contact Contracts/Purchasing and request a pre-approved authorization number that must be included on the submitted requisition, or the document will be de-logged and returned to the requesting party.
4. The user contacts and arranges for the delivery of the required goods or services.
4. The user obtains the original invoice from the provider and submits the original invoice along with the properly signed original and one copy of the confirming requisition to the Auditor/Controller. **The description of the requisition shall prominently indicate that it is a "*confirming*" requisition.**

In certain situations, a "Q" requisition may be used instead of confirming purchase orders. "Q" requisitions do not become an actual purchase order. Departments do not forward the "Q" requisition to Contracts/Purchasing. Instead, they are processed and paid by the Auditor-Controller, similar to a "*white claim*". The Auditor-Controller, prior to its use, must approve the use of "Q" requisitions for specific transactions.

Updated:
April 3, 2008

THE PURCHASE ORDER

The purchase order is issued by the Contracts/Purchasing Division and is based upon the ordering department's requisition.

The purchase order is a legal contract between the County of Monterey and the supplying vendor. The purchase order covers specific items and/or services stated on the face of the purchase order at the prices shown. A sample purchase order is attached for reference.

There are five basic types of purchase orders:

- "B" **BLANKET ORDERS.** A blanket purchase order covers routine and repetitive purchases made from a single vendor over a specified period of time. The duration of the blanket purchase order cannot exceed the current fiscal year. The amount shown on the purchase order is estimated.
- "M" **MAINTENANCE ORDERS.** Similar to a blanket order, this purchase order covers repetitive maintenance on equipment during the current fiscal year.
- "R" **REGULAR.** Regular purchase orders are typically used for routine purchases.
- "K" **CONFIRMING.** The vendor has been contacted by the department and given the Purchase Order number in advance.
- "W" **WARRANT.** Used when pre-payment is required, in situations where purchase orders are not accepted. Warrants can be used for payment up to \$3000.

There are four specialty types of purchase orders:

- "C" **CONTRACTS.** This purchase order identifier is used to identify those requisitions that are tied to or associated with a construction project. These are mostly used for Capital Projects and Public Works projects, where we need to track expenditures quickly and efficiently.
- "P" **PHYSICIAN.** This purchase order identifier is used to identify those requisitions that are associated with a Physician contract.
- "E" **EMERGENCY.** This purchase order identifier is used to identify those requisitions that are associated with an identified emergency. These are either by Board Action or as approved by the County Contracts/Purchasing Officer.

“MA” MASTER AGREEMENTS. This purchase order identifier is used to identify those requisitions that are associated with a particular “Master Agreement” as identified by the County’s approved Contracts/Purchasing Master Agreement listing.

Contracts/Purchasing staff enters the requisition data into the county's Advantage Financial System (AFIN) accounting system.

Upon entry and approval by Contracts/Purchasing, the data is transmitted electronically to the Auditor/Controller's office for authorization. The Auditor Controller’s office will verify proper allocation of county funds.

Once the Auditor Controller’s office applies their approval, the Purchase Order will print the following business day. The Purchase Order document is printed in the Contracts/Purchasing office.

The purchase order contains five duplicate sheets that are distributed as follows:

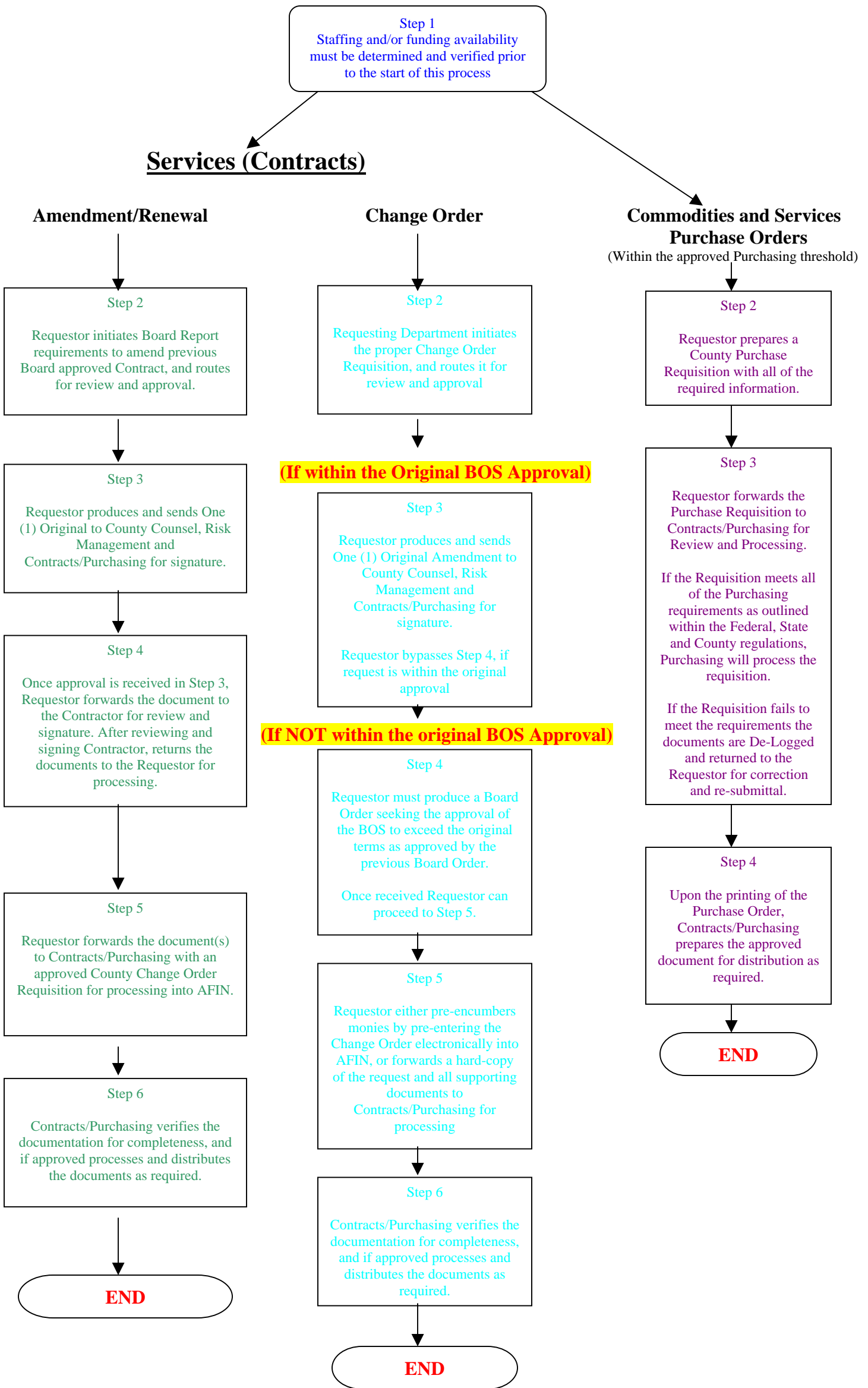
- **Original** copy (white), is the vendor's copy and is mailed to the vendor from the Purchasing office.
- **2nd** copy (off-white), serves as the receiving report and is sent first to the originating department to await receipt of the goods or services. Subsequent to delivery of the goods or services, this copy is signed and dated by the ordering department, along with any other required documentation and forwarded to the Auditor/Controller for payment.
- **3rd** copy (green) is the ordering department copy and retained for its permanent record.
- **4th** copy (gold) is Purchasing’s copy and is retained for its permanent record, filed in alphanumeric order.
- **5th** copy (pink) is the Auditor/Controller's copy and is retained as a permanent record.

CHANGE/CANCELLATION ORDER.

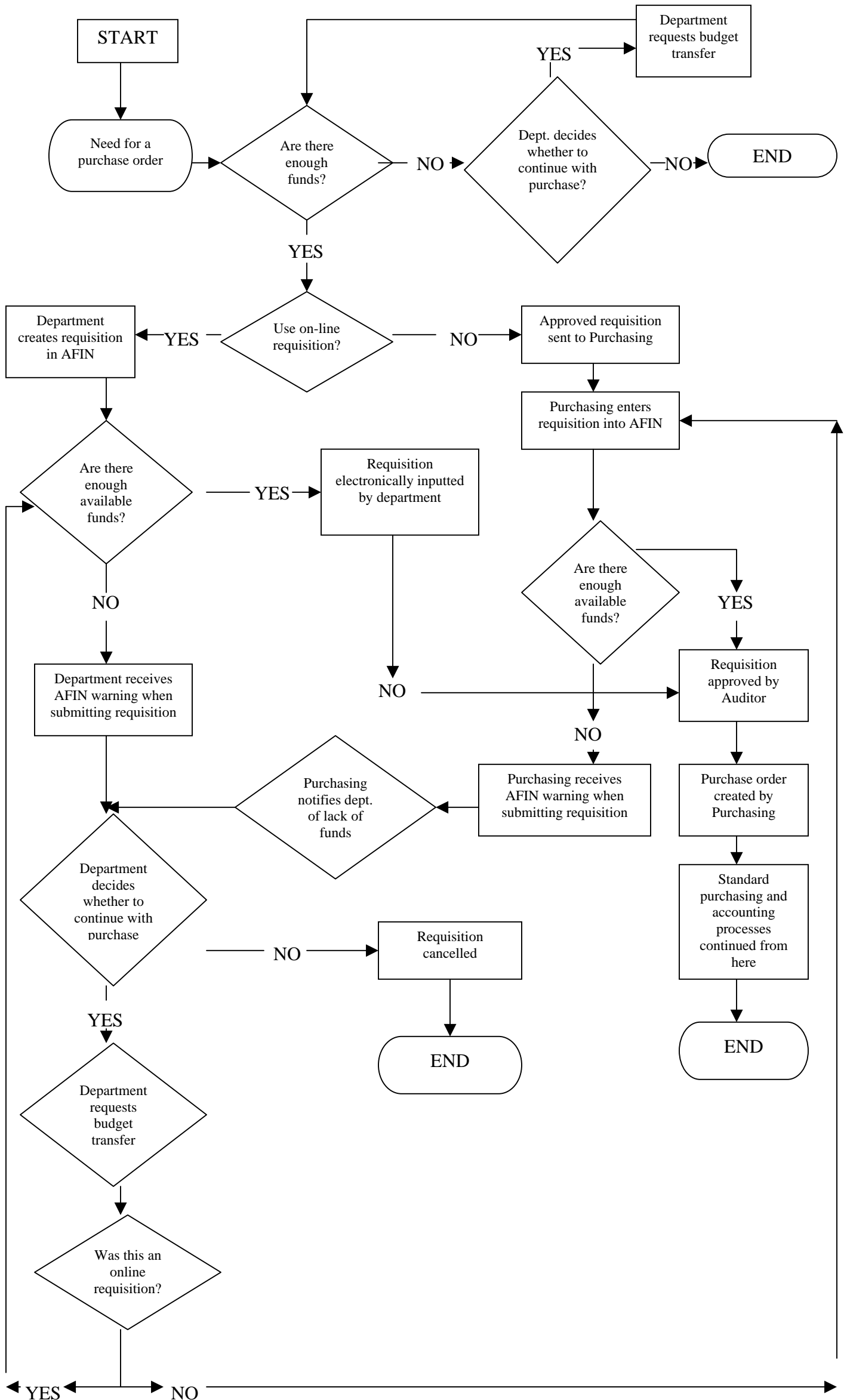
A change order form is used to adjust amounts, quantities, terms or other description as listed on the face of the purchase order, or to cancel a purchase order in its entirety.

Vendor code, or name of vendor may not be altered with a Change/ Cancellation order.

Contract/Purchase Order Revision Process
 (Includes Amendments, Change Orders and Purchase Order Extensions)



PURCHASE ORDER FLOW CHART



MONTEREY COUNTY COMPETITIVE BIDDING / VENDOR SELECTION

For the purpose of goods and services, competitive quotations shall be solicited whenever possible and practical to do so. This process does not cover or include the solicitations for “Works of Public Improvement”, which are covered under the California Public Contract Code.

Competitive bidding consists of any of the following methods:

INFORMAL BID: For values less than \$50,000. Prices may be obtained from **competitive** bids, catalogs, price lists, letter, telephone quotation, agreements, multi-user contract, or verbally. **The action and results must be documented.**

Informal Bid Thresholds:

Micro Purchases – less than \$3000 – One quote minimum is required. Purchases shall be made with adequate and reasonable judgment for the material, or service being purchased. A department may require more than one quote per internal controls.

Mini Purchases – more than \$3,000 but less than \$15,000 – A minimum of two quotes is required. Award shall be made to the responsible bidder submitting the quotation that is most advantageous to the county and conforms in all aspects to the material or service solicited. The names of the businesses submitting quotations, and the date and amount of each quotation, shall be recorded and maintained as a public record.

Small Purchases – greater than \$15,000 but less than \$50,000 – Informal bids may be obtained by using the RFP or RFQ process, not requiring public advertising or public bid opening.

FORMAL BID: For values greater than \$50,000. Prices obtained by competitive bidding, using an RFP or RFQ, with a minimum of three written quotations. Formal bids shall include public advertising and public opening. Award shall be to the lowest responsive, responsible bidder in conformance with award criteria set forth in the RFP. An award letter may be sent to advise the winning bidder of the outcome, however, the award shall not be considered final without a fully executed contract and purchase order.

Bid solicitations are mailed to prospective vendors, along with any other pertinent data. This data is usually contained in a bid specification prepared by Purchasing and approved by the head of the requesting department. The bid specification, along with the cover letter, or formal bid form, will specify the bid due date, as well as other relevant information regarding the intended purchase.

A formal (advertised) bid is intended to satisfy requirements to notify prospective bidders of the county's intent to solicit formal bids and invites participation in the public bidding process from interested contractors. Advertising may be augmented by posting on the Monterey County web site.

A sample format for a Request for Proposals can be found on the Contracts/Purchasing web site, including the standard clauses. The Contracts/Purchasing Division maintains electronic files that may be used as templates (boilerplates) for various commodities. Contact the Contracts/Purchasing Division for additional samples or boilerplate materials for various commodities. Template samples in Word format may be requested by e-mail.

General Provisions and Instructions and Conditions should be attached to each RFP, explaining requirements and bid preparation details. The following sections include sample boilerplate clauses.

Special Conditions, which include details pertaining to the specific project, shall prevail over terms specified in General Conditions.

ADDITIONAL NOTES

For merchandise purchases under \$50,000, a written purchase order mailed, or otherwise furnished, to the successful bidder within the time specified for acceptance will result in a binding contract without further action by either party. A detailed contract is not required, but may be used at the discretion of the originating department.

For purchases over \$50,000, award shall in most cases be signified by issuing a contract document.

All services require a contract in the form of a Professional Service Agreement (PSA) or a standard contract extracted from terms stated in a Request for Proposals (RFP) or Request for Quotation (RFQ).

In either case, the contract shall be interpreted and given effect in all respects according to the laws of the State of California.

Specified delivery time is a condition of the bid and should be considered in the award.

REQUEST FOR PROPOSAL vs. REQUEST FOR QUOTATION:

A request for proposal (RFP) is different from a Request for Quotation (RFQ) in that the RFP invites a bid response in the form of a proposal and generally specifies the bidder's own solution and presents the bidder's method, pricing, delivery, etc. A request for

quotation is usually specific in nature and invites bids on items or services that are clearly specified in the bid. The RFP contains background information, bid content and format, time frames, instructions, rules, scope of the project, intent, pricing and payment criteria, but leaves open the actual method, products, labor, material, etc., to the bidder.

A request for proposal shall be treated the same as informal, formal and advertised bids in terms of value levels, preparation and submission of bids, response time frames and as detailed in the General Conditions for bidding.

DELIVERY OF BIDS:

All bidders are responsible for timely delivery of their bids. A bid or a proposal that is received after the due date and time is to be considered not responsive and may be returned unopened by the purchasing agent. Acceptance of a late bid is at the sole discretion of the Contracts/Purchasing Officer.

A bid is considered late if the bid has not been received by the date and time of day specified in the Bid Specifications and in the face of the bid itself. There is no grace period such as five minutes after the specified time. A bid is due before the deadline specified and bids received after the deadline may be considered not responsive.

REVISION OF BIDS:

If a bidder wishes to change a bid prior to the deadline, the bidder may contact the purchasing agent and retrieve, change or replace his/her bid. This must be done before the due date and time. No bids will be changed, exchanged or altered in any way after the due date. When reviewing the bid responses if the buyer discovers an obvious clerical error, the bidder may be asked to correct the response. This will be at the discretion of the buyer, after consulting with the Contracts/Purchasing Officer. There is no guarantee that the bidder will be contacted. It is the responsibility of the bidder to ensure accuracy and responsiveness of the bid.

BASICS OF THE RFP/RFQ PROCESS:

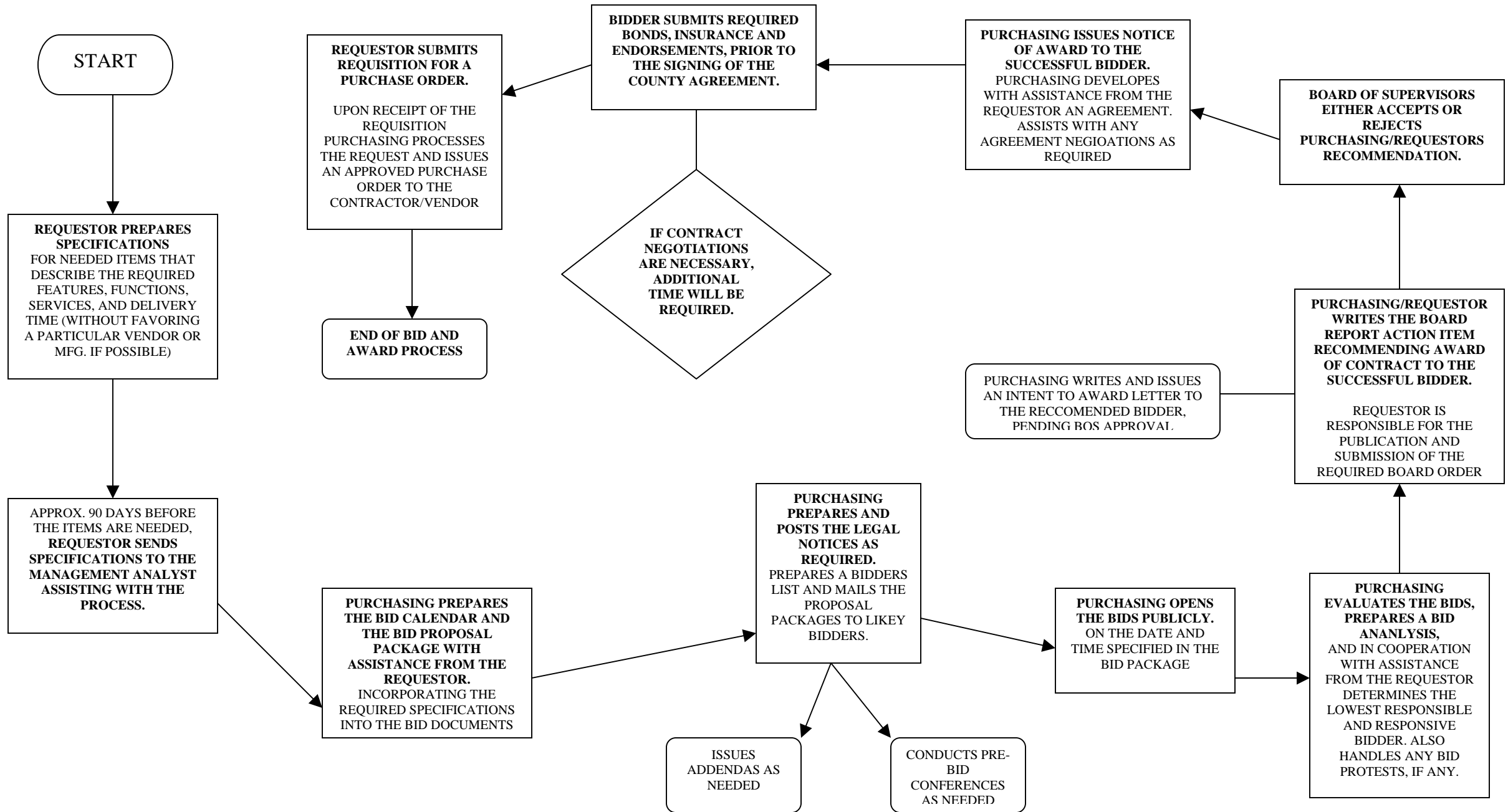
1. Develop set of specifications
 - Consensus on what service or product is needed
 - Consider the different variety of products available
 - Ensure compatibility with existing environment (technical/political)
 - Agreement between all parties on the specifications within the document

2. Write the RFP/RFQ
 - This is a collaborative effort between the requesting department and Contracts/Purchasing staff.
 - Develop a calendar of events
 - Review and approval by County Counsel

- Ensure the document contains all of the required County boilerplate language.
3. Issue the RFP/RFQ
 - Publish the required legal notifications
 - Issue and mail the completed package to a list of pre-identified perspective bidder's.
 - Provide document on request to other interested parties as well.
 - Pre-Bidder's conference/site visit if necessary
 4. Evaluate perspective bidder's responses (Bids)
 - Public bid opening
 - Evaluate perspective bids for basic compliance requirements
 5. Select preferred vendor
 - Select a recommended vendor (not a public announcement yet until Board of Supervisors give final approval by board action)
 6. Negotiate Contract
 - Management Analyst writes and creates the required agreement/contract based off both the specifications as outlined within the RFP/RFQ and the perspective bidder's submitted proposal, working with County Counsel.
 - Negotiate both price and terms with the perspective vendor
 - Customization of schedule and milestone payments

PURPOSE OF THIS ARDUOUS PROCESS:

- Insure the County gets a product or service that clearly meets its needs
- Protect the County from unscrupulous vendors and contractors
- Insures effective expenditures of public funds
- Insures the County is in compliance with Federal, State and County codes with regards to the expenditure and investment of public funds.
- Protects public funds and investments
- Protect the County from possible adverse legal actions
- Insures the active involvement of the Contracts/Purchasing Department, County Counsel, Risk Management and other experts as necessary.
- Forces the County to think systematically about its needs and requirements
- Provides an opportunity to include experts from outside the County in an important discussion of future options.
- Provides the County an opportunity to change direction if necessary
- Successful contract negotiations and provisions may drive the research and development effort, affecting the kind of product or service that becomes available.



REQUIRED FOR PUBLIC PROJECTS > \$10,000 AND FOR GOODS AND SERVICES > \$50,000

SOLE SOURCE/SOLE BRAND JUSTIFICATION

OVERVIEW:

Contracts/Purchasing recognizes that departments often invest a great deal of time and effort in selecting a source or brand, prior to submitting a requisition to Contracts/Purchasing. Even though the department's review process prior to the submittal of a requisition may be sound, departments may unknowingly discourage free and open competition by requesting a single vendor or product. Additionally, the County is bound by both federal and local laws as well as County Policies of which County Staff may be not be aware of. The lack of an effective means of communication between buyer and requesting departments can lead to both lost time in completing the requisition as well as possible adverse legal actions towards both the County and the requesting staff member. Contracts/Purchasing can be an effective partner in a competitive review process given adequate time and involvement in your requirement definitions.

In an effort to expedite sole source/brand requisition requests through purchasing, we would encourage you to review the criteria for Sole Source/Brand form herein. If you feel your request meets such criteria, follow the instructions in filling out the form and attach it to your requisition. If sole source/brand justification is warranted and accepted by Contracts/Purchasing, the requisition will be processed for the sole source/brand as requested.

This is an internal review process. Departments are requested to use discretion in their discussion with vendors so as not to compromise any competitive advantage the Buyer may utilize, regardless of the acceptance or rejection of the sole source/brand justification.

Rather than merely a shift of the review process and burden, this process acknowledges the significant effort a department may undertake when identifying a vendor or brand, and provides you with the method by which to make your requisitioning efforts more efficient under sole source/brand conditions.

Contracts/Purchasing will advise you when a particular competitive review process may both serve the County better and/or be required by governing law.

In order for us to accept a request for sole source/brand the certification, the form referenced herein should be made a part of your justification and be signed by an authorized department representative. This certification will remain on file as part of your requisition package for audit purposes.

SOLE SOURCE PURCHASING:

On rare occasions there may be a need to purchase goods or services from one vendor/contractor without going to formal bid or requesting competitive quotations. This is known as "Sole Source" purchasing.

“Sole Source” purchasing is authorized by Monterey County Code 2.32.040, Emergency Purchases, and by Monterey County Code 2.32.070, Competitive Bidding Not Required.

A sole source may be designated when it is apparent that a needed product or service is uniquely available from the source, or for all practical purposes, it is justifiably in the best interest of the County.

“Sole Source” purchasing may be necessary under certain circumstances such as an emergency wherein the department head or other County Official who is authorized to sign requisitions may purchase items for the continuance of the department function, or that items purchased are necessary for the preservation of life or property, and that no authorized purchasing department personnel are immediately available to make the purchase.

The designation of a “Sole Source” supplier must be authorized by the County Contracts/Purchasing Officer, Agent or Deputy-Purchasing Agent before the requirement for competitive quotations is waived.

PROCEDURE:

Sole source/brand purchasing is an exception to the normal procurement function and requires a detailed justification. In processing sole source/brand requests for supplies, services and/or equipment, Contracts/Purchasing adheres to and is governed by the principles set forth in both the Federal and State Laws governing public purchasing and the Public Contract Code, and by the adopted and approved County of Monterey Policies and Procedures. As such, our decision is final.

If you are requesting a particular vendor, brand or product, you must make this fact clear on your requisition. Such a request should not be made unless the request is reasonable and appropriately justified to meet legal requirements and can withstand a possible audit. The County requirements and the format for submitting such requests are contained herein. Please make copies of the Criteria for Sole Source/Brand form for your future use.

The following factors **DO NOT** apply to sole source/brand requests and should not be included in your sole source/brand justification. They will not be considered and only tend to confuse the evaluation process.

1. Personal preference for product or vendor
2. Cost, vendor performance, and local service (this may be considered an award factor in competitive bidding)
3. Features which exceed the minimum department requirements
4. Explanation for the actual need and basic use for the equipment, unless the information relates to a request for unique factors

5. A request for no substitution submitted without justification. This is a sole source/brand request requiring detailed justification including established sole source/brand criteria

County of Monterey
Contracts/Purchasing Division
JUSTIFICATION OF SOLE SOURCE/SOLE BRAND REQUEST

Purchase Requisition Number _____ Date _____

Description of Item: _____

1. Please indicate the following:

Procurement: Goods
 Services

(Check One)

Sole Source: Item is available from one source only. Item is a one-of-a kind and is not sold through distributors. Manufacturer is exclusive distributor.

Sole Brand: Various sources can supply the specified model and brand and competitive bids will be solicited for the requested brand only. Meets form, fit and function- nothing else will do.

Note: Sole Source/Sole Brand Requests are not maintained as a standing request.
Each request is for a single one-time purchase only.

2. Vendor Selection:

Preferred Vendor
 Sole Source

Vendor Name: _____
Address: _____ City: _____ State: _____
Phone Number: (_____) _____ Fax: (_____) _____
Contact Person: _____ Title: _____
Federal Employer #: _____

3. Provide a brief description of the goods/services to be purchased and why this purchase is being proposed under a sole source acquisition.

a) Why were product and/or vendor chosen?

4. Is there an unusual or compelling urgency associated with this project?

- No
- Yes (Please describe)

THE FOLLOWING TO BE COMPLETED BY THE REQUESTOR

I hereby certify that:

1. I am an approved department representative, and am aware of the County's requirements for competitive bidding, as well as the criteria for justification for sole source/brand purchasing.
2. I have gathered the required technical information and have made a concentrated effort to review comparable and/or equal equipment.
3. The information contained herein is complete and accurate.
4. There is justification for sole source/brand purchasing noted above as it meets the County's criteria.
5. A sole source/brand purchase in this case would withstand a possible audit or a vendor's protest.

Requestors Signature

Date

Authorized Signature by Department Head

Date

Approval by the Contracts/Purchasing Officer:

Authorized Signature

Date

VENDOR REGISTRATION

Vendors are required to complete and file a Vendor Registration Packet, which is available from the Contracts/Purchasing Division. The Vendor Registration Packet includes instructions and guidelines for registration, and forms to be completed by the vendor. Completion of the W-2 form contained within the packet is required for registration into the County accounting financial system. Prospective suppliers may contact the Contracts/Purchasing Division to request a vendor registration packet by calling (831) 755-4990 or, visiting our web site at <http://www.co.monterey/admin/candp.htm>

VENDOR DATABASE

The County Contracts/Purchasing Division maintains a central depository of vendor files as well as an electronic database that includes information from vendor registration forms. The database is used as a resource for bid lists and sourcing information.

COMPETITIVE BIDS – BIDDERS LISTS

It is the County's policy to encourage as many responses as possible for a bid solicitation. Prospective bidders (vendors, contractors, proposers) are invited to submit responses to bid solicitations. Whether formal or informal solicitations, bid requests may be mailed to firms from the list requesting competitive quotations for particular goods or services.

Prospective bidders are encouraged to respond to a bid request even if the response is "no bid". Failure to respond to bid requests could result in a prospective bidder's name to be removed from the bid list in future bids for the category.

Where a bidder list exists for a particular category, prospective vendors may review it upon request to the Contracts/Purchasing Office. Once a bid solicitation is sent out, prospective vendors may not review the list of vendors to whom bids were mailed until after the due date.

Vendors who wish to participate in a bid solicitation need not be previously listed on the vendor bid list. These vendors may contact the Contracts/Purchasing Division and request a copy of the bid solicitation.

INDEPENDENT CONTRACTORS
CONSULTANTS AND PROFESSIONAL SERVICES PROVIDERS

Monterey County Code Section 2.32.030 F. authorizes the purchasing agent to engage independent contractors to perform services for the county where the aggregate cost does not exceed one hundred thousand dollars (\$100,000). This does not apply to repair of structures or work on the public roads of the county or certain other professional services enumerated in that section.

Architectural, engineering, land surveying, construction management, and environmental services are covered under Government Code, Title 1, Division, Chapter 10, Section, 4525-429.5. (Architectural design services are addressed in Public Contract Code section 20103.6.)

Agreements valued in excess of one hundred thousand dollars (\$100,000) require approval by the Board of Supervisors before the purchasing agent may enter into the contract.

With the exception of an emergency, under no circumstances shall a contractor be allowed to commence work for the County without an executed contract, which shall include the authorization of the final document the “Purchase Order”.

Professional services should be competitively bid. Exceptions are subject to approval of sole source justification by the Contracts/Purchasing Officer.

Professional Service Agreements

A Professional Service Agreement (PSA) is required for services other than those by a state licensed contractor for construction trades including specialty classifications.

Examples of services where PSA is required:

1. Architectural services
2. Engineering services
3. Laboratory services
4. General consulting services

A PSA is not required if a more detailed contract is executed based on the RFP or RFQ process.

Vendor originated agreements are not to be used unless approved for both content and form by County Counsel and the Contracts/Purchasing Officer.

A sample of a typical PSA preparation packet includes:

1. PSA Checklist
2. Guideline for Determining Contractor Status
3. Standard PSA Signature Pages
4. Exhibit A – Scope of Services/ Payment Provisions (additional attachments may be used to detail scope of services &/or payment provisions)
5. Insurance Certificates and Endorsements.

AMENDMENTS

An amendment must be completed for **any changes** made to an agreement. All parties involved in signing the original agreement must sign the amendment. The Contracts/Purchasing Officer must approve any exceptions to this rule. **If the amendment takes the agreement over \$100,000, the Board of Supervisors must approve it.**

If an amendment is produced within the same fiscal year that the contract was completed, a change order must accompany the amendment to update the current Purchase Order. If the amendment is produced in a succeeding fiscal year, a new Purchase Order (referencing the original PO number) is required to process the change. Contracts and / or amendments are not final until a Purchase Order is completed.

Change Orders (CO) for Purchase Orders (PO) that originally required Board of Supervisors (BOS) approval must be accompanied by a copy of the expenditure history, as well as the standard back-up documentation, which includes, but is not limited to, a copy of the:

- BOS Order
- Agreement
- Previous Purchase Order

The expenditure history must accurately reflect the amount of approved funding remaining to be expended from the original BOS approved funding. One of the easiest ways to exhibit this information is to provide Contracts/Purchasing with a copy of the Open PO Header Inquiry (OPPH) screen from AFIN, for the number of PO's that have been opened against the original BOS Order. If there is more than one

PO opened against the BOS Order, an accounting sheet reflecting the amounts spent and the balances remaining must be provided.

Any Purchase Order or Change Order, not accompanied by the required documentation, will be de-logged and returned unprocessed to the originating department for correction and resubmission.

PSA forms are available for download from the Contracts/Purchasing Division web page at <http://www.co.monterey/admin/candp.htm>

Professional Service Agreements (PSA):

- (1) **Professional Service Agreements (PSA):** Contracts for unique, technical, and/or infrequent functions performed by an independent contractor qualified by education, experience, and/or technical ability to provide services. In most cases these services are of a specific project nature. Professional Service Agreements may be with partnerships, firms, or corporations, as well as with individuals.
- (2) **Selection of a provider:** Professional Service Agreements for services that exceed \$100,000 must be selected through a competitive process such as a Request for Proposal (RFP), Request for Qualifications (RFQ) or Request for Quotations (RFQ), unless the service is a sole source purchase and is appropriately documented. The \$100,000 threshold is not based on a one-time cost, but rather on a cumulative cost for ongoing services under the terms of the project engagement. Professional Service Agreements, that are less than \$50,000 over the course of service, may be entered into without using the competitive bid process. Total payment to a single professional service provider for services provided to any one County department may not exceed \$50,000 in a fiscal year, unless subject to competitive bidding or review and approval by the Contracts/Purchasing Officer. Selection of a professional service provider shall be based on a variety of criteria including, but not limited to, demonstrated competence, knowledge, references, and unique qualifications to perform the services, in addition to offering a fair and reasonable price that is consistent with current market conditions. Additional criteria may be used as appropriate to the circumstances.
- (3) **Provider accountability:** The Scope of Service (SOS) should clearly define all performance objectives, work expectations, and project milestones, which hold the contractor accountable for successful completion. Requirements may include, but not be limited to, reports, training sessions, assessments, evaluations, or other tangible services.
- (4) **Provisions of Professional Service Agreements:** The following terms and conditions must be addressed:
 - (a) **Performance requirements:** Performance requirements should be precise and written in such a way that it can easily be determined if and when the contractor has successfully fulfilled his or her obligations under the agreement. Consequences for noncompliance such as non-payment and/or termination of the contract must also be defined. Scheduled due dates that specify milestone targets must be clearly identified and may include, but not be limited to, regular meetings scheduled to evaluate progress, identification of problem areas to determine actions to be taken to resolve any concerns, dates for formal written reports, required oral progress reports, and contract monitoring requirements.

(b) Performance monitoring: The department shall monitor the compliance with the terms and conditions of the agreement and applicable laws and regulations.

(c) Period of performance: The resultant agreement must specify a start date and a completion date. While there may be exceptions, in most circumstances an end date to the agreement will be required. If an end date cannot be determined, a maximum time limit or maximum number of hours must be stated. Agreements with organizations are typically written for a specific term of successive years. In some instances, these agreements are annually renewable. Other provisions of an agreement may include a renewal clause beyond the original term of the agreement. Extended term agreements for individuals are discouraged.

(d) Compensation and payment: Compensation and payment terms include elements relating to cost and payment, such as maximum cost (i.e., not to exceed cost), cost per deliverable, hourly rates for individuals providing services, number of hours required, allowable expenses and total authorized-for expenses, and payment and invoicing procedures. Compensation and payment terms should also include a statement as to whether the County will pay expenses incurred by the contractor and, if so, which ones. Such expenses may include, but not be limited to, airfare (economy or coach class), lodging and subsistence necessary during periods of required travel, expenses incurred during travel for telephone, copying and postage, and private vehicle mileage. If other types of expenses are allowed, they must be clearly defined.

(e) Provision of liability: The provider will be required to show proof of insurance coverage and workers compensation in compliance with statutory requirements, in the form specified by the County.

PURCHASING PRINTED MATERIALS

Printed materials shall be subject to competitive bidding requirements conducted by the Printing Services Division of the Information Technology Department.

Each job will be reviewed to determine the practicality of production in-house, or competitively bidding the job to qualified contractors.

Printing Services staff shall review the job to ensure conformance with accepted Monterey County Graphics Standards, continuity of materials, and delivery requirements.

Printing Services Division staff will coordinate with the requesting department to ensure that operational requirements and specifications are met.

**CONTRACT AWARDS FOR CERTAIN PROFESSIONAL SERVICES
(Little Brooks Act)
Government Code, Title 1, Division 5, Chapter 10, Section 4525-429.5**

4525. For purposes of this chapter, the following terms have the following meaning:

- (a) "Firm" means any individual, firm, partnership, corporation, association, or other legal entity permitted by law to practice the profession of architecture, landscape architecture, engineering, environmental services, land surveying, or construction project management.
- (b) "State agency head" means the secretary, administrator, or head of a department, agency, or bureau of the State of California authorized to contract for architectural, landscape architectural, engineering, environmental, land surveying, and construction project management services.
- (c) "Local agency head" means the secretary, administrator, or head of a department, agency, or bureau of any city, county, city and county, whether general law or chartered, or any district which is authorized to contract for architectural, landscape architectural, engineering, environmental, land surveying, and construction project management services.
- (d) "Architectural, landscape architectural, engineering, environmental, and land surveying services" includes those professional services of an architectural, landscape architectural, engineering, environmental, or land surveying nature as well as incidental services that embers of these professions and those in their employ may logically or justifiably perform.
- (e) "Construction project management" means those services provided by a licensed architect, registered engineer, or licensed general contractor which meet the requirements of Section 4529.5 for management and supervision of work performed on state construction projects.
- (f) "Environmental services" means those services performed in connection with project development and permit processing in order to comply with federal and state environmental laws. "Environmental services" also includes the processing and awarding of claims pursuant to Chapter 6.75 (commencing with Section 25299.10) of Division 20 of the Health and Safety Code.

4526. Notwithstanding any other provision of law, selection by a state or local agency head for professional services of private architectural, landscape architectural, engineering, environmental, land surveying, or construction project management firms shall be on the basis of demonstrated competence and on the professional qualifications necessary for the satisfactory performance of the services required.

In order to implement this method of selection, state agency heads contracting for private architectural, landscape architectural, professional engineering, environmental, land surveying, and construction project management services shall adopt by regulation, and local agency heads contracting for private architectural, landscape architectural, professional engineering, environmental, land surveying, and construction project management services may adopt by ordinance, procedures that assure that these services are engaged on the basis of demonstrated competence and qualifications for the types of services to be performed and at fair and reasonable prices to the public agencies. Furthermore, these procedures shall assure maximum participation of small business firms, as defined by the Director of General Services pursuant to Section 14837.

In addition, these procedures shall specifically prohibit practices which might result in unlawful activity including, but not limited to, rebates, kickbacks, or other unlawful consideration, and shall specifically prohibit **government** agency employees from participating in the selection process when those employees have a relationship with a person or business entity seeking a contract under this section which would subject those employees to the prohibition of Section 87100.

4526.5. A state agency head entering into a contract pursuant to this chapter shall, in addition to any other applicable statute or regulation, also follow Section 6106 of the Public Contract **Code**.

4527. In the procurement of architectural, landscape architectural, engineering, environmental, land surveying, and construction project management services, the state agency head shall encourage firms engaged in the lawful practice of their profession to submit annually a statement of qualifications and performance data.

(a) When the selection is by a state agency head, statewide announcement of all projects requiring architectural, landscape architectural, engineering, environmental, land surveying, or construction project management services shall be made by the agency head through publications of the respective professional societies. The agency head, for each proposed project, shall evaluate current statements of qualifications and performance data on file with the agency, together with those that may be submitted by other firms regarding the proposed project, and shall conduct discussions with no less than three firms regarding anticipated concepts and the relative utility of alternative methods of approach for furnishing the required services and then shall select therefrom, in order of preference, based upon criteria established and published by him or her, no less than three of the firms deemed to be the most highly qualified to provide the services required.

(b) When the selection is by a local agency head, the agency head may undertake the procedures described in subdivision (a). In addition, these procedures shall specifically prohibit practices which might result in

unlawful activity including, but not limited to, rebates, kickbacks, or other unlawful consideration, and shall specifically prohibit **government** agency employees from participating in the selection process when these employees have a relationship with a person or business entity seeking a contract under this section.

4528. (a) When the selection is by a state agency head the following procedures shall apply:

(1) The state agency head shall negotiate a contract with the best qualified firm for architectural, landscape architectural, engineering, environmental, land surveying, and construction project management services at compensation which the state agency head determines is fair and reasonable to the State of California or the political subdivision involved.

(2) Should the state agency head be unable to negotiate a satisfactory contract with the firm considered to be the most qualified, at a price the agency head determines to be fair and reasonable to the State of California or the political subdivision involved, negotiations with that firm shall be formally terminated. The state agency head shall then undertake negotiations with the second most qualified firm. Failing accord with the second most qualified firm, the state agency head shall terminate negotiations. The state agency head shall then undertake negotiations with the third most qualified firm.

(3) Should the state agency head be unable to negotiate a satisfactory contract with any of the selected firms, the state agency head shall select additional firms in order of their competence and qualification and continue negotiations in accordance with this chapter until an agreement is reached.

(b) When the selection is by a local agency head, the local agency head may undertake the procedures described in subdivision (a).

4529. This chapter shall not apply where the state or local agency head determines that the services needed are more of a technical nature and involve little professional judgment and that requiring bids would be in the public interest.

4529.5. Any individual or firm proposing to provide construction project management services pursuant to this chapter shall provide evidence that the individual or firm and its personnel carrying out onsite responsibilities have expertise and experience in construction project design review and evaluation, construction mobilization and supervision, bid evaluation, project scheduling, cost-benefit

analysis, claims review and negotiation, and general management and administration of a construction project.

**PROCEDURE FOR THE SELECTION OF ARCHITECTS BASED UPON
QUALIFICATIONS AND DEMONSTRATED COMPETENCE**

CONTENTS

- I Introduction
- II Announcement
- III Proposal Preparation
- IV Submittals
- V Evaluations
- VI Interviews - Oral/Visual Presentations
- VII Ranking
- VIII Negotiations
- IX Insurance/Liability Requirements
- X The Little Brooks Act, Government Code, Title I Division 5, Chapter 10,
Section 4525-4529.5

- Appendix I Preliminary Scope of the Work
- Appendix II Letters of Qualification Evaluation
- Appendix III The Reference Check
- Appendix IV Example - The Interview: Questions and Score Sheets
- Appendix V Group Interview Evaluation Form

I **INTRODUCTION:**

The county desires to standardize its procedures with respect to the retention of an architectural firm providing the county architectural design services for major construction projects where design fees are estimated to be in excess of \$100,000. (Contracts in excess of \$100,000 require Board approval.) (Govt. code section 25502.5 and Ord. 3679)

II **ANNOUNCEMENT:**

- A. The announcement of the county's intent to engage the services of a competent architectural firm will be made by the placement of notices in the local newspapers of general circulation.
- B. In addition to local advertising, notices will be mailed to local architects from a list of prospective architectural providers maintained by the Contracts/Purchasing Division. This mailing will include the Monterey Bay Chapter of the American Institute of Architects.
- C. These notices will include a brief description of the project and the name, address and telephone number of the person at the county to contact for further information.
- D. Upon receipt or publication of this notice, interested architects may indicate to the county one of the following:
 - Interest in competing for the contract
 - Interest in serving on the Proposal Preparation/Selection Advisory Committee
 - No interest in the participation/selection process

III **PROPOSAL PREPARATION:**

- A. The County's Capital Projects Department, of the Resource Management Agency will establish a committee to develop the Request for Proposal for architectural services.
- B. This committee will be composed of, as a minimum, the following:
 1. Two representatives from Capital Projects, or the Facilities Operations Division if the project value is under \$100,000.
 2. One representative from the Contracts/Purchasing Division
 3. One representative each from the affected department or departments
 4. One Budget Analyst from the County Administrative Office

- C. The county may, at its option, convene a pre-bid bidder's conference for all potential participants, where questions for the potential providers may be answered, or, the county may, at its option, open a ten (10) day time period wherein all questions can be sent to the Capital Projects or Facilities Operations Manager. These questions may be sent in by mail or facsimile. The Project Manager will coordinate with the Contracts/Purchasing Division to assemble the questions and answers, and mail the questions with the responses to all interested parties.

Committee Responsibilities

1. Develop RFP to include the following elements and evaluation criteria:
 - a. Intent of proposal
 - b. Scope of service
 - c. Design and use
 - d. Description of the project
 - e. Proposal format and content
 - f. Evaluation and award criteria
 - g. Minimum insurance/bonding requirements
 2. Evaluation of proposals
 3. Interview shortlist
 4. Recommend realistic time frames for project
- D. If the retention of an architectural firm is for architectural design services exceeding \$10,000, and the agreement will require the architect to indemnify and hold harmless the County against any and all liability, whether or not caused by the activity of the architect, the request for proposals or invitation to bid must include a disclosure of that contract provision prominently set forth in bold type. Failure to do so precludes the County from requiring the selected architect to agree to such a contract provision or requires the County to reopen the request for proposals or invitation to bid or allows the architect and County to mutually agree to an indemnity clause acceptable to both parties. (Public Contract Code section 20103.6)

IV. **SUBMITTALS:**

The committee will be responsible for the review and evaluation of proposals submitted as a result of the solicitation.

All submittals shall be directed to the following address:

Contracts/Purchasing Officer
168 West Alisal Street 3rd Floor
Salinas, CA 93901

All submittals shall be in the form and formatted as specified in the RFP section titled "Proposal Format and Content". Proposals (submittals) which do not include all of the elements as specified, or which deviate greatly from the proposal format and content as specified, may be deemed "non-responsive" by the evaluation committee and eliminated from further consideration.

All submittals shall be received and date stamped by the Contracts/Purchasing Division **prior** to the date and time specified in the RFP. Late submittals may be returned to the proposer as "non-responsive".

V. **EVALUATIONS:**

Each member of the selection committee will evaluate each proposal submitted as a result of the solicitation. Evaluations will be based upon the criteria specified in the RFP and shall be qualifications-based criteria. Architectural fees will not be considered at this point in the selection process.

VI **INTERVIEWS:**

The committee will establish a short list of firms to be invited for oral/visual presentations to the county. There is no maximum or minimum number of firms, which can be on the short list.

The committee will establish a numerical scoring system to be included as part of the oral panel questions to the short listed proposers. (See Appendix IV)

The committee will establish criteria for a reference check on the short listed firms, which will include questions to be asked of referenced clients. These references shall be clients of the short listed proposers who have performed projects similar in size and scope as the current county project under consideration for award. (Appendix III).

VII **RANKING**

The committee shall, on the basis of the evaluations, rank the short listed firms in order of preference with the first (top) ranked firm short listed as number one (1), with the next ranked firm short listed as number two (2), and so on until the short list is complete.

VIII **NEGOTIATION OF DESIGN FEES:**

As soon as possible after the ranking is completed, the negotiations for compensation shall begin. Prior to the actual negotiation of fees, the county and the top ranked firm shall meet and agree on the following aspects of the project:

1. Comprehensive scope of services

2. List of consultants proposed by the architects
3. Project work plan
4. Roles of the architects
5. Role of the County
6. Insurance requirements

IX INSURANCE/LIABILITY REQUIREMENTS:

As a minimum, the successful architectural firm will obtain and keep in force for the duration of the project insurance coverage including professional liability. Insurance coverage shall be required, at minimum levels approved by Risk Management. Exceptions to this minimum coverage requirement may be allowed with the concurrence of the County's Risk Manager and County Counsel.

X. "THE LITTLE BROOKS ACT", GOVERNMENT CODE, TITLE I, DIVISION 5, CHAPTER 10, SECTION 4525-4529.5

4525. Procurement based on negotiated contracts – state and local

Notwithstanding any other provision of law, selection by a state or local agency head for professional services of private architectural, engineering, environmental, land surveying, or construction project management firms shall be on the basis of demonstrated competence and on the professional qualifications necessary for the satisfactory performance of the services required. In order to implement this method of selection, state agency heads contracting for private architectural, professional engineering, environmental, land surveying, and construction project management services shall adopt by regulation, and local professional, engineering, environmental, land surveying, and construction project management services may adopt by ordinance, procedures that assure that these services are engaged on the basis of demonstrated competence and qualifications for the types of services to be performed and at fair and reasonable prices to the public agencies. Furthermore, these procedures shall assure maximum participation of small business firms, as defined by the Director of General Services pursuant to Section 14837.

In addition, these procedures shall specifically prohibit practices which might result in unlawful activity including, but not limited to, rebates, kickbacks, or other unlawful consideration, and shall specifically prohibit government agency employees from participating in the selection process when those employees have a relationship with a person or business entity seeking a contract under this section which would subject those employees to the prohibition of Section 87100.

[Amended, Chapter 1412, Statutes of 1989]

4527. Qualification for state contracts – optional locally

In the procurement of architectural, engineering, environmental, land surveying, and construction project management services, the state agency head shall encourage firms engaged in the lawful practice of their profession to submit annually a statement of qualifications and performance data.

- (a) When the selection is by a state agency head, statewide announcement of all projects requiring architectural, engineering, environmental, land surveying, or construction project management services shall be made by the agency head through publications of the respective professional societies. The agency head, for each proposed project, shall evaluate current statements of qualifications and performance data on file with the agency, together with those that may be submitted by other firms regarding the proposed project, and shall conduct discussions with no less than three firms regarding anticipated concepts and the relative utility of alternative methods of approach for furnishing the required services and then shall select there from, in order of preference, based upon criteria established and published by him or her, no less than three of the firms deemed to be the most highly qualified to provide the services required.
- (b) When the selection is by a local agency head, the agency head may undertake the procedures described in subdivision (a). In addition, these procedures shall specifically prohibit practices which might result in unlawful activity including, but not limited to, rebates, kickbacks, or other unlawful consideration, and shall specifically prohibit government agency employees from participating in the selection process when these employees have a relationship with a person or business entity seeking a contract under this section.

[Amended, Chapter 1412, Statutes of 1989]

4528. Mandatory state procedures – option locally

- (a) When the selection is by a state agency head, the following procedures shall apply:
 - (1) The state agency head shall negotiate a contract with the best qualified firm for architectural, engineering, environmental, land surveying, and construction project management services at compensation which the state agency head determines is fair and reasonable to the state of California or the political subdivision involved.
 - (2) Should the state agency head be unable to negotiate a satisfactory contract with the firm considered to be the most qualified, at a

price the agency head determines to be fair and reasonable to the State of California or the political subdivision involved, negotiations with that firm shall be formally terminated. The state agency head shall then undertake negotiations with the second most qualified firm. Failing accord with the second most qualified firm, the state agency head shall terminate negotiations. The state agency head shall then undertake negotiations with the third most qualified firm.

(3) Should the state agency head be unable to negotiate a satisfactory contract with any of the selected firms, the state agency head shall select additional firms in order of their competence and qualification and continue negotiations in accordance with this chapter until an agreement is reached.

(b) When the selection is by a local agency head, the local agency head may undertake the procedures described in subdivision (a).

[Amended, Chapter 1412, Statutes of 1989]

APPENDIX I

Preliminary Scope of the Work

[The development of a scope of work for each project should include the following information in general terms, and should be limited to one page.]

[Owner]

[Project Name]

[Project Location]

[Contact Person]

Identification and involvement of groups (Example: Boards, committees, citizens' groups, etc.):

- Description of studies, surveys, and preliminary feasibility work relevant to project, and useful and available to firms that will be short-listed.
- Requirements for further feasibility planning before development of plans or design work.
- Project outline and general anticipated requirements. (Example: demolition, renovation, and new construction, land use, environmental, waste management, etc.

Anticipated time frame:

Projected start _____ Planned finish _____

Approval process/involvement of groups.

Other requirements: Referendums, public hearings etc.

APPENDIX II
Letters of Qualification Evaluation

The following model, you should add or delete questions as appropriate for your specific situation. It is suggested that the weights and values assigned be on the same scale as those used for interviewing short listed firms, which you will do later.

Highest Number: most value / Rating column: 1-5 points / Weight column: 1-10, depending on importance to the project.

A form on the following page is provided for the person in charge of the review group to use, to summarize the results of the process, to narrow the number of firms that submitted qualifications down to the number desired for a short list (firms to be interviewed).

QUALIFICATIONS EVALUATION

Owner _____
 Contact Person _____
 Project Description _____
 Professional Design Firm _____
 Address _____
 City _____ State _____ Zip _____
 Phone _____ Contact _____

Rating X Weight = Total

1) Firm's history and resource capability to perform required services	X	=
2) Evaluation of assigned personnel	X	=
3) Related experience (as appropriate)	X	=
4) Design services	X	=
5) Construction coordination	X	=
6) Studies	X	=
7) Other	X	=
8) Budget, cost controls experience, and results	X	=
9) Familiarity area –geography and facilities	X	=
10) Ability to relate to project requirements	X	=
11) Analysis of subjective statements [one page] applicable to the project as required on the RFP	X	=
12) Reference check (evaluation transfer from reference check form)	X	=

GRANDTOTAL _____

Name of Reviewer _____

(continued)

(APPENDIX II continued)

QUALIFICATIONS EVALUATION SUMMARY

To be used by the review group person in charge, to compile the evaluation results of all Letters of Qualification submitted. Note: Enter the grand total for each firm's qualifications (from the respective evaluation sheets for comparative purposes) to select three to five most qualified firms to be interviewed.]

Firms	1	2	3	4	5	6	7	8	9	10
Reviewer 1										
Reviewer 2										
Reviewer 3										
Reviewer 4										
Reviewer 5										

GRAND TOTAL: _____

List the top-ranked firms as the short-listed firms to be interviewed.

APPENDIX III
The Reference Check

Owner _____ Project Description _____

Professional design firm _____ for whom the reference check is being conducted.

REFERENCE INFORMATION:

Owner _____ Project Referenced _____
Address _____ Person Contacted _____
Phone _____ Date Contacted _____

[Based on references provided in firm's Letters of Qualification or through networking with other owners who have worked with the firm.]

<u>Sample Questions to be Asked:</u>	5	4	3	2	1
	Exc.	Good	Average	Fair	Poor
1. What was your project?	_____				
2. When was it completed	_____				
3. Did the firm above do the work?	_____				
4. What did they do for you? Design work, construction coordination, studies, other (specify)	_____				
5. Who was the staff person assigned to work with you on this project?	_____				
6. Was the project started as scheduled?	_____				
7. Was the project completed as planned?	_____				
8. Were the budget, cost control, and Financial administration within the planned controls and limitations?	_____				
8. Did the firm and (you) the owner work well as a team as related to the project?	_____				
10. Did the firm's personnel work well with the committee/boards and staff on all requirements of the project's specific requirements?	_____				
11. What is your overall evaluation of the firm based on your experience?	_____				
12. Other questions	_____				
GRAND TOTAL	_____				

Multiply number of question by 5 for maximum score as appropriate. Add each firm's score following the reference check, and then transfer to the letters of Qualification Evaluation form as a line item on that firm's evaluation sheet.

APPENDIX IV
Example - The Interview:
Questions and Score Sheets

[Owner]	[Project]
----------------	------------------

[Firms invited to interview for the captioned project should be prepared to address the following issues during the course of their interview. Questions can be expanded on as appropriate.]

(a) CATEGORIES	RATING	WEIGHT	TOTAL
1) Related project experience	_____	x _____	= _____
2) Firm's ability and capability to perform the work.			
• Key personnel assigned to this project	_____	x _____	= _____
3) Grasp of the project requirements			
• Studies			
• Design			
• Other	_____	x _____	= _____
4) Method to be used to fulfill the required Services, including design phase	_____	x _____	= _____
5) Management approach for technical Requirements. For example:			
• Cost controls			
• Design and construction phase involvement	_____	x _____	= _____
6) Use of consultants that may work on the project			
• Discuss in-house resources			
• Outside sources	_____	x _____	= _____
7) Time schedule planned for this project.			
• Flexibility	_____	x _____	= _____
8) Firm's experience and methods used for:			
• Budgeting and financial controls			
• Determining fee and compensation	_____	x _____	= _____
	GRAND TOTAL		= _____

Instruction for the Interviewers:

During the interview, rate each firm on a scale of 1-5, with 5 being the highest, in each of the eight categories. Enter the number under "Rating." At the completion of the interview, multiply the rating by the predetermined weight for each category, and enter the total. Add all totals to establish the Grand Total. The person in charge will combine all of the totals for those participating in the interview session. The pre-assigned weights are established with a maximum of 10 points for each category. A maximum of 400 points may be awarded, assuming all categories were weighted at 10 and the firm received the maximum 5 rating on each category.

INTERVIEWER: _____ **FIRM:** _____

APPENDIX V
Group Interview Evaluation Form

[For use by the person in charge of the interviews, to compile all scores of professional design firms participating in the interview process.]

Note:

Enter the grand total for each firm, as recorded by each interviewer on the interview score sheet. After all entries are made and totaled, divide the combined group total for each firm by 400 for the maximum possible score.

	Firm A	Firm B	Firm C	Firm D	Firm E
Interviewer 1	_____	_____	_____	_____	_____
Interviewer 2	_____	_____	_____	_____	_____
Interviewer 3	_____	_____	_____	_____	_____
Interviewer 4	_____	_____	_____	_____	_____
Interviewer 5	_____	_____	_____	_____	_____
Interviewer 6	_____	_____	_____	_____	_____
Interviewer 7	_____	_____	_____	_____	_____
Interviewer 8	_____	_____	_____	_____	_____
Grand Totals	_____	_____	_____	_____	_____

Divide group totals by 400 for a composite score to determine the most qualified firm. (Based on 8 categories.)

RECEIVING GOODS OR SERVICES

RECEIVING GOODS:

Merchandise should be signed for immediately upon receipt of merchandise as shown on the packing slip, invoice and/ or purchase order.

In the instance of periodic purchase orders such as monthly quarterly, semi-annual, or annual (blanket), sign off should be at the end of the covered period. Time is of the essence in returning the signed off receiving (white) copy to the Auditor/Controller for payment so that the county may take advantage of any discounts offered for prompt payment. Immediate sign off enables prompt payment to the vendor and fosters a good business relationship.

On the receiving or "white" copy, the person who actually received and verified the goods or services or the person designated by the department should sign on the appropriate line.

The designated receiver should:

- Check the quantity and description against the requisition for accuracy and conformance to desired products or services.
- Check delivery date for acceptability.
- Review prices.
- If there is a problem with any of the above, contact the Purchasing Division for assistance.

The County does not pay in advance for goods and services, only in arrears, or subsequent to the delivery and acceptance of goods or services. However, partial payments can be made against blanket purchase orders and regular purchase orders in some cases. The department shall make a photocopy of the receiving copy of the purchase order and note on the bottom of the copy the number of items received and the amount to be paid, sign the copy and forward to the Auditor/Controller, along with an **original** invoice for prompt payment.

STATUS CHECKING

The Contracts/Purchasing Division can be contacted directly to determine the status of a requisition, or you may check on-line by visiting our web site at <http://www.co.monterey/admin/candp.htm>

For an order placed by your department directly with a supplier against a contract or blanket order, contact the supplier directly with your inquiry. Notify the Contracts/Purchasing Division for assistance if a problem arises.

RECEIVING DELIVERIES

Merchandise may be accepted when adequate identification from the packaging or delivery tags is obtained. A contract number, purchase order number, or other suitable identification indicating correct routing, should be in evidence before accepting the shipment.

When receiving goods from a common carrier, you are signing only for the *number of boxes or cartons* received. The number of cartons, or units such as "one skid" will be listed on the bill of lading, or delivery tag. Your signature on the delivery tag does not indicate acceptance of the *contents* in good condition.

If there is evidence of damage to the exterior of the cartons, such as crushed or open cartons, this should be indicated on the delivery tag. A "Good Order" receipt is not to be given under these circumstances. Procedures for damaged merchandise appear below.

Check merchandise received against the packing slip and the purchase order and sign off the receiving copy and return it to the Auditor/Controller only after all items have been received. By doing this promptly, you assure that the vendor will be paid promptly.

Inspect the merchandise carefully immediately after receipt. Inspections of items received and determination of compliance with the ordering specifications is the responsibility of the ordering department. If there is any damage from shipping, quantity discrepancy, or merchandise is otherwise unsatisfactory, contact the Purchasing office immediately.

An exception to this may be when the purchase order states that the quantity is approximate or that a specified over-shipment is acceptable. In this event the receiver shall indicate the quantity actually received before approval for payment.

End users are obligated to accept receipt of merchandise legitimately ordered. If it is determined that the items are no longer needed, contact the Contracts/Purchasing Office for assistance in alternative arrangements. If the items must be returned through no fault of the supplying vendor, the County may be required to pay a restocking charge.

DAMAGED MERCHANDISE

This section refers to two types of damaged merchandise:

- Visible
- Concealed

In either case, the receiver should exercise judgment in receiving the merchandise.

In cases of "visible" damage:

Note on both copies of the freight bill "**case damaged in shipment**". If the item is visible and the damage is visible, you should also note on the freight bill "**visible damage to contents**".

Obtain signature from delivery person on both copies of freight bill. Return one copy to delivery person and forward the other copy to the Purchasing Department with a note, which identifies the damage.

In cases of concealed damage:

After the merchandise has been accepted from the carrier, open the package and inspect for damage or discrepancies. If damage has occurred, you must keep all packaging materials and report the damage to the Purchasing Department. The receiving department has 15 days in which to make a claim for damages from the carrier. After this time period has lapsed, I.C.C. rules will not permit the filing of a claim. Do not destroy or throw out the items ordered or the packaging materials.

If the order was placed directly by the end user, the person who placed the order, or one with knowledge of the order details, may correspond directly with the vendor in obtaining resolution. Contracts/Purchasing will offer any assistance if needed.

MONTEREY COUNTY INSURANCE REQUIREMENTS

Contractors shall be required to comply with insurance requirements prior to engaging in work for the County. It is the operating department's responsibility to ensure that contractors are provided information on the requirements as stated within the specified bid solicitations and/or associated agreements. Exceptions to policy require approval by Risk Management and the Board of Supervisors.

Evidence of Coverage:

Prior to commencement of this AGREEMENT, the CONTRACTOR shall provide a "Certificate of Insurance" certifying that coverage as required herein has been obtained. Individual endorsements executed by the insurance carrier shall accompany the certificate. In addition, the CONTRACTOR upon request shall provide a certified copy of the policy or policies.

This verification of coverage shall be sent to the County's Contracts/Purchasing Department, unless otherwise directed. The CONTRACTOR shall not receive a "Notice to Proceed" with the work under this AGREEMENT until it has obtained all insurance required and the County has approved such insurance. This approval of insurance shall neither relieve nor decrease the liability of the CONTRACTOR.

Qualifying Insurers:

All coverage, except surety, shall be issued by companies which hold a current policy holder's alphabetic and financial size category rating of not less than A- VII, according to the current Best's Key Rating Guide or a company of equal financial stability that is approved by the County's Contracts/Purchasing Officer.

Insurance Coverage Requirements: Without limiting CONTRACTOR'S duty to indemnify, CONTRACTOR shall maintain in effect throughout the term of this AGREEMENT a policy or policies of insurance with the following minimum limits of liability:

Commercial general liability insurance, including but not limited to premises and operations, including coverage for Bodily Injury and Property Damage, Personal Injury, Contractual Liability, Broad form Property Damage, Independent Contractors, Products and Completed Operations, with a combined single limit for Bodily Injury and Property Damage of not less than \$1,000,000 per occurrence.

Business automobile liability insurance, covering all motor vehicles, including owned, leased, non-owned, and hired vehicles, used in providing services under this AGREEMENT, with a combined single limit for Bodily Injury and Property Damage of not less than \$500,000 per occurrence.

Workers' Compensation Insurance, if CONTRACTOR employs others in the performance of this AGREEMENT, in accordance with California Labor Code section 3700 and with Employer's Liability limits not less than \$1,000,000 each person, \$1,000,000 each accident and \$1,000,000 each disease.

Professional liability insurance, if required for the professional services being provided, (e.g., those persons authorized by a license to engage in a business or profession regulated by the California Business and Professions Code), in the amount of not less than \$1,000,000 per claim and \$2,000,000 in the aggregate, to cover liability for malpractice or errors or omissions made in the course of rendering professional services. If professional liability insurance is written on a "claims-made" basis rather than an occurrence basis, the CONTRACTOR shall, upon the expiration or earlier termination of this AGREEMENT, obtain extended reporting coverage ("tail coverage") with the same liability limits. Any such tail coverage shall continue for at least three years following the expiration or earlier termination of this AGREEMENT.

Other Insurance Requirements:

All insurance required by this AGREEMENT shall be with a company acceptable to the County and issued and executed by an admitted insurer authorized to transact Insurance business in the State of California. Unless otherwise specified by this AGREEMENT, all such insurance shall be written on an occurrence basis, or, if the policy is not written on an occurrence basis, such policy with the coverage required herein shall continue in effect for a period of three years following the date CONTRACTOR completes its performance of services under this AGREEMENT.

Each liability policy shall provide that the County shall be given notice in writing at least thirty days in advance of any endorsed reduction in coverage or limit, cancellation, or intended non-renewal thereof. Each policy shall provide coverage for CONTRACTOR and additional insureds with respect to claims arising from each subcontractor, if any, performing work under this AGREEMENT, or be accompanied by a certificate of insurance from each subcontractor showing each subcontractor has identical insurance coverage to the above requirements.

Commercial general liability and automobile liability policies shall provide an endorsement naming the County of Monterey, its officers, agents, and employees as Additional Insureds with respect to liability arising out of the CONTRACTOR'S work, including ongoing and completed operations, and shall further provide that such insurance is primary insurance to any insurance or self-insurance maintained by the County and that the insurance of the Additional Insureds shall not be called upon to contribute to a loss covered by the CONTRACTOR'S insurance. The required endorsement form for Commercial General Liability Additional Insured is ISO Form CG 20 10 11-85 or CG 20 10 10 01 in tandem with CG 20 37 10 01 (2000). The required endorsement form for Automobile Additional Insured endorsement is ISO Form CA 20 48 02 99.

Prior to the execution of this AGREEMENT by the County, CONTRACTOR shall file certificates of insurance with the County's contract administrator and County's Contracts/Purchasing Division, showing that the CONTRACTOR has in effect the insurance required by this AGREEMENT. The CONTRACTOR shall file a new or amended certificate of insurance within five calendar days after any change is made in any insurance policy, which would alter the information on the certificate then on file. Acceptance or approval of insurance shall in no way modify or change the indemnification clause in this AGREEMENT, which shall continue in full force and effect.

CONTRACTOR shall at all times during the term of this AGREEMENT maintain in force the insurance coverage required under this AGREEMENT and shall send, without demand by County, annual certificates to County's Contract Administrator and County's Contracts/Purchasing Division. If the certificate is not received by the expiration date, County shall notify CONTRACTOR and CONTRACTOR shall have five calendar days to send in the certificate, evidencing no lapse in coverage during the interim. Failure by CONTRACTOR to maintain such insurance is a default of this AGREEMENT, which entitles County, at its sole discretion, to terminate this AGREEMENT immediately.

Indemnification Language:

CONTRACTOR shall indemnify, defend, and hold harmless the County of Monterey (hereinafter "County"), its officers, agents and employees from any claim, liability, loss, injury or damage arising out of, or in connection with, performance of this AGREEMENT by CONTRACTOR and/or its agents, employees or sub-contractors, excepting only loss, injury or damage caused by the negligence or willful misconduct of personnel employed by the County. It is the intent of the parties to this AGREEMENT to provide the broadest possible coverage for the County. The CONTRACTOR shall reimburse the County for all costs, attorneys' fees, expenses and liabilities incurred with respect to any litigation in which the CONTRACTOR is obligated to indemnify, defend and hold harmless the County under this AGREEMENT.

MONTEREY COUNTY INSURANCE REQUIREMENTS

Please provide a Certificate of Liability Insurance and Additional Insured Endorsements.

The following is a guideline of general insurance requirements.

- General Liability One million dollars (\$1,000,000.00) per occurrence
- Auto Liability Five hundred Thousand dollars (\$500,000.00) for Agreements
\$25,000.00 and under per County fiscal year (07/01 – 06/30).

One million dollars (\$1,000,000.00) for Agreements **\$25,000.00 and over** per County fiscal year (07/01 – 06/30).
- Worker's Compensation Insurance
One million dollars (\$1,000,000.00) per person),
One million dollars (\$1,000,000.00) each accident,
One million dollars (\$1,000,000.00) each disease
- Professional Liability Insurance, if required, for the professional services being provided
One million dollars (\$1,000,000.00) per claim
Two million dollars (\$2,000,000.00) in the aggregate

To avoid any unnecessary delays in becoming a contractor, please:

- Have Monterey County named as additional insured on your policy.
- Provide Additional Insured Endorsements for **both** general liability and automobile liability. The endorsements must contain the specific language of naming **the County of Monterey, its agents, officers and employees as Additional Insureds with respect to liability arising out of the Contractor's work, including ongoing and completed operations, and shall further provide that such insurance is primary insurance to any insurance or self-insurance maintained by the County and that the insurance of the Additional Insureds shall not be called upon to contribute to a loss covered by the Contractor's insurance.** The required form for this purpose is: **ISO Form CG 20 10 11-85 or CG 20 10 10 01 in tandem with CG 20 37 10 01 (2000).** For the Automobile Additional Insured Endorsement, the County will accept **ISO form CA 20 48 02 99.**
- Review the attached certificate of liability & additional insured endorsement examples. Please note the language that must be reflected in the endorsements. Listing the County as an additional insured on the certificate of insurance, only, is **not** sufficient.

Send the Certificate of Insurance and Additional Insured Endorsements to the address listed below:

Monterey County Contracts/Purchasing Division
168 West Alisal Street 3rd Floor
Salinas, CA 93901

It is the Contractor's responsibility to see that Purchasing has a **current** Insurance Certificate with the correct amount of coverage and appropriate additional insured endorsements on file at all times. **NON-COMPLIANCE OF THIS CONDITION MAY JEOPARDIZE YOUR STATUS AS AN ACTIVE CONTRACTOR.** You may be prohibited from engaging in any additional work with the County and from participating in any purchasing solicitations until your insurance documents are updated.

Updated:
April 3, 2008

SURPLUS PROPERTY/DISPOSAL

Introduction:

The Contracts/Purchasing Division in cooperation with County Departments will work together to reduce and/or eliminate the amount of surplus waste that may eventually end up at local landfills.

The Contracts/Purchasing Division will make every effort to ensure surplus equipment is made available to other governmental agencies and non-profit organizations throughout the County.

When governmental entities have not expressed an interest in the surplus equipment, the material may be distributed to qualifying non-profit organizations located within Monterey County that have expressed an interest in receiving the material, by submitting a "Notice of Interest Letter" to the Contracts/Purchasing Division, (Attachment-A).

If no Monterey County governmental agency or qualifying non-profit organization has expressed interest in the surplus equipment, the equipment may then be made available to governmental agencies or qualifying non-profit organizations outside of Monterey County.

Policy:

An essential internal control to safeguard the County's assets, and ensure compliance with state and local law's regarding the disposal of surplus governmental property, is the policy of segregation of duties. Therefore the following duties will be segregated and performed by separate individuals with adequate authority:

- Determination of asset no longer needed by office holder
- Determination of asset as unsuitable for retention or transfer to other offices
- Preparation of asset disposal or donation and advertisement of asset for donation
- Selection of non-profit organization
- Board Order authorizing donation or disposal (if required)
- Proof of acceptance and receipt by non-profit, or proof of disposal

The Contracts/Purchasing Division shall maintain a list of non-profit organizations authorized to receive surplus county equipment. The organization(s) seeking the surplus property shall be required to provide proof that they are an authorized non-profit organization that is located within the County of Monterey and is exempt from federal income taxation pursuant to Government Code 26 U.S.C. 501 (a) and (c)(3), also a description of the organization's primary purpose, a description of the type or types of property the organization needs and the name, address, and telephone number of a person designated by the organization's governing board to receive donated property and to serve as its agent.

The Contracts/Purchasing Division shall post annually its policy and procedures for the disbursement of surplus property on its website accessible to all interested parties.

The condition of the surplus equipment may vary and may be in need of reconditioning and/or repair. The County of Monterey cannot predict what types of items or amounts of items that may be labeled as surplus over the course of any time period.

The County shall be responsible for the removal of all County-related markings from all surplus equipment prior to its release to outside sources. When disposing of both computer and electronic equipment, the department from where the equipment is transferred from is responsible in ensuring that the equipment is clean and clear of all county information. Any and all recorded tapes, CD's, hard drives, or other magnetic data storage devices sent by the department to the surplus facility shall either be erased by a method that conforms to the US Department of Defense Clearing and Sanitization Standard DoD 5220.22-M, or ground up in a shredding device.

The County shall not be responsible for equipment that may be either malfunctioning or inoperative. No warranty, either expressed or implied, will be associated with the donation of surplus items.

The receiving agency/organization shall not obtain the surplus items from the County of Monterey with the intent to sell or barter.

Procedures for Disposal of Surplus Property:

The majority of items to be disposed of are separated into four (4) categories:

Category:

- One:** Surplus equipment, which still has some useful life
- Two:** Surplus equipment no longer needed by the County but still has a resale or scrap value
- Three:** Surplus equipment which, can be donated or given to authorized governmental agencies and/or non-profit organizations
- Four:** Surplus equipment which has no useful service life, is unsuitable or it is not economical to repair or restore to service

The following procedures will be implemented and will be applied by category:

Categories:

Category One: Surplus equipment, which still has some useful life:

- Surplus equipment that has been deemed by the Purchasing Agent to have some useful life shall be transferred to County surplus facility by the department accompanied with a "Property Transfer Document", which is available from the Contracts/Purchasing Division.
- County departments expressing a need for a piece of equipment from surplus must fill out a "Property Transfer Document" form to document the transaction. Departments are required to contact the Contracts/Purchasing Division to schedule an appointment to view available surplus equipment.
- If after a period of time determined by the Purchasing Agent surplus equipment continues to remain within the surplus facility, the Purchasing Agent may re-categorize the surplus equipment as "Category Two".
- This procedure ensures that the County will receive the maximum benefit from these items.

Category Two: Surplus equipment no longer needed by the County but still has a resale or scrap value:

- Surplus equipment transferred to surplus that has been determined by the Purchasing Agent to no longer have any type of internal value or usage to the County and has re-categorized the surplus equipment to a "Category Two" level may now be offered and opened to the public through an advertised public sale.
- The Purchasing Agent shall recommend a minimum bid for surplus equipment. Interested parties shall be allowed to quote a bid price for the listed equipment. If the quoted bids meet or exceed the recommended minimum value, the Purchasing Agent may award and sell the surplus equipment to the bidder who, in the determination of the Purchasing Agent, submits the quotation determined to be in the best interest of the County.

Note: This is in conformance with Government Code Section 25507.

- In the event that the surplus equipment is not sold during the public auction stage the Purchasing Agent may then re-categorize the surplus equipment to a "Category Three" level.

Category Three: Surplus equipment which, can be donated or given to authorized governmental agencies and/or non-profit organizations:

- In accordance with applicable code, items transferred to surplus, and classified, as “Category Four” by the Purchasing Agent may be made available to those organizations that are pre-register with the County of Monterey as interested parties for those types of items, which may become available.

Category Four: Surplus equipment which has no useful service life, is unsuitable or it is not economical to repair or restore to service:

- In accordance with applicable code, items transferred to the surplus facility, and classified, as “Category Four” by the Purchasing Agent shall be disposed of in a manner determined to be in the best interest of the county. The Purchasing Agent shall make a good faith effort to either place the items in county service, or dispose of by public sale and/or by donation to authorized agencies. These efforts having failed, the items may be disposed of by either sending them to recyclers and/or hauled away as rubbish.

Attachment- A

Notice of Interest for County of Monterey Surplus Property

Request Date: _____ **Submit to:** County of Monterey
Contracts/Purchasing Division
168 West Alisal Street 3rd Floor
Salinas, CA 93901

Organization Information:

Name of Organization: _____

Address: _____

City: _____ State: _____ Zip: _____

Telephone: () _____ Fax: () _____

Authorized Requestors Information:

Name: _____

Title: _____

Telephone: () _____ Email: _____

Types of Equipment:

Please indicate the type of surplus equipment your organization is interested in by checking the appropriate boxes.

- Office Furniture
- Office Equipment
- Vehicles
- Computer Equipment

Proof of your organizations Non-Profit status must be on file with the County of Monterey.

Please provide and attach the following documents with this application:

1. Copy of your organizations 501C-3 IRS Tax Identification Number
2. IRS Letter of Determination
3. Brief description of the proposed use of the donated equipment

Note: These documents may either be faxed or mailed into our office.

Any questions you may contact the Contracts/Purchasing Division at (831) 755-4990.

Attachment- B

Monterey County Codes:

2.32.080 Posting Notices of Sale

Notices of sales of surplus personal property shall be posted for not less than five business days preceding the day of sale in the county courthouse and in the office of the purchasing agent and in such other public place within the county as the purchasing agent may deem advisable. (Ord. 1030 Section 8, 1958.)

2.32.090 Advertising Proposed Sale

In the disposition of any surplus personal property and upon approval of the Board of Supervisors, the purchasing agent may purchase advertising space and may advertise the proposed sale or other disposition of the personal property in such newspapers, magazines and other periodicals as in his judgment will best publicize the proposed sale or other disposition to those persons most likely to bid for the purchase of the personal property. Within the limitation of the order of the Board of Supervisors approving the advertising, the purchasing agent shall decide upon the amount, nature, makeup and content of the advertising. (Ord. 1030 Section 9, 1958.)

2.32.100 Surplus Pool

Whenever any item of personal property is no longer needed by the office, department or institution in possession thereof, such fact shall be reported to the purchasing agent who may transfer such item to a surplus pool to be maintained under the supervision of the purchasing agent. Whenever any office, department, or institution is in need of an article, which has been placed in such surplus pool or has requisitioned the purchase of a similar article, the purchasing agent, upon a properly drawn request for transfer or requisition approved by the administrative officer, may transfer the article to such department. (Ord. 1030 Section 10, 1958.)

WHITE CLAIMS

Certain items may be paid by the use of a white claim by the Auditor/Controller without the use of a purchase order. Examples include postage, and certain payments for employee related services, aid in goods for service clients, and medical examinations. Payments for these and other expenditures may be allowable as determined by the Auditor/Controller.

Using a White Claim, vendor invoices may be paid by the Auditor/Controller upon approval of the department head or authorized representative. The Auditor/Controller retains the authority to question or disapprove payment for items the Auditor/Controller deems improper.

The "white claims" process is not intended to avoid the normal requisition process. The majority of transactions for the procurement of goods and services shall be made through the Contracts/Purchasing Department using the requisition and purchase order process.

Board resolution 87-444 dated August 4, 1987 approves and specifies items, which may be paid through the "white claim" procedure.

EQUIPMENT LEASING

In accordance with Monterey Code Section 2.32.030.c., the purchasing agent shall negotiate and execute in the name of the county all equipment service contracts and lease-purchase agreements of personal property. Agreements shall be signed by the purchasing agent or authorized deputy unless otherwise directed by the Board of Supervisors or applicable code.

REAL PROPERTY LEASING/RENTALS

In accordance with Monterey County Code Section 2.32.020.D., the purchasing agent shall negotiate in the name of the county as lessee subject to approval by the Board of Supervisors all rentals of real property, which the county may require.

The Real Property Specialist, operating under the supervision of the Facilities Operations Division, of the Resource Management Agency, has been designated as the point of contact to coordinate and facilitate county real property leases between leasing agents/landlords and the County of Monterey. Final authorization is provided by the Contracts/Purchasing Officer, or designated Deputy Purchasing Agent.

Real property lease procedures are detailed in a separate manual, effective February 1, 2001 under the auspices of Facilities Projects Division of the Resource Management Agency (RMA). All property leases, amendments and other transactions affecting those leases are subject to approval by County Counsel.

A Notice of Intention to engage in such a lease/rental agreement shall be posted in a public place for a minimum period of (5) five working days before submission to the Board of Supervisors for approval.

COUNTY OF MONTEREY

STANDARD LEASE AGREEMENT



LEASED PREMISES:	_____
DEPARTMENT:	_____
LESSOR:	_____ _____ _____ _____

a) *COUNTY OF MONTEREY*

b) *STANDARD LEASE AGREEMENT*

Article II. PREAMBLE

THIS LEASE ("Lease") is made this ___ day of ____, 200_, by and between _____, Federal Identification Number _____, ("LESSOR") and the **COUNTY OF MONTEREY**, ("LESSEE"), C/O Lease Manager, 855 East Laurel Drive, Building C, Salinas, CA, 93905. LESSOR and LESSEE hereby agree as follows:

ARTICLE 1 - PREMISES

1.1 ***Description:*** LESSOR hereby leases to LESSEE and LESSEE hereby leases from LESSOR, upon the terms and conditions herein set forth, that certain real property and its appurtenances, situated at _____ and described as follows: General offices consisting of approximately _____ rentable square feet of space, (the "Premises"), as designated in Exhibit A, which is attached and incorporated herein. The term "rentable square feet" shall be used as defined by the Building Owners and Managers Association ("BOMA"). If the Premises constitutes only a portion of the building or complex, the Premises represents one hundred percent (100%) of the total rentable space. The Premises is _____ percent (___%) of the total building or complex.

1.2 ***Non-Exclusive Use Areas:*** LESSEE shall also have the non-exclusive right to use, in common with other tenants in the building, any and all of the following areas which may be appurtenant to the Premises: Common entrances, lobbies, elevators, stairways and access ways, loading and unloading areas, visitor parking areas, ramps, drives, platforms, public rest rooms, and common walkways and sidewalks necessary for access to the Premises.

1.3 ***Parking Areas:*** LESSEE shall have access to all parking spaces in the _____ and shall be allowed, if needed, to park up to _____ (___) county vehicle as close to the Premises as possible, overnight and on weekends. LESSEE'S employees shall park in the middle row as far away from entries as possible. LESSOR, at LESSOR'S expense may need to post parking signage if deemed necessary for LESSEE'S use of the Premises.

1.4 ***Compliance with the "Americans with Disabilities Act of 1990" (ADA):*** LESSOR shall ensure that the Premises are in compliance with the Americans with Disabilities Act of 1990 ("ADA"), as amended, and, if necessary, prior to the Commencement Date, shall modify the Premises to comply with the Act and the regulations promulgated to implement the ADA.

1.5 **Compliance with "No Smoking Law" (2003 Assembly Bill 846):** LESSOR shall ensure that the Premises and the non-exclusive areas of the building as described in Article 1.2 are in compliance with Government Code Title 1, Division 7, Chapter 32 (commencing with section 7596), as amended, and, if necessary, prior to the Commencement Date, shall modify the same to comply with the law and the regulations promulgated to implement 2003 Assembly Bill 846.

1.6 **Statement of Seismic Adequacy:** LESSEE shall provide the statement described in Exhibit B with respect to seismic adequacy clearance.

1.7 **Area of Premises:** Within _____ (____) days of the date that this Lease is executed by LESSOR and LESSEE, and upon LESSEE'S written request, LESSOR shall have the rentable square feet of the Premises measured as described in Article 1.1 by a reputable architect. Provided the amount differs from that set forth in Article 1.1, LESSOR and LESSEE will execute a letter of agreement setting forth the correct rentable square feet of the Premises. It is agreed that when the correct rentable square feet of the Premises is determined, changes and modifications to the Lease may be required including, but not limited to, Article 3. Cost for architectural services shall be equally split between LESSOR and LESSEE. LESSOR'S cost for any architectural services shall not exceed \$_____.

1.8 **Right of First Refusal:** LESSEE shall have the right of first refusal to lease any additional suites in the _____ Building located at _____, which may become available during the initial term or any extended term of this Lease. LESSEE will have up to but not more than thirty (30) days to accept or reject this additional space.

ARTICLE 2 - TERM

2.1 **Lease Term:** The term of this Lease (the "Lease Term") shall be _____ (____) years, commencing on _____ 1, 200_ or upon issuance of a certificate of occupancy from the City of _____ and LESSEE'S final walk through and approval of all Premise Improvements, whichever is later, ("Lease Commencement Date") and ending _____ 1, 200_ or _____ (____) years from Lease Commencement Date, whichever is earlier, with such rights of termination and extension of the Lease Term as are hereinafter set forth.

2.2 **Extended Term:** Upon completion of the initial Lease Term, the LESSOR and LESSEE may renew the lease for one additional _____ (____) year term ("First Extended Term"), and upon the expiration of the First Extended Term, the LESSOR and LESSEE may renew the lease for a second additional _____ (____) year term ("Second Extended Term"). LESSEE shall give LESSOR advance written notice of its intent to renew _____ (____) days prior to expiration of the initial Lease Term or First Extended Term.

ARTICLE 3 - RENT

In consideration of the continuing right of use, quiet enjoyment and possession of the Premises,

LESSEE shall pay to LESSOR as monthly rent for the Premises the initial sum of _____ (\$_____), payable on or before the first day of each month. LESSEE shall commence rental payments upon occupancy ("Rent Commencement Date"). If the Rent Commencement Date is other than the first day of a calendar month, then the rent for that month shall be prorated on a daily basis, based on a thirty (30) day month. Rent shall be payable to LESSOR at the address specified in Article 6 or at such other address as LESSOR may from time to time designate in writing. In addition, LESSEE shall contract and pay directly to its vendors for its responsibilities as outlined in Exhibits D and E. Monthly rent shall include LESSEE'S share of real estate taxes, assessments, fire and liability insurance, and Monterey Regional Water Pollution Control Agency (MRWPCA) fee for the Premises. [Initial monthly rent is computed as follows: Base rent of \$0._____ per square foot per month, plus a cost not to exceed \$0._____ per square foot for Premise Improvements, totaling an amount not to exceed \$_____ per square foot per month for the initial term of the Lease.]

It is hereby agreed that the figures noted herein are subject to change, and that cost of Premise Improvements will be paid in accordance with Exhibit F ("Amortized Premise Improvement Cost").

(i) ARTICLE 4 – ANNUAL RENT ADJUSTMENT

At the end of each one year period of the Lease Term or any one year period of any Extended Term, the monthly base rent shall be increased by the fixed amount of _____ percent (_____%).

Section 2.02 ARTICLE 5 - TERMINATION BY COUNTY

Notwithstanding any other provisions of this Lease, LESSEE, at its sole option, may terminate this Lease upon sixty (60) days written notice, solely on the condition that funds have not been budgeted for leasing of the property described herein. Such termination shall be without penalty to LESSEE. Such right of termination shall not be construed so as to permit LESSEE to terminate this Lease in order to lease other premises for a similar purpose within the City of Salinas. LESSEE represents that its intent is not to exercise its rights under this Article unless financial conditions prevent the Monterey County Board of Supervisors from budgeting funds for this Lease. Should LESSEE so terminate, LESSEE shall pay in one lump sum payment any unamortized Premise Improvement costs incurred by LESSOR in connection with the Premise Improvements, as referenced in Article 7.2.

ARTICLE 6 - NOTICES

All notices or correspondence provided for herein shall be effective only when made in writing, personally delivered or deposited in the United States mail, certified, postage prepaid, and addressed as follows:

To LESSOR: _____

To County of Monterey
LESSEE:
General Services Department
C/O Real Property Specialist
855 East Laurel Drive, Building C
Salinas, CA 93905

Rent payments shall be made to (need not be sent certified _____), at the address listed above.

Any notice or correspondence shall be deemed delivered upon personal delivery or five (5) days after notice is mailed. Correspondence other than notices may be given by phone, regular mail, email or facsimile. Any correspondence sent by facsimile shall also be sent by United States mail if requested by either party. By written notice to the other, either party may change its own mailing address or correspondence information.

LESSOR or LESSOR'S designated property management shall be available to LESSEE by phone during regular business hours, and for emergencies after hours and weekends. LESSOR or LESSOR'S designated property management shall subscribe to a 24-hour, 7 days a week emergency answering service that maintains contact phone numbers of key personnel or maintenance/service companies in event of an emergency.

LESSEE shall be available to LESSOR, by phone during regular business hours, and for emergencies after hours and on weekends. LESSEE shall subscribe to a 24-hour, 7 days a week emergency answering service that maintains contact phone numbers of key personnel or maintenance/service companies in event of an emergency.

If applicable, LESSOR'S designated property management shall be vested with such power and authority as is reasonably necessary or incidental to the performance of this Lease and the accomplishment of its purpose.

(i) ARTICLE 7 - PREMISE IMPROVEMENTS

7.1 **Premise Improvements:** Prior to the Lease Commencement Date, LESSOR shall construct Premise Improvements and make installations in the Premises (collectively "Premise Improvements") in accordance with plans and specifications as prepared by _____ Architects ("Plans and Specifications"), approved by LESSEE and LESSOR, and in accordance with those provisions of the attached Exhibit C ("Premise Improvement Agreement"), which describe construction.

7.2 **Cost of Premise Improvements:** LESSOR shall provide, as an allowance to LESSEE for Premise Improvements to be constructed by LESSOR, the sum of which shall not exceed \$_____. LESSEE acknowledges that LESSOR intends to obtain financing for up to \$_____ on the basis of a ____ (___) year loan at a rate not to exceed _____ percent (___%) interest, and that up to \$0.____ per square foot per month will be included in the rent hereunder as compensation to LESSOR for the Allowance referenced herein. No furniture or equipment items/cost shall be included in the Allowance. LESSOR and LESSEE shall be in agreement of all Premise Improvement costs (presented in itemized format), and construction schedule (presented in Gant Chart format) prior to commencement of construction. Premise Improvement costs shall include costs associated with architectural, engineering, building permits and fees, inspections and signage.

7.3 **Premise Improvement Warranties:** LESSOR warrants to LESSEE that all materials and equipment furnished by LESSOR in its improvement of the Premises shall be new

unless otherwise specified in the Premise Improvement Agreement, and that all of LESSOR'S work to be performed under the Premise Improvement Agreement shall be of good and workmanlike quality, free from faults and defects, and in accordance with the final requirements of the Premise Improvement Agreement. Any of LESSOR'S work not conforming to the above standards shall be considered defective.

For one (1) year after the date of substantial completion of Premise Improvements, LESSOR shall, following written notice from LESSEE, unconditionally make any repair, replacement, correction or other alteration of any nature necessary by virtue of any defective construction of the Premises or defective materials used therein. Thereafter, LESSOR shall promptly make or cause to be made all repairs, replacements, corrections or alterations, at no expense to LESSEE, to correct latent defects in the Premises.

ARTICLE 8 - NOTICE OF COMPLETION

- (b) **LESSOR will be responsible to insure that a properly prepared Notice of Completion is filed with the County Clerk-Recorder's Office on all construction and remodeling work performed as a result of this Lease Agreement. The Notice of Completion form will be filed within ten (10) working days after the LESSOR and the LESSEE have concurred that the construction is complete.**

ARTICLE 9 - PUBLIC WORKS LAWS

Under Section 1720.2 of the California Labor Code, any construction contract to improve the space to be leased by the County of Monterey for government services may be considered a 'public work' if certain conditions are met. If applicable, LESSOR shall comply with provisions of law governing public works including, without limitation, Labor Code sections 1773, 1773.2, 1773.3, 1773.8, 1775 (payment of prevailing wages), 1776 (payroll records), and 1777.5 (employment of apprentices), all as periodically amended.

ARTICLE 10 - TIME LIMIT AND PRIOR TENANCY

It shall be LESSOR'S responsibility to remove any prior LESSEE in the Premises.

ARTICLE 11 - USE

11.1 **Use:** LESSEE shall use the Premises for _____ space use. LESSEE may alter said use to any lawful purpose, upon the written consent of LESSOR, which consent shall not be unreasonably withheld.

11.2 **Compliance with Laws:** LESSOR represents and warrants to LESSEE that, to the best of LESSOR'S knowledge, the construction (including all LESSOR-constructed Premise Improvements), the current and proposed uses, and the operation of the Premises and the non-exclusive areas of the building as described in Article 1.2 are in full compliance with applicable building and seismic codes, environmental, zoning and land use laws, and other applicable local, state and federal laws, regulations and ordinances. LESSOR absolves LESSEE of legal or other responsibility for any code violations or other deviations from applicable local, state and federal laws, regulations and ordinances as may be listed above. Said absolution excludes LESSEE installed improvements to the Premises such as phone/data cabling, support equipment, trade fixtures, and any other equipment used to meet LESSEE'S operational needs.

11.3 **Hazardous Substances:** LESSEE shall have no liability or responsibility for toxic or hazardous materials or substances in existence on the demised premises prior to LESSEE'S occupancy of the demised premises or which result from LESSOR'S acts or omissions or which occur on any portion of LESSOR'S property not occupied by LESSEE, unless caused by LESSEE, its agents, employees, invitees or guests. LESSOR warrants, to the best of LESSOR'S actual knowledge, that at the time of execution of this Lease there are no known areas on LESSOR'S property where hazardous or toxic materials or substances (including asbestos or PCBs) have been used, stored, or deposited. LESSOR will comply with all applicable laws concerning the handling and removal of any hazardous materials, including asbestos or PCB containing materials.

11.4 **Environmental Hazards:** LESSOR hereby warrants and guarantees that the Premises and the non-exclusive areas of the building as described in Article 1.2 will be maintained free of all Environmental Hazards (including asbestos, leads, toxic mold spores or PCBs) and agrees to survey, test, and abate as applicable and in accordance with Environmental Protection Agency, "EPA" guidelines. A qualified industrial hygienist approved by LESSOR and LESSEE shall perform all testing. LESSOR further agrees to contract with a qualified remedial contractor to provide remedial services as specified in Exhibit H on an as needed basis. LESSOR specifically agrees that any costs related to abatement of Environmental Hazards shall be the LESSOR'S responsibility unless caused by LESSEE, its agents, employees, invitees or guests.

11.5 **Acceptance of Premises:** By entry hereunder, LESSEE accepts the Premises as being in good and sanitary order, condition and repair.

ARTICLE 12 - SIGNS AND FIXTURES

LESSEE may place such signs and advertisements upon the Premises as LESSEE may desire, subject to approval by the LESSOR which consent shall not be unreasonably withheld provided, however, that at the expiration of the term hereof or any renewal or extension of this Lease, LESSEE will remove said signs and will restore the Premises to their original conditions. Any trade fixtures, equipment, furniture, demountable walls, and other property installed in the Premises by and at the expense of the LESSEE shall remain the property of the LESSEE, and the LESSOR agrees that the LESSEE shall have the right at any time, and from time to time, to remove any and all of its trade fixtures, equipment and other property which it may have stored or installed in the Premises, provided the Premises are restored to acceptable condition. The LESSOR agrees not to mortgage or pledge the LESSEE'S trade fixtures, equipment and other property.

ARTICLE 13 - SERVICES AND UTILITIES

Services and utilities shall be furnished and the cost borne as outlined in Exhibit D. In the event of failure by LESSOR to furnish, in a satisfactory manner, any of the services and utilities to the Premises for which LESSOR is responsible, LESSEE may furnish the same if LESSOR has not undertaken to correct such failure within fifteen (15) days after written notice, and, in addition to any other remedy LESSEE may have, may deduct the amount thereof, including LESSEE'S service costs, from rent or other remuneration due LESSOR hereunder.

ARTICLE 14 - REPAIR AND MAINTENANCE

14.1 **LESSOR and LESSEE Obligations:** The respective repair and maintenance responsibilities of LESSOR and LESSEE are set forth in Exhibit E, Summary of Repair and Maintenance Responsibilities, which by this reference is incorporated herein. As stated in Exhibit E, the term “deemed necessary” shall mean that LESSOR and LESSEE are in agreement that appropriate action needs to be taken to ensure the health, safety and general well being of the occupants and or invitees of the Premises.

14.2 **Negligent Acts or Omissions of LESSEE:** Notwithstanding the foregoing, LESSEE will pay to LESSOR the reasonable cost of any repairs or maintenance required as a direct result of negligent acts or omissions of LESSEE, its agents, employees, or invitees.

14.3 **Failure of LESSOR to Make Repairs:** If LESSOR fails to maintain the Premises or to make the repairs required in this article within the time periods as specified in Article 23.1, LESSEE may perform such maintenance or make such repairs at its expense and deduct the reasonable cost thereof from the rent due hereunder.

LESSOR agrees to perform all emergency repairs involving the Premises and the non-exclusive areas of the building as described in Article 1.2 with the utmost urgency. An emergency repair is a repair that is necessary in order to protect health and safety of persons or public property or to save the building's integrity. LESSEE agrees to make a diligent effort to contact LESSOR before it uses responsible judgment to contact the appropriate

vendor identified in Exhibit I to perform emergency repair to protect health and safety of persons or public property or to save the building's integrity.

14.4 **LESSOR/LESSEE Obligations in Applying Noxious Substances:** LESSOR and/or LESSEE, its officers, employees, and agents shall not apply any substance as part of any building maintenance or repair which would introduce irritating or noxious odors or any other hazardous condition to occupied spaces without prior coordination and approval of the County of Monterey Facilities Projects Manager, who can be reached by telephone at (831) 755-4855. Prior notification and approval shall be made at least 48 hours prior to the desired application time. Also, a Product Safety Data Sheet shall be furnished by the proposed applicator to the _____ **Department,** _____ **Division.** Examples of such substances or materials include, but are not limited to, the following:

- Termite Control Materials
- Pesticides
- Paint
- Water Treatment Chemicals
- Any other substance that is or could be construed as hazardous

ARTICLE 15 - SERVICE COMPANIES

Within ten (10) days after occupancy of the Premises by LESSEE, LESSOR shall give LESSEE a list (see Exhibit I) of the names, addresses and telephone numbers of an agencies or persons convenient to LESSEE as a local source of service with regard to LESSOR'S responsibilities under Exhibit D and Exhibit E of this Lease. If LESSOR fails to provide such list, LESSEE may choose service companies as needed and without penalty from LESSOR.

ARTICLE 16 - ALTERATIONS, MECHANICS' LIENS

16.1 **Alterations:** Except for the Premise Improvements, no alterations or improvements shall be made to the Premises by LESSEE or at LESSEE'S request without the prior written consent of LESSOR, which consent shall not be unreasonably withheld.

16.2 **Condition at Termination:** LESSEE may remove any fixtures, machinery and equipment installed in the Premises by LESSEE upon the termination of this Lease, if LESSEE is not then in default under this Lease and if LESSEE repairs any damage to the Premises caused by such removal. Upon termination of this Lease, LESSEE shall return the Premises in the same condition as when delivered to LESSEE, reasonable wear and tear, and damage by casualty, and alterations approved by LESSOR excepted.

16.3 ***Mechanic's Liens***: LESSOR and LESSEE shall keep the Premises free from any liens arising out of any work performed by, materials furnished to, or obligations incurred by the parties.

ARTICLE 17 - ASSIGNMENT AND SUBLETTING

LESSEE shall not assign or sublet all or any portion of the Premises without the prior written consent of LESSOR, which consent shall not be unreasonably withheld.

ARTICLE 18 - ENTRY BY LESSOR

LESSEE shall permit LESSOR and LESSOR'S agents to enter the Premises, with reasonable advance notice (except in the case of emergency), provided such entry is made in a reasonable manner and does not unreasonably interfere with the conduct of LESSEE'S business.

ARTICLE 19 - INSURANCE AND INDEMNIFICATION

LESSEE, during the term hereof, shall indemnify and hold harmless the LESSOR from and against any and all claims and demands whether for injuries to persons or loss of life, or damage to property, occurring within the demised Premises and arising out of the use of the demised Premises by the LESSEE, excepting however, such claims and demands whether for injuries to persons or loss of life, or damage to property, caused by acts or omissions of the LESSOR.

LESSEE shall maintain public liability and property damage coverage or program of self insurance with liability limits of not less than \$1,000,000 for injury or death to one or more persons and property damage limits of not less than \$50,000 per occurrence insuring against all liability of LESSEE and its authorized representatives arising out of and in connection with LESSEE'S use or occupancy of the Premises. LESSOR, during the terms hereof, shall indemnify, defend and save harmless the LESSEE from and against any and all claims and demands whether for injuries to persons or loss of life, or damage to property, arising out of acts or omissions of the LESSOR.

LESSOR agrees that it will keep insured against loss or damage by fire, to at least eighty percent (80%) of the full fair insurable value thereof, the building on the demised Premises or of which the demised premises are a part.

LESSOR shall not be liable to LESSEE, or to anyone whatsoever for any damages caused by plumbing, gas, water, steam, sprinkler or other pipe and sewage system, or by the bursting, running or leaking of any tank, washstand, closet, or waste or other pipe, in and about the Premises of the building of which they are a part, or for any damage caused by water being upon or coming in through the roof, skylight, vent, trap door or otherwise; provided that LESSOR shall not be relieved from any of its obligations for maintenance and repair as otherwise set forth in this Lease.

ARTICLE 20 - WAIVERS OF SUBROGATION

LESSOR and LESSEE each hereby waive any right of recovery against the other due to loss of or damage to the property of either LESSOR or LESSEE when such loss of or damage to property arises out of the acts of God or any other property perils whether or not such perils have been insured, self-insured or non-insured.

ARTICLE 21 - DESTRUCTION

If the Premises are totally destroyed by fire or other casualty, either party may terminate this Lease immediately by giving notice to the other party.

If such casualty shall render ten percent (10%) or less of the floor space of the Premises unusable for the purpose intended, LESSOR shall effect restoration of the Premises as quickly as is reasonably possible, but in any event restoration shall begin within thirty (30) days after such destruction.

If such casualty shall render more than ten percent (10%) of such floor space unusable but not constitute total destruction, LESSOR shall forthwith give notice to LESSEE of the specific number of days required to repair the same. If LESSOR under such circumstances shall not give such notice within fifteen (15) calendar days after such destruction, or if such notice shall specify that such repairs will require more than ninety (90) days to complete from the date such notice is given, LESSEE, in either such event, at its option, may terminate this Lease.

In the event of any such destruction other than total, where LESSEE has not terminated the Lease as herein provided, LESSOR shall diligently prosecute the repair of the Premises and, in any event, if said repairs are not completed within sixty (60) calendar days from the work commencement date, for destruction aggregating ten percent (10%) or less of the floor space, or within the period specified herein in connection with partial destruction aggregating more than ten percent (10%), LESSEE shall have the option to terminate this Lease. LESSEE shall assist LESSOR with obtaining all applicable building permits if necessary.

Parties understand that, in normal circumstances, work cannot commence before a building permit is obtained. Time deadlines set forth herein shall not commence before required permits are issued. Lessor warrants to diligently pursue issuance of said permits.

If LESSEE remains in possession of the Premises though partially destroyed, the rent for said Premises as herein provided, during restoration, shall be reduced by the same ratio as the usable square feet LESSEE is thus precluded from occupying, bears to the total usable square feet in the Premises. "Usable square feet" shall mean actual inside dimensions and shall not include public areas.

ARTICLE 22 - DEFAULT BY LESSEE

22.1 ***Default:*** If any of the following events occur, each such event shall constitute a material breach of this Lease, and LESSOR may, at LESSOR'S option, exercise any or all rights available to a LESSOR under the laws of the State of California:

- a. A default in the payment of rent or other obligation when such default continues for a period of thirty (30) days after written notice, or
- b. LESSEE fails to faithfully perform or observe any other covenant or undertaking required under this Lease and such failure continues for a period of thirty (30) days after written notice thereof, or
- c. LESSEE is adjudicated bankrupt, or
- d. LESSEE'S lease interest is sold under execution of judgment.

22.2 ***Remedies:*** If LESSEE fails to cure a prospective default within the time frames outlined above, LESSOR shall have the option to cure the default or to terminate this Lease, in addition to any other remedies at law not inconsistent herewith. Should LESSOR elect to cure the default itself, all costs associated with such cure, including reasonable attorneys' fees (if any), shall be reimbursed by LESSEE to LESSOR, as Additional Rent, within thirty (30) days of receipt of LESSOR'S invoice for said costs.

ARTICLE 23 - DEFAULT BY LESSOR

23.1 ***Default:*** LESSOR shall not be in default unless LESSOR fails to perform its obligations under this Lease within a reasonable time, but in no event later than thirty (30) days after written notice by LESSEE to LESSOR specifying wherein LESSOR has failed to perform such obligations. If the nature of LESSOR'S obligation is such that more than thirty (30) days are required for performance, then LESSOR shall not be in default if LESSOR commences performance within such thirty (30) day period and thereafter diligently prosecutes the same to completion.

23.2 ***Remedies:*** If LESSOR fails to cure a prospective default within the time periods outlined above, LESSEE shall have the option to cure the default or to terminate this Lease, in addition to any other remedies at law not inconsistent herewith. Should LESSEE elect to cure the default itself, all costs associated with such cure, including reasonable attorneys' fees (if any), shall be reimbursed by LESSOR to LESSEE within thirty (30) days of receipt of LESSEE'S invoice for said costs. However, upon LESSOR'S failure to so reimburse or, at LESSEE'S option, said costs shall be held from rent due hereunder. If LESSOR'S default hereunder prevents LESSEE'S use of the Premises, there shall be an abatement of rental payments for the period of such non-use.

ARTICLE 24 - CONDEMNATION

If more than ten percent (10%) of the floor space area of the Premises is taken or condemned for a public or quasi-public use, or the part taken renders the entire Premises insufficient for the conduct of LESSEE'S business and operations, then this Lease shall

terminate at the option of LESSEE as of the date title shall vest in the condemner. If only part of the Premises is taken and the remainder of the Premises is sufficient for the conduct of LESSEE'S business and operations, then LESSOR shall restore the Premises to a single architectural unit and the Lease shall continue as to the part not taken, but the monthly rent shall be reduced in proportion that the usable area of the Premises taken bears to the usable area of the Premises before the taking.

ARTICLE 25 - HOLDING OVER

If LESSEE, with LESSOR'S written consent, remains in possession of the Premises after the Lease Term or any Extended Term, this Lease shall automatically be extended on a two month-to-two month basis at the monthly rent applicable to the last month of the Lease Term or Extended Term, subject to termination upon sixty (60) days' written notice by either party. All other terms and conditions shall remain in full force and effect.

ARTICLE 26 - WAIVER

The waiver by LESSOR or LESSEE of any term, covenant or condition herein contained shall not be deemed to be a waiver of any other term, covenant or condition, nor shall either party consent to any breach of any term, covenant or condition, nor shall either party be deemed to constitute or imply its consent to any subsequent breach of the same or other term, covenant or condition herein contained.

ARTICLE 27 - QUIET POSSESSION

As long as LESSEE keeps and performs the covenants in this Lease, LESSEE shall at all times during the term of this Lease peaceably and quietly have, hold and enjoy the Premises, without suit, trouble or hindrance from LESSOR or any person claiming under LESSOR. LESSOR, to the best of LESSOR'S ability, shall also be responsible for ensuring that all other tenants in the building or complex do not interfere with the quiet enjoyment of the LESSEE.

ARTICLE 28 - SUBORDINATION

This Lease shall be subject and subordinated to the lien of any mortgages and deeds of trust which are hereafter placed against the LESSOR'S interest or estate in the property provided that the mortgagor or beneficiary under such mortgage or deed of trust shall agree in writing that, in the event of a foreclosure of same or of any other such action or proceeding for the enforcement thereof, or of any sale thereunder, this Lease shall not be barred, terminated, cut off, or foreclosed, nor will the rights and possession of LESSEE hereunder be disturbed if LESSEE shall not then be in default under the terms of this Lease, and LESSEE shall attorn to the purchaser at such foreclosure, sale or other action or proceeding. The foregoing subordination shall be effective without the necessity of having any further instruments executed by LESSEE, but LESSEE shall nonetheless execute, upon demand, such further instruments evidencing such subordination as may be reasonably requested by LESSOR or any mortgagee or beneficiary.

ARTICLE 29 - ESTOPPEL CERTIFICATE

Within thirty (30) days of written notice by one party to the other, each will execute, acknowledge and deliver to the other an estoppel certificate in writing declaring any modifications, defaults or advance payments and whether the lease, as may be modified, is in full force and effect. Any such certificate may be conclusively relied upon for the intended transaction for which the statement was requested.

ARTICLE 30 - MISCELLANEOUS PROVISIONS

30.1 **No Amendments:** No oral amendment of this Lease shall be valid unless made in writing and signed by the parties hereto, and no prior oral understanding or agreement not incorporated herein shall be binding on either party hereto.

30.2 **Time is of the Essence:** Time is of the essence of each term and provision of this Lease.

30.3 **Binding Effect:** Subject to any provision hereof restricting assignment or subletting by LESSEE, this Lease shall bind the parties, their personal representatives, successors, and assigns.

30.4 **Invalidity:** The invalidity of any provision of this Lease as determined by a court of competent jurisdiction shall in no way affect the validity of any other provision hereof.

30.5 **Warranty of Authority:** If LESSOR is a corporation, the person executing this lease on behalf of LESSOR hereby covenants and warrants that LESSOR is a duly authorized and existing corporation and that he/she is duly authorized to execute this Lease.

30.6 **Addendum:** In the event of conflict between this Lease and any Addendum or Exhibit attached hereto, the provisions of such Addendum or Exhibit shall control.

ARTICLE 31 - MAJOR APPLIANCES

Installation of major appliances such as vending machines, refrigerators, stoves, etc., must be approved by LESSOR prior to installation. The LESSOR will grant installation approval for new appliances only. Such approval shall not be unreasonably withheld.

LESSEE: (County of Monterey)

APPROVED AS TO FORM: (County Counsel)

By:

By:

Title: Contracts/Purchasing Manager

Title: Deputy County Counsel

Date:

Date:

LESSOR:

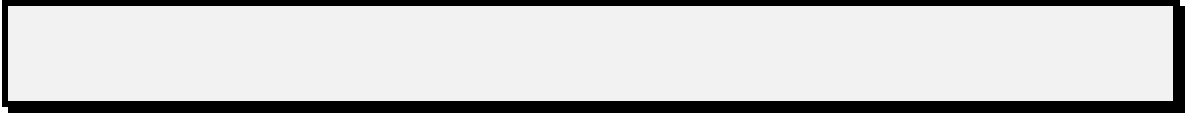
(_____)

By:

Title:

Date:

EXHIBIT A



DESCRIPTION OF PREMISES

(Floor Plan with Dimensions)

(Parking Location or Plan)

(Site Map)

EXHIBIT B

STATEMENT OF SEISMIC ADEQUACY

(c)

If the Premises are contained in a building constructed after 1973, or one of which has undergone major structural renovation since 1973, the LESSOR shall obtain from its design engineer a warranty, which contains the following:

Construction/renovation of the Building containing the Premises occurred in _____.
Construction/renovation plans have been determined to be in compliance with all building codes applicable to seismic safety.

EXHIBIT C

(i) PREMISE IMPROVEMENT AGREEMENT

This Premise Improvement Agreement is made this ____ day of _____, 200__, by and between _____, (“LESSOR”), and **COUNTY OF MONTEREY**, (“LESSEE”).

1. Premise Improvements:

- a. LESSOR shall construct all Premise Improvements in accordance with the Plans and Specifications as approved by LESSOR and LESSEE and as further defined in Article 7 of the County of Monterey Standard Lease Agreement to which this Exhibit is attached. Premise Improvements must satisfy the Federal Americans with Disabilities Act of 1990, as and if applicable.
- b. Premise Improvements are generally described as follows: the remodel of approximately _____ square feet of existing [*general office and retail space*] to [*health care and general office space*] by demolition of existing interior features and construction of new interior features so as to conform to LESSEE’S approved program for the use of the Premises.
- c. LESSOR shall commence construction of the Premises Improvement work at the earliest opportunity, but not more than 5 days following issuance of building permit. Plans and Specifications shall be approved by LESSOR and LESSEE prior to submittal to the _____ Building and Planning Department.
- d. LESSOR shall diligently pursue construction of approved Premises Improvement work and deliver the Premises to LESSEE in a condition suitable for occupancy no later than a date certain, that will be mutually established by LESSOR and LESSEE on or before the date LESSOR’S contractor commences construction of the Premise Improvements.

2. Construction Plans and Specifications, Change Orders and Delay:

- a. LESSOR shall provide for LESSEE’S approval the complete and detailed proposed Plans and Specifications for the Premises Improvements, the design of which shall conform to LESSEE’S approved program for use of the Premises.
- b. LESSEE shall provide LESSOR with written notice of its approval or disapproval of the Plans and Specifications within five (5) business days after receipt of such Plans and Specifications.

- c. During construction, LESSOR and LESSEE'S Representative (as defined below) shall confer periodically regarding the progress of the work and the approximate cost of the work completed. LESSEE'S Representative may request changes, modifications or alterations to the Plans and Specifications by written change order delivered to LESSOR, but no such change shall be made without the written approval of LESSOR, which approval shall not be unreasonably withheld. LESSOR shall approve or deny each LESSEE change order within four (4) business days, and LESSOR shall also provide to LESSEE'S Representative, by written notice to LESSEE, an estimate of the maximum cost of each change order within five (5) business days after the delivery of the change order to LESSOR. No work based upon a change order shall be undertaken unless and until LESSEE'S Representative shall have approved (by notice to LESSOR) LESSOR'S cost estimate.
 - d. If LESSOR determines that a change proposed by LESSEE will delay completion of the construction beyond the period allocated for such construction, LESSOR shall, within four (4) business days, notify LESSEE'S Representative of the estimated length of the delay caused by LESSEE'S request. LESSEE'S Representative shall advise LESSOR within two (2) business days after receipt of such notice as to whether LESSOR shall proceed with requested change, modification or alteration. LESSOR shall not make the requested change to the Plans and Specifications without LESSEE'S approval of any proposed time extensions.
 - e. If LESSOR requires that LESSEE clarify or refine the Plans and Specifications, then LESSEE'S Representative shall meet with LESSOR for the purpose of clarifying or refining the Plans and Specifications within two (2) business days after LESSEE'S receipt of LESSOR'S request therefore. No such clarification or refinement shall be deemed to be a change order.
 - f. If LESSOR determines that the Plans and Specifications must be changed as a result of omissions or errors in the Plans and Specifications, then LESSOR shall, prepare and submit to LESSEE revised Plans and Specifications correcting any such omission or error. LESSEE shall approve or disapprove such revised Plans and Specifications within two (2) business days after receipt and shall not unreasonably withhold its approval.
 - g. LESSOR shall not be responsible for any delays in the time for completion of construction resulting from LESSEE'S delay. For purposes herein, LESSEE'S delay in the completion of the construction of the Premise Improvements are delays that may arise solely as a result of: (1) LESSEE'S failure to comply with its obligations set forth in subsection b, d, e, or f, above, within the time specified; (2) any change directed by LESSEE after notification to LESSEE that the change will delay completion of the construction as provided in subsection d, above; or (3) extra time required to obtain any long lead items specified by LESSEE. For purposes herein, an item shall be considered a long lead item if LESSOR notifies LESSEE within fifteen (15) business days after receipt of LESSEE'S approval of the Plans and Specifications that such item is not readily available or readily installable after the same is requested by LESSEE.
3. Approval of Plans by Public Authorities: LESSOR shall obtain approval of the Plans and Specifications for the Premises from all appropriate government agencies, and a copy of the Plans and Specifications, as approved, shall be dated and initialed by both LESSOR and LESSEE. LESSOR shall exercise due diligence in obtaining any such approval. LESSEE shall cooperate with LESSOR in obtaining all such approvals, and in this regard, LESSEE shall make, or cause it to be made all revisions and changes to the Plans and specifications reasonably required by any governmental agency, with due diligence and without delays.

4. Quality of Work: All work performed hereunder shall be done in a good and workmanlike manner, free from faults and defects and in accordance with the Plans and Specifications. All materials and equipment installed in the Premise Improvements shall be new unless otherwise specified in the Plans and Specifications.
5. LESSEE'S Access during Construction: LESSEE'S Representative, agents, consultants and contractors ("LESSEE Representatives") shall have access to the Premises during the construction of the Premise Improvements for activities and purposes related to construction of the Premises or preparation of the Premises for occupancy. LESSEE'S Representatives on the Premises during construction shall cooperate with LESSOR'S contractor and not delay in any way the performance by LESSOR'S contractors or LESSOR'S representatives of any work (including but not limited to the construction of Premise Improvements).
6. Acceptance of Premises:
 - a. At any time during the construction of the Premise Improvements, LESSEE may reject any work that does not conform to the Plans and Specifications or does not meet good and workmanlike standards as reasonably interpreted by and at the sole discretion of the LESSEE.
 - b. Within five (5) business days after LESSOR delivers to LESSEE a list of work items remaining to be done or corrected and notifies LESSEE that the Premise Improvements are ready for inspection by LESSEE'S representative, LESSEE shall deliver to LESSOR a list of items that LESSEE shall have reasonably determined that LESSOR must complete or correct prior to LESSEE'S acceptance of possession in order for the work to conform to the Plans and Specifications. LESSOR shall immediately commence to complete or correct the items listed by LESSEE, except those it contends are not justified. If LESSEE fails to deliver such a list within the five (5) business day period, LESSEE shall be deemed to have accepted the Premises subject to completion of the corrections on LESSOR'S list of corrections and to have approved the construction.
 - c. Acceptance by LESSEE shall not be unreasonably withheld.

7. Notices: All notices required or permitted hereunder shall be in writing and shall be delivered as follows:

a. If to _____ (LESSOR'S
LESSOR, to: _____ Representative)

b. If to LESSEE, County of Monterey (LESSEE'S
to: _____ Representative)
General Services Department
Real Property Specialist
855 E. Laurel Drive, Building C
Salinas, CA 93905

8. Notice of Non-Responsibility: LESSOR may post such notices of non-responsibility as it reasonably deems appropriate in the Premises during the construction provided for herein.

9. Responsibility for Damage: If LESSEE installs equipment in the Premises prior to completion of the work hereunder, LESSEE shall bear the risk of loss to such equipment other than loss that is a result of negligence or willful misconduct by LESSOR, its agent or contractors.

10. Approval of Agreement: Approval of this Agreement will result in a construction of a facility suitable for the Monterey County _____ Department. This agreement specifically includes the installation of necessary telecommunications/data processing linkages, and alarm systems. Specification for telecommunications/data processing linkages and alarm systems will be developed and provided by the Monterey County Information Technology Department.

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

LESSOR:

LESSEE:

By:

By:

Title:

Title:

Updated:
April 3, 2008

EXHIBIT D

SUMMARY OF SERVICES AND UTILITIES

The following is a summary of services and utilities responsibilities of LESSOR and LESSEE for the proposed use of the Premises:

	N/A	LESSOR	LESSEE
Provide adequate paper supplies, dispensers, and waste and recycling containers for the Premises and restrooms within Premises (not in common area)		X	
Provide adequate custodial service for the interior of the Premises per schedule attached as Exhibit F, "Custodial Service Specifications"		X	
Provide adequate custodial service for exterior of the Premises and the non-exclusive areas of the building as described in Article 1.2 (including steam cleaning or pressure washing sidewalks)		X	
Professionally clean carpets, rugs, tile and linoleum flooring as indicated in Exhibit F		X	
Professionally clean existing drapes, blinds, and window shades as indicated in Exhibit F		X	
Professionally clean interior windows as indicated in Exhibit F		X	
Professionally clean exterior windows as indicated in Exhibit F		X	
Provide adequate pest control for the interior of the Premises		X	
Provide adequate pest control for exterior of Premises		X	
Provide adequate landscape maintenance and gardening (including landscape irrigation system and associated water supply and service)		X	
Provide adequate parking lot area sweeping		X	
Provide adequate refuse, rubbish, garbage, and recyclable (paper, plastic, and aluminum, if available) disposal and pick up service		X	
Provide adequate fire sprinkler systems testing		X	
Provide adequate fire alarm systems monitoring		X	
Provide adequate intrusion/security alarm systems monitoring		X	
Provide adequate patrolled security guard service (to common area only, from 6 am to 9 pm M-F, and 7 am to 4 pm on Sat.) (Subject to change with mutual written consent)		X	
Provide adequate heating, ventilation & air conditioning		X	

(HVAC) systems filter replacements, unit inspections, unit lubrications and record keeping pursuant to the California Code of Regulations, Title 8, Section 5142			
Provide adequate servicing of uninterrupted power source (UPS)		X	
Provide adequate servicing of back up generator		X	
Provide adequate gas utility service		X	
Provide adequate electric utility service		X	
Provide adequate water utility service		X	
Provide adequate telephone and data service (including connection charges)			X



EXHIBIT E

(ii) SUMMARY OF REPAIR AND MAINTENANCE RESPONSIBILITIES

The following is a summary of maintenance and repair responsibilities of LESSOR and LESSEE for the proposed use of the Premises:

	N/A	LESSOR	LESSEE
Common Areas		X	
Foundations and Floor Slabs		X	
Elevators and/or Dumb Waiters		X	
Exterior and Bearing Walls		X	
Exterior Doors and Hardware		X	
Exterior Windows and Window Frames		X	
Roofs (including replacement if deemed necessary)		X	
Gutters, Drains and Downspouts		X	
Parking Lots		X	
Ceilings (damage due to roof leaks only)		X	
Fire Sprinkler Systems		X	
Fire Alarm Systems		X	
Intrusion/Security Alarm Systems (excluding common areas)		X	
Heating, Ventilation and Air Conditioning (HVAC) Systems (including replacement if deemed necessary)		X	
Heating, Ventilation and Air Conditioning (HVAC) control switches, sensors and thermostats		X	
Electrical Systems (including electrical outlets, panels, circuit breakers and wiring)		X	
Plumbing Systems (including sewer and drain stoppages, and fixtures)		X	
Exterior Lighting (including starters, ballasts, transformers and light switches)		X	
Interior Lighting (including starters, ballasts, transformers and light switches)		X	
Interior Light Bulbs and Fluorescent Light Tubes (replacement)		X	
Interior Walls		X	
Interior Wall Surfaces (including repainting every 5 years if Premises wall surfaces are accessible)		X	
Interior Doors and Hardware		X	
Interior Windows and Window Frames		X	
Carpet, VCT, and Linoleum Flooring (including replacement if deemed necessary and with the understanding that LESSEE pays for moving office furniture and equipment).		X	
Base and/or Moldings (including replacement if deemed necessary)		X	
Appliances (excluding common area)		X	
Communication Systems (data/telephone cabling, connections and			X

equipment)			
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***Notwithstanding the forgoing, LESSEE will pay to LESSOR the reasonable cost of any repairs or maintenance required as a direct result of negligent acts or omissions of LESSEE, its agents, employees, or invitees.**

EXHIBIT F

(iii) CUSTODIAL SERVICE SPECIFICATIONS (Page 1 of 3)

DAILY SERVICE (Monday through Friday)
A. General Cleaning
1. Empty wastebaskets; replace liners, place trash in dumpster
2. Sweep outside Premises entrances
3. Remove graffiti from any interior walls
B. Floor and Carpet Care (including stairways)
1. Sweep and dust mop hard surface floors with treated mop
2. Vacuum carpeted floors and entry mats
3. Damp mop all spills on hard surfaces
4. Remove gum/candy from carpet/floors
C. Window Cleaning
1. Clean entry door and lobby glass, inside and outside
2. Clean interior partitions and counter glass
3. Clean interior/exterior door glass
D. Restroom Cleaning (including non-exclusive areas of the building)
1. Empty waste containers
2. Sweep and wet mop floors
3. Restock dispensers with the proper product (common area to have extra service performed in mid-morning and mid-afternoon, M-F)
4. Clean and disinfect all restroom fixtures (common area to have extra service performed in mid-morning and mid-afternoon, M-F)
5. Unstop urinals, toilets and sinks (Notify LESSOR of necessary repairs.) (common area only)
6. Clean restroom mirrors and glass
7. Replenish air fresheners in all restrooms (common area only and as needed)
8. Remove graffiti from interior walls
9. Damp wipe all walls and partitions (as needed)
10. Clean around all door knobs and push plates
E. Dusting
1. Tops of all filing cabinets (only if cleared off and with notice posted by office worker)
2. Tops of desks where cleared (only if cleared off and with posted notice by office worker)
3. Table tops and counters where cleared
WEEKLY SERVICE (Fridays)

A. General Cleaning
1. Remove fingerprints from doors, walls, and light switches
2. Remove marks/clean door kick plates
3. Wash wastebaskets/trash receptacles inside and out
4. Wash all handrails
5. Clean around door knobs/push plates
B. Floor and Carpet Care (including stairways)
1. Damp mop all hard surface floors
2. Buff all hard surface floors using a high speed buffing machine
3. Spot clean all carpeted floors
C. Restroom Cleaning
1. Scrub all sinks with abrasive cleaner
2. Scrub inside toilets and urinals with acid-type bowl cleaner
D. Dusting
1. All windows and door sills
2. Ledges, baseboards, and partitions
3. All chairs
4. Remove cobwebs from ceilings, corners and crevices, etc.
BI-WEEKLY SERVICES (Fridays)
Dry shampoo all carpeted areas.
MONTHLY SERVICE (Last Weekend of the Month)
A. Floor and Carpet Care
1. Scrub and refinish all hard surface floors using an acrylic finish
2. Edge out all carpet areas (areas that are out of reach during normal vacuuming)
B. Restroom Cleaning (including non-exclusive areas of the building)
1. Wash all walls and partitions
C. Dusting
1. Vacuum all upholstered furniture
2. Clean all blinds, drapes and window shades
D. Additional requirements specific to Premises
1. Shampoo all upholstered furniture
QUARTERLY SERVICES (January, April, July, October)

A. General Cleaning
1. Wash exterior of all desks, filing cabinets, and tables
B. Floor and Carpet Care
1. Shampoo all carpeted areas using bonnet method
2. Strip and refinish all hard surface floors using an acrylic finish
C. Window Cleaning
1. Wash inside and outside windows
D. Dusting
1. High dust all light fixtures, HVAC vents and surface/ledges above six (6) feet.
BI-ANNUAL SERVICES (April and October)
A. Restroom Cleaning (including non-exclusive areas of the building)
1. Machine scrub restroom floors (porcelain tile floors)
ANNUAL SERVICES
A. Floor and Carpet Care
1. Steam/Extraction clean all carpeted areas

*** LESSOR and LESSEE agree that it may be necessary to modify the foregoing Custodial Service Specifications to better meet facility needs. Such modification shall be with mutual written consent. LESSOR and LESSEE acknowledge that additional costs may apply.**

EXHIBIT G

COUNTY OF MONTEREY INFORMATION TECHNOLOGY

Article III. CABLING STANDARDS (Page 1 of 3)

This document is to be used as a guide for voice and data cabling in all Monterey County facilities with the exception of Natividad Medical Center. Some of the requirements are dependent on specifications that are specific to a particular job and this information will be made available as necessary.

1. The cable plant shall be star configured, unshielded twisted pair (UTP) system capable of supporting data rates of 350 MBPS.
2. All riser and closet-to-closet voice wiring shall be unshielded twisted pair PVC rated, Outside Plant (OSP) rated for underground use, Riser rated, or Plenum rated as required by local Fire Marshall, and shall be EIA/TIA 568, 569 and TSB-36 Category 3 certified cable. This cable shall be tested for opens, shorts and reversals.
3. All riser and closet-to-closet data wiring shall be color coded tight tube 62.5/125 multimode fiber optic cable PVC, Outside Plant, Riser or Plenum rated as required by specific project specifications or the local Fire Marshall.
4. Only existing communications closets may be used for the termination of voice and data cable. Additional cable consolidation points and intermediate distribution frames will be added only with prior approval from the Monterey County Telecommunications Department.
5. All fiber optic cable shall be terminated on ST or SC connections as required by specific project specifications.
6. All fiber optic cable shall be installed in appropriate fiber optic interduct PVC, Outside Plant, Riser or Plenum rated as required by specific project specifications or the local Fire Marshall.
7. All Fiber optic cable shall be terminated in the equipment rooms in approved fiber optic LIU cabinets Leviton Part # 5R330-OAB or the equivalent with sufficient density to accommodate all fiber optic cable as specified in the project specifications.
8. The cable plant shall meet EIA/TIA-568 "Commercial Building Telecommunications Wiring Standard" and the maximum length of any UTP data drop SHALL NOT exceed 100 meters (322 feet) including patch cables and future jumper cables.
9. All data drop cabling shall be EIA/TIA 568, 569 and TSB-36 Category 5 enhanced certified (5E) cable.

10. All data drop cabling shall be 4 pair unshielded twisted pair, PVC rated, (Outside Plant (OSP) rated for underground use) (Plenum rated as required by local Fire Marshall), and Category 5 enhanced certified cable.
11. Approved cable supplier: Belden enhanced Data Twist CAT-5 #1700A (Blue color for data-1 Black color for data-2 unless otherwise requested) or it's equivalent or data and Belden CAT-5 #1583A (Grey color for voice-1 White color for voice-2 unless otherwise requested) or it's equivalent for voice.
12. All wiring closet data connecting hardware shall be EIA/TIA TSB-40 Category 5 enhanced certified cable.

COUNTY OF MONTEREY INFORMATION TECHNOLOGY

Article IV. CABLING STANDARDS (Page 2 of 3)

13. All wiring closet data connecting hardware shall be modular jack panels with RJ45 jacks on the front and 110 style insulation displacement connectors (IDC) for termination of the drop cable on the back.
14. The modular information outlets shall be housed in a four or six position wall plate.
15. The modular information outlet shall have an identification display and each outlet shall have the assigned specific identification number in the sequence assigned by an appropriate representative of Monterey County ITD displayed on it.
16. All modular jacks shall be eight position jacks with the pin/pair assignments utilizing EIA/TIA T568B.
17. Approved information outlet supplier: Leviton 5G108-R*5 (Orange color for data-1 Black color for data-2 unless otherwise requested) for data and Leviton 41108-R*5 (Ivory color for voice-1 White color for voice-2 unless otherwise requested) for voice.
18. Approved wall plate supplier: Leviton 41080-4IP (single-gang 4 port), 41080-6IP (single-gang 6 port), 42080-4IP (dual-gang 4 port), and 42080-6IP (dual-gang 6 port).
19. Approved surface plate supplier: Leviton 41089-4IP 4 port surface plates permanently attached to the appropriate surface.
20. The patch panel shall be Category 5 enhanced, 8-position modular jack panel with circuit board construction in all IC/MC locations. The 8-position modular jack patch panel shall be with wall mounted or rack mounted with cable management panels.

21. The patch panel shall meet EIA/TIA TSB-40 standards.
22. The patch panel shall be configured for 48 ports maximum or as requested.
23. Approved supplier for patch panels: Leviton #5G484-B48.
24. Approved supplier for vertical wire manager: Panduit #WMP-1 and horizontal wire managers: Panduit #MVPVC45 and #MVPVS45 or approved equivalent.
25. All wiring closet voice connecting hardware shall be EIA/TIA TSB-40 Category 5 compliant.
26. All wiring closet voice connecting hardware shall be wall mounting 66 M150 connecting hardware for termination of drop cable. These blocks should be attached to the wall using Homaco 50M series wall racks and 89B brackets.
27. All data station drop cables shall be tested from the outlet device to the patch panel. Each wire/pair shall be tested at both ends.
28. Testing shall be made utilizing a hand cable tester meeting EIA/TIA 568 standards; all testing equipment shall be calibrated annually and shall have a dated certificate.
29. Printed test results shall be assembled and delivered to county's representative.
30. Test results for each 4 pair; UTP cable must be submitted with identification to match labels on all patch panels and 8 position modular jacks.

COUNTY OF MONTEREY INFORMATION TECHNOLOGY

Article V. CABLING STANDARDS (Page 2 of 3)

31. All voice cables shall be tested for continuity, grounds, split pairs, polarity, shorts between wires, and shorts between pairs.

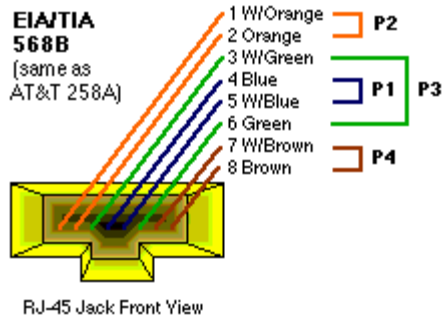


EXHIBIT H

REMEDIAL CONTRACTOR SPECIFICATIONS

A. Scope of Services

Remedial Contractor to provide treatment, cleanup, and damage restoration of:

- Water and/or sewage
- Mold contamination
- Fire and smoke damage
- Hazardous materials within the license and certification capabilities of the Remedial Contractor
- Human bodily fluids, including but not limited to blood, vomitus, urine, feces, and saliva
- Routine sanitation cleanup

B. Work Standards

All work must be done in accordance with the California Health and Safety Code, California Occupational Safety and Health Act (OSHA), and other applicable laws and regulations. The Remedial Contractor must take all care to ensure that work proceeds under the highest standards of safety and prudence, and in compliance with all applicable laws.

EXHIBIT I

SERVICE CONTACT LIST (Page 1 of 2)

Back Up Generator

Carpenter

Ceiling Tile

Electrical

Electronic Gates and Garage Doors

Elevator

Elevator Phone

Exterior Door and Hardware

Flooring

Fire Sprinkler System

Fire Extinguisher Servicing

Fire Alarm

Heating & Air Conditioner

Industrial Hygienist

Interior Door and Hardware

Janitorial

Landscape Maintenance

Light Bulbs and Fluorescent Tubes

Locksmith

Service Contact List (Page 2 of 2)

Painting

Pest Control

Parking Lot Repair

Parking Lot Sweeping

Patrolled Security

Plumbing

Remedial Contractor

Roofing System

Roof Gutters and Downspouts

Security Alarm Company

Sewer and Drain Cleaning

Utility (Gas & Electric)

Utility (Telephone)

Utility (Water)

Waste Disposal & Recycle

Window Replacement and Repair

Window Cleaning

EXHIBIT J

(i) AMORTIZED PREMISE IMPROVEMENT COSTS

REAL PROPERTY LEASING/RENTALS

In accordance with Monterey County Code Section 2.32.020.D., the purchasing agent shall negotiate in the name of the county as lessee subject to approval by the Board of Supervisors all rentals of real property, which the county may require.

The Real Property Specialist, operating under the supervision of the Facilities Operations Division, of the Resource Management Agency, has been designated as the point of contact to coordinate and facilitate county real property leases between leasing agents/landlords and the County of Monterey. Final authorization is provided by the Contracts/Purchasing Officer, or designated Deputy Purchasing Agent.

Real property lease procedures are detailed in a separate manual, effective February 1, 2001 under the auspices of Facilities Projects Division of the Resource Management Agency (RMA). All property leases, amendments and other transactions affecting those leases are subject to approval by County Counsel.

A Notice of Intention to engage in such a lease/rental agreement shall be posted in a public place for a minimum period of (5) five working days before submission to the Board of Supervisors for approval.

COUNTY OF MONTEREY

STANDARD LEASE AGREEMENT



LEASED PREMISES:	_____
DEPARTMENT:	_____
LESSOR:	_____ _____ _____ _____

a) COUNTY OF MONTEREY

b) STANDARD LEASE AGREEMENT

Article II. PREAMBLE

THIS LEASE ("Lease") is made this ___ day of ____, 200_, by and between _____, Federal Identification Number _____, ("LESSOR") and the COUNTY OF MONTEREY, ("LESSEE"), C/O Lease Manager, 855 East Laurel Drive, Building C, Salinas, CA, 93905. LESSOR and LESSEE hereby agree as follows:

ARTICLE 1 - PREMISES

1.1 **Description:** LESSOR hereby leases to LESSEE and LESSEE hereby leases from LESSOR, upon the terms and conditions herein set forth, that certain real property and its appurtenances, situated at _____ and described as follows: General offices consisting of approximately _____ rentable square feet of space, (the "Premises"), as designated in Exhibit A, which is attached and incorporated herein. The term "rentable square feet" shall be used as defined by the Building Owners and Managers Association ("BOMA"). If the Premises constitutes only a portion of the building or complex, the Premises represents one hundred percent (100%) of the total rentable space. The Premises is _____ percent (___%) of the total building or complex.

1.2 **Non-Exclusive Use Areas:** LESSEE shall also have the non-exclusive right to use, in common with other tenants in the building, any and all of the following areas which may be appurtenant to the Premises: Common entrances, lobbies, elevators, stairways and access ways, loading and unloading areas, visitor parking areas, ramps, drives, platforms, public rest rooms, and common walkways and sidewalks necessary for access to the Premises.

1.3 **Parking Areas:** LESSEE shall have access to all parking spaces in the _____ and shall be allowed, if needed, to park up to _____ (___) county vehicle as close to the Premises as possible, overnight and on weekends. LESSEE'S employees shall park in the middle row as far away from entries as possible. LESSOR, at LESSOR'S expense may need to post parking signage if deemed necessary for LESSEE'S use of the Premises.

1.4 **Compliance with the "Americans with Disabilities Act of 1990" (ADA):** LESSOR shall ensure that the Premises are in compliance with the Americans with Disabilities Act of 1990 ("ADA"), as amended, and, if necessary, prior to the Commencement Date, shall modify the Premises to comply with the Act and the regulations promulgated to implement the ADA.

1.5 **Compliance with "No Smoking Law" (2003 Assembly Bill 846):** LESSOR shall ensure that the Premises and the non-exclusive areas of the building as described in Article 1.2 are in compliance with Government Code Title 1, Division 7, Chapter 32 (commencing with section 7596), as amended, and, if necessary, prior to the Commencement Date, shall modify the same to comply with the law and the regulations promulgated to implement 2003 Assembly Bill 846.

1.6 **Statement of Seismic Adequacy:** LESSEE shall provide the statement described in Exhibit B with respect to seismic adequacy clearance.

1.7 **Area of Premises:** Within _____ (____) days of the date that this Lease is executed by LESSOR and LESSEE, and upon LESSEE'S written request, LESSOR shall have the rentable square feet of the Premises measured as described in Article 1.1 by a reputable architect. Provided the amount differs from that set forth in Article 1.1, LESSOR and LESSEE will execute a letter of agreement setting forth the correct rentable square feet of the Premises. It is agreed that when the correct rentable square feet of the Premises is determined, changes and modifications to the Lease may be required including, but not limited to, Article 3. Cost for architectural services shall be equally split between LESSOR and LESSEE. LESSOR'S cost for any architectural services shall not exceed \$_____.

1.8 **Right of First Refusal:** LESSEE shall have the right of first refusal to lease any additional suites in the _____ Building located at _____, which may become available during the initial term or any extended term of this Lease. LESSEE will have up to but not more than thirty (30) days to accept or reject this additional space.

ARTICLE 2 - TERM

2.1 **Lease Term:** The term of this Lease (the "Lease Term") shall be _____ (____) years, commencing on _____ 1, 200_ or upon issuance of a certificate of occupancy from the City of _____ and LESSEE'S final walk through and approval of all Premise Improvements, whichever is later, ("Lease Commencement Date") and ending _____ 1, 200_ or _____ (____) years from Lease Commencement Date, whichever is earlier, with such rights of termination and extension of the Lease Term as are hereinafter set forth.

2.2 **Extended Term:** Upon completion of the initial Lease Term, the LESSOR and LESSEE may renew the lease for one additional _____ (____) year term ("First Extended Term"), and upon the expiration of the First Extended Term, the LESSOR and LESSEE may renew the lease for a second additional _____ (____) year term ("Second Extended Term"). LESSEE shall give LESSOR advance written notice of its intent to renew _____ (____) days prior to expiration of the initial Lease Term or First Extended Term.

ARTICLE 3 - RENT

In consideration of the continuing right of use, quiet enjoyment and possession of the Premises,

LESSEE shall pay to LESSOR as monthly rent for the Premises the initial sum of _____ (\$ _____), payable on or before the first day of each month. LESSEE shall commence rental payments upon occupancy ("Rent Commencement Date"). If the Rent Commencement Date is other than the first day of a calendar month, then the rent for that month shall be prorated on a daily basis, based on a thirty (30) day month. Rent shall be payable to LESSOR at the address specified in Article 6 or at such other address as LESSOR may from time to time designate in writing. In addition, LESSEE shall contract and pay directly to its vendors for its responsibilities as outlined in Exhibits D and E. Monthly rent shall include LESSEE'S share of real estate taxes, assessments, fire and liability insurance, and Monterey Regional Water Pollution Control Agency (MRWPCA) fee for the Premises. [Initial monthly rent is computed as follows: Base rent of \$0._____ per square foot per month, plus a cost not to exceed \$0._____ per square foot for Premise Improvements, totaling an amount not to exceed \$_____ per square foot per month for the initial term of the Lease.]

It is hereby agreed that the figures noted herein are subject to change, and that cost of Premise Improvements will be paid in accordance with Exhibit F ("Amortized Premise Improvement Cost").

(i) ARTICLE 4 – ANNUAL RENT ADJUSTMENT

At the end of each one year period of the Lease Term or any one year period of any Extended Term, the monthly base rent shall be increased by the fixed amount of _____ percent (_____%).

Section 2.02 ARTICLE 5 - TERMINATION BY COUNTY

Notwithstanding any other provisions of this Lease, LESSEE, at its sole option, may terminate this Lease upon sixty (60) days written notice, solely on the condition that funds have not been budgeted for leasing of the property described herein. Such termination shall be without penalty to LESSEE. Such right of termination shall not be construed so as to permit LESSEE to terminate this Lease in order to lease other premises for a similar purpose within the City of Salinas. LESSEE represents that its intent is not to exercise its rights under this Article unless financial conditions prevent the Monterey County Board of Supervisors from budgeting funds for this Lease. Should LESSEE so terminate, LESSEE shall pay in one lump sum payment any unamortized Premise Improvement costs incurred by LESSOR in connection with the Premise Improvements, as referenced in Article 7.2.

ARTICLE 6 - NOTICES

All notices or correspondence provided for herein shall be effective only when made in writing, personally delivered or deposited in the United States mail, certified, postage prepaid, and addressed as follows:

To LESSOR: _____

To County of Monterey
LESSEE:
General Services Department
C/O Real Property Specialist
855 East Laurel Drive, Building C
Salinas, CA 93905

Rent payments shall be made to (need not be sent certified _____), at the address listed above.

Any notice or correspondence shall be deemed delivered upon personal delivery or five (5) days after notice is mailed. Correspondence other than notices may be given by phone, regular mail, email or facsimile. Any correspondence sent by facsimile shall also be sent by United States mail if requested by either party. By written notice to the other, either party may change its own mailing address or correspondence information.

LESSOR or LESSOR'S designated property management shall be available to LESSEE by phone during regular business hours, and for emergencies after hours and weekends. LESSOR or LESSOR'S designated property management shall subscribe to a 24-hour, 7 days a week emergency answering service that maintains contact phone numbers of key personnel or maintenance/service companies in event of an emergency.

LESSEE shall be available to LESSOR, by phone during regular business hours, and for emergencies after hours and on weekends. LESSEE shall subscribe to a 24-hour, 7 days a week emergency answering service that maintains contact phone numbers of key personnel or maintenance/service companies in event of an emergency.

If applicable, LESSOR'S designated property management shall be vested with such power and authority as is reasonably necessary or incidental to the performance of this Lease and the accomplishment of its purpose.

(i) ARTICLE 7 - PREMISE IMPROVEMENTS

7.1 **Premise Improvements:** Prior to the Lease Commencement Date, LESSOR shall construct Premise Improvements and make installations in the Premises (collectively "Premise Improvements") in accordance with plans and specifications as prepared by _____ Architects ("Plans and Specifications"), approved by LESSEE and LESSOR, and in accordance with those provisions of the attached Exhibit C ("Premise Improvement Agreement"), which describe construction.

7.2 **Cost of Premise Improvements:** LESSOR shall provide, as an allowance to LESSEE for Premise Improvements to be constructed by LESSOR, the sum of which shall not exceed \$_____. LESSEE acknowledges that LESSOR intends to obtain financing for up to \$_____ on the basis of a ____ (___) year loan at a rate not to exceed _____ percent (___%) interest, and that up to \$0.____ per square foot per month will be included in the rent hereunder as compensation to LESSOR for the Allowance referenced herein. No furniture or equipment items/cost shall be included in the Allowance. LESSOR and LESSEE shall be in agreement of all Premise Improvement costs (presented in itemized format), and construction schedule (presented in Gant Chart format) prior to commencement of construction. Premise Improvement costs shall include costs associated with architectural, engineering, building permits and fees, inspections and signage.

7.3 **Premise Improvement Warranties:** LESSOR warrants to LESSEE that all materials and equipment furnished by LESSOR in its improvement of the Premises shall be new

unless otherwise specified in the Premise Improvement Agreement, and that all of LESSOR'S work to be performed under the Premise Improvement Agreement shall be of good and workmanlike quality, free from faults and defects, and in accordance with the final requirements of the Premise Improvement Agreement. Any of LESSOR'S work not conforming to the above standards shall be considered defective.

For one (1) year after the date of substantial completion of Premise Improvements, LESSOR shall, following written notice from LESSEE, unconditionally make any repair, replacement, correction or other alteration of any nature necessary by virtue of any defective construction of the Premises or defective materials used therein. Thereafter, LESSOR shall promptly make or cause to be made all repairs, replacements, corrections or alterations, at no expense to LESSEE, to correct latent defects in the Premises.

ARTICLE 8 - NOTICE OF COMPLETION

- (b) **LESSOR will be responsible to insure that a properly prepared Notice of Completion is filed with the County Clerk-Recorder's Office on all construction and remodeling work performed as a result of this Lease Agreement. The Notice of Completion form will be filed within ten (10) working days after the LESSOR and the LESSEE have concurred that the construction is complete.**

ARTICLE 9 - PUBLIC WORKS LAWS

Under Section 1720.2 of the California Labor Code, any construction contract to improve the space to be leased by the County of Monterey for government services may be considered a 'public work' if certain conditions are met. If applicable, LESSOR shall comply with provisions of law governing public works including, without limitation, Labor Code sections 1773, 1773.2, 1773.3, 1773.8, 1775 (payment of prevailing wages), 1776 (payroll records), and 1777.5 (employment of apprentices), all as periodically amended.

ARTICLE 10 - TIME LIMIT AND PRIOR TENANCY

It shall be LESSOR'S responsibility to remove any prior LESSEE in the Premises.

ARTICLE 11 - USE

11.1 **Use:** LESSEE shall use the Premises for _____ space use. LESSEE may alter said use to any lawful purpose, upon the written consent of LESSOR, which consent shall not be unreasonably withheld.

11.2 **Compliance with Laws:** LESSOR represents and warrants to LESSEE that, to the best of LESSOR'S knowledge, the construction (including all LESSOR-constructed Premise Improvements), the current and proposed uses, and the operation of the Premises and the non-exclusive areas of the building as described in Article 1.2 are in full compliance with applicable building and seismic codes, environmental, zoning and land use laws, and other applicable local, state and federal laws, regulations and ordinances. LESSOR absolves LESSEE of legal or other responsibility for any code violations or other deviations from applicable local, state and federal laws, regulations and ordinances as may be listed above. Said absolution excludes LESSEE installed improvements to the Premises such as phone/data cabling, support equipment, trade fixtures, and any other equipment used to meet LESSEE'S operational needs.

11.3 **Hazardous Substances:** LESSEE shall have no liability or responsibility for toxic or hazardous materials or substances in existence on the demised premises prior to LESSEE'S occupancy of the demised premises or which result from LESSOR'S acts or omissions or which occur on any portion of LESSOR'S property not occupied by LESSEE, unless caused by LESSEE, its agents, employees, invitees or guests. LESSOR warrants, to the best of LESSOR'S actual knowledge, that at the time of execution of this Lease there are no known areas on LESSOR'S property where hazardous or toxic materials or substances (including asbestos or PCBs) have been used, stored, or deposited. LESSOR will comply with all applicable laws concerning the handling and removal of any hazardous materials, including asbestos or PCB containing materials.

11.4 **Environmental Hazards:** LESSOR hereby warrants and guarantees that the Premises and the non-exclusive areas of the building as described in Article 1.2 will be maintained free of all Environmental Hazards (including asbestos, leads, toxic mold spores or PCBs) and agrees to survey, test, and abate as applicable and in accordance with Environmental Protection Agency, "EPA" guidelines. A qualified industrial hygienist approved by LESSOR and LESSEE shall perform all testing. LESSOR further agrees to contract with a qualified remedial contractor to provide remedial services as specified in Exhibit H on an as needed basis. LESSOR specifically agrees that any costs related to abatement of Environmental Hazards shall be the LESSOR'S responsibility unless caused by LESSEE, its agents, employees, invitees or guests.

11.5 **Acceptance of Premises:** By entry hereunder, LESSEE accepts the Premises as being in good and sanitary order, condition and repair.

ARTICLE 12 - SIGNS AND FIXTURES

LESSEE may place such signs and advertisements upon the Premises as LESSEE may desire, subject to approval by the LESSOR which consent shall not be unreasonably withheld provided, however, that at the expiration of the term hereof or any renewal or extension of this Lease, LESSEE will remove said signs and will restore the Premises to their original conditions. Any trade fixtures, equipment, furniture, demountable walls, and other property installed in the Premises by and at the expense of the LESSEE shall remain the property of the LESSEE, and the LESSOR agrees that the LESSEE shall have the right at any time, and from time to time, to remove any and all of its trade fixtures, equipment and other property which it may have stored or installed in the Premises, provided the Premises are restored to acceptable condition. The LESSOR agrees not to mortgage or pledge the LESSEE'S trade fixtures, equipment and other property.

ARTICLE 13 - SERVICES AND UTILITIES

Services and utilities shall be furnished and the cost borne as outlined in Exhibit D. In the event of failure by LESSOR to furnish, in a satisfactory manner, any of the services and utilities to the Premises for which LESSOR is responsible, LESSEE may furnish the same if LESSOR has not undertaken to correct such failure within fifteen (15) days after written notice, and, in addition to any other remedy LESSEE may have, may deduct the amount thereof, including LESSEE'S service costs, from rent or other remuneration due LESSOR hereunder.

ARTICLE 14 - REPAIR AND MAINTENANCE

14.1 **LESSOR and LESSEE Obligations:** The respective repair and maintenance responsibilities of LESSOR and LESSEE are set forth in Exhibit E, Summary of Repair and Maintenance Responsibilities, which by this reference is incorporated herein. As stated in Exhibit E, the term “deemed necessary” shall mean that LESSOR and LESSEE are in agreement that appropriate action needs to be taken to ensure the health, safety and general well being of the occupants and or invitees of the Premises.

14.2 **Negligent Acts or Omissions of LESSEE:** Notwithstanding the foregoing, LESSEE will pay to LESSOR the reasonable cost of any repairs or maintenance required as a direct result of negligent acts or omissions of LESSEE, its agents, employees, or invitees.

14.3 **Failure of LESSOR to Make Repairs:** If LESSOR fails to maintain the Premises or to make the repairs required in this article within the time periods as specified in Article 23.1, LESSEE may perform such maintenance or make such repairs at its expense and deduct the reasonable cost thereof from the rent due hereunder.

LESSOR agrees to perform all emergency repairs involving the Premises and the non-exclusive areas of the building as described in Article 1.2 with the utmost urgency. An emergency repair is a repair that is necessary in order to protect health and safety of persons or public property or to save the building's integrity. LESSEE agrees to make a diligent effort to contact LESSOR before it uses responsible judgment to contact the appropriate

vendor identified in Exhibit I to perform emergency repair to protect health and safety of persons or public property or to save the building's integrity.

14.4 **LESSOR/LESSEE Obligations in Applying Noxious Substances:** LESSOR and/or LESSEE, its officers, employees, and agents shall not apply any substance as part of any building maintenance or repair which would introduce irritating or noxious odors or any other hazardous condition to occupied spaces without prior coordination and approval of the County of Monterey Facilities Projects Manager, who can be reached by telephone at (831) 755-4855. Prior notification and approval shall be made at least 48 hours prior to the desired application time. Also, a Product Safety Data Sheet shall be furnished by the proposed applicator to the _____ **Department,** _____ **Division.** Examples of such substances or materials include, but are not limited to, the following:

- Termite Control Materials
- Pesticides
- Paint
- Water Treatment Chemicals
- Any other substance that is or could be construed as hazardous

ARTICLE 15 - SERVICE COMPANIES

Within ten (10) days after occupancy of the Premises by LESSEE, LESSOR shall give LESSEE a list (see Exhibit I) of the names, addresses and telephone numbers of an agencies or persons convenient to LESSEE as a local source of service with regard to LESSOR'S responsibilities under Exhibit D and Exhibit E of this Lease. If LESSOR fails to provide such list, LESSEE may choose service companies as needed and without penalty from LESSOR.

ARTICLE 16 - ALTERATIONS, MECHANICS' LIENS

16.1 **Alterations:** Except for the Premise Improvements, no alterations or improvements shall be made to the Premises by LESSEE or at LESSEE'S request without the prior written consent of LESSOR, which consent shall not be unreasonably withheld.

16.2 **Condition at Termination:** LESSEE may remove any fixtures, machinery and equipment installed in the Premises by LESSEE upon the termination of this Lease, if LESSEE is not then in default under this Lease and if LESSEE repairs any damage to the Premises caused by such removal. Upon termination of this Lease, LESSEE shall return the Premises in the same condition as when delivered to LESSEE, reasonable wear and tear, and damage by casualty, and alterations approved by LESSOR excepted.

16.3 ***Mechanic's Liens***: LESSOR and LESSEE shall keep the Premises free from any liens arising out of any work performed by, materials furnished to, or obligations incurred by the parties.

ARTICLE 17 - ASSIGNMENT AND SUBLETTING

LESSEE shall not assign or sublet all or any portion of the Premises without the prior written consent of LESSOR, which consent shall not be unreasonably withheld.

ARTICLE 18 - ENTRY BY LESSOR

LESSEE shall permit LESSOR and LESSOR'S agents to enter the Premises, with reasonable advance notice (except in the case of emergency), provided such entry is made in a reasonable manner and does not unreasonably interfere with the conduct of LESSEE'S business.

ARTICLE 19 - INSURANCE AND INDEMNIFICATION

LESSEE, during the term hereof, shall indemnify and hold harmless the LESSOR from and against any and all claims and demands whether for injuries to persons or loss of life, or damage to property, occurring within the demised Premises and arising out of the use of the demised Premises by the LESSEE, excepting however, such claims and demands whether for injuries to persons or loss of life, or damage to property, caused by acts or omissions of the LESSOR.

LESSEE shall maintain public liability and property damage coverage or program of self insurance with liability limits of not less than \$1,000,000 for injury or death to one or more persons and property damage limits of not less than \$50,000 per occurrence insuring against all liability of LESSEE and its authorized representatives arising out of and in connection with LESSEE'S use or occupancy of the Premises. LESSOR, during the terms hereof, shall indemnify, defend and save harmless the LESSEE from and against any and all claims and demands whether for injuries to persons or loss of life, or damage to property, arising out of acts or omissions of the LESSOR.

LESSOR agrees that it will keep insured against loss or damage by fire, to at least eighty percent (80%) of the full fair insurable value thereof, the building on the demised Premises or of which the demised premises are a part.

LESSOR shall not be liable to LESSEE, or to anyone whatsoever for any damages caused by plumbing, gas, water, steam, sprinkler or other pipe and sewage system, or by the bursting, running or leaking of any tank, washstand, closet, or waste or other pipe, in and about the Premises of the building of which they are a part, or for any damage caused by water being upon or coming in through the roof, skylight, vent, trap door or otherwise; provided that LESSOR shall not be relieved from any of its obligations for maintenance and repair as otherwise set forth in this Lease.

ARTICLE 20 - WAIVERS OF SUBROGATION

LESSOR and LESSEE each hereby waive any right of recovery against the other due to loss of or damage to the property of either LESSOR or LESSEE when such loss of or damage to property arises out of the acts of God or any other property perils whether or not such perils have been insured, self-insured or non-insured.

ARTICLE 21 - DESTRUCTION

If the Premises are totally destroyed by fire or other casualty, either party may terminate this Lease immediately by giving notice to the other party.

If such casualty shall render ten percent (10%) or less of the floor space of the Premises unusable for the purpose intended, LESSOR shall effect restoration of the Premises as quickly as is reasonably possible, but in any event restoration shall begin within thirty (30) days after such destruction.

If such casualty shall render more than ten percent (10%) of such floor space unusable but not constitute total destruction, LESSOR shall forthwith give notice to LESSEE of the specific number of days required to repair the same. If LESSOR under such circumstances shall not give such notice within fifteen (15) calendar days after such destruction, or if such notice shall specify that such repairs will require more than ninety (90) days to complete from the date such notice is given, LESSEE, in either such event, at its option, may terminate this Lease.

In the event of any such destruction other than total, where LESSEE has not terminated the Lease as herein provided, LESSOR shall diligently prosecute the repair of the Premises and, in any event, if said repairs are not completed within sixty (60) calendar days from the work commencement date, for destruction aggregating ten percent (10%) or less of the floor space, or within the period specified herein in connection with partial destruction aggregating more than ten percent (10%), LESSEE shall have the option to terminate this Lease. LESSEE shall assist LESSOR with obtaining all applicable building permits if necessary.

Parties understand that, in normal circumstances, work cannot commence before a building permit is obtained. Time deadlines set forth herein shall not commence before required permits are issued. Lessor warrants to diligently pursue issuance of said permits.

If LESSEE remains in possession of the Premises though partially destroyed, the rent for said Premises as herein provided, during restoration, shall be reduced by the same ratio as the usable square feet LESSEE is thus precluded from occupying, bears to the total usable square feet in the Premises. "Usable square feet" shall mean actual inside dimensions and shall not include public areas.

ARTICLE 22 - DEFAULT BY LESSEE

22.1 ***Default:*** If any of the following events occur, each such event shall constitute a material breach of this Lease, and LESSOR may, at LESSOR'S option, exercise any or all rights available to a LESSOR under the laws of the State of California:

- a. A default in the payment of rent or other obligation when such default continues for a period of thirty (30) days after written notice, or
- b. LESSEE fails to faithfully perform or observe any other covenant or undertaking required under this Lease and such failure continues for a period of thirty (30) days after written notice thereof, or
- c. LESSEE is adjudicated bankrupt, or
- d. LESSEE'S lease interest is sold under execution of judgment.

22.2 ***Remedies:*** If LESSEE fails to cure a prospective default within the time frames outlined above, LESSOR shall have the option to cure the default or to terminate this Lease, in addition to any other remedies at law not inconsistent herewith. Should LESSOR elect to cure the default itself, all costs associated with such cure, including reasonable attorneys' fees (if any), shall be reimbursed by LESSEE to LESSOR, as Additional Rent, within thirty (30) days of receipt of LESSOR'S invoice for said costs.

ARTICLE 23 - DEFAULT BY LESSOR

23.1 ***Default:*** LESSOR shall not be in default unless LESSOR fails to perform its obligations under this Lease within a reasonable time, but in no event later than thirty (30) days after written notice by LESSEE to LESSOR specifying wherein LESSOR has failed to perform such obligations. If the nature of LESSOR'S obligation is such that more than thirty (30) days are required for performance, then LESSOR shall not be in default if LESSOR commences performance within such thirty (30) day period and thereafter diligently prosecutes the same to completion.

23.2 ***Remedies:*** If LESSOR fails to cure a prospective default within the time periods outlined above, LESSEE shall have the option to cure the default or to terminate this Lease, in addition to any other remedies at law not inconsistent herewith. Should LESSEE elect to cure the default itself, all costs associated with such cure, including reasonable attorneys' fees (if any), shall be reimbursed by LESSOR to LESSEE within thirty (30) days of receipt of LESSEE'S invoice for said costs. However, upon LESSOR'S failure to so reimburse or, at LESSEE'S option, said costs shall be held from rent due hereunder. If LESSOR'S default hereunder prevents LESSEE'S use of the Premises, there shall be an abatement of rental payments for the period of such non-use.

ARTICLE 24 - CONDEMNATION

If more than ten percent (10%) of the floor space area of the Premises is taken or condemned for a public or quasi-public use, or the part taken renders the entire Premises insufficient for the conduct of LESSEE'S business and operations, then this Lease shall

terminate at the option of LESSEE as of the date title shall vest in the condemner. If only part of the Premises is taken and the remainder of the Premises is sufficient for the conduct of LESSEE'S business and operations, then LESSOR shall restore the Premises to a single architectural unit and the Lease shall continue as to the part not taken, but the monthly rent shall be reduced in proportion that the usable area of the Premises taken bears to the usable area of the Premises before the taking.

ARTICLE 25 - HOLDING OVER

If LESSEE, with LESSOR'S written consent, remains in possession of the Premises after the Lease Term or any Extended Term, this Lease shall automatically be extended on a two month-to-two month basis at the monthly rent applicable to the last month of the Lease Term or Extended Term, subject to termination upon sixty (60) days' written notice by either party. All other terms and conditions shall remain in full force and effect.

ARTICLE 26 - WAIVER

The waiver by LESSOR or LESSEE of any term, covenant or condition herein contained shall not be deemed to be a waiver of any other term, covenant or condition, nor shall either party consent to any breach of any term, covenant or condition, nor shall either party be deemed to constitute or imply its consent to any subsequent breach of the same or other term, covenant or condition herein contained.

ARTICLE 27 - QUIET POSSESSION

As long as LESSEE keeps and performs the covenants in this Lease, LESSEE shall at all times during the term of this Lease peaceably and quietly have, hold and enjoy the Premises, without suit, trouble or hindrance from LESSOR or any person claiming under LESSOR. LESSOR, to the best of LESSOR'S ability, shall also be responsible for ensuring that all other tenants in the building or complex do not interfere with the quiet enjoyment of the LESSEE.

ARTICLE 28 - SUBORDINATION

This Lease shall be subject and subordinated to the lien of any mortgages and deeds of trust which are hereafter placed against the LESSOR'S interest or estate in the property provided that the mortgagor or beneficiary under such mortgage or deed of trust shall agree in writing that, in the event of a foreclosure of same or of any other such action or proceeding for the enforcement thereof, or of any sale thereunder, this Lease shall not be barred, terminated, cut off, or foreclosed, nor will the rights and possession of LESSEE hereunder be disturbed if LESSEE shall not then be in default under the terms of this Lease, and LESSEE shall attorn to the purchaser at such foreclosure, sale or other action or proceeding. The foregoing subordination shall be effective without the necessity of having any further instruments executed by LESSEE, but LESSEE shall nonetheless execute, upon demand, such further instruments evidencing such subordination as may be reasonably requested by LESSOR or any mortgagee or beneficiary.

ARTICLE 29 - ESTOPPEL CERTIFICATE

Within thirty (30) days of written notice by one party to the other, each will execute, acknowledge and deliver to the other an estoppel certificate in writing declaring any modifications, defaults or advance payments and whether the lease, as may be modified, is in full force and effect. Any such certificate may be conclusively relied upon for the intended transaction for which the statement was requested.

ARTICLE 30 - MISCELLANEOUS PROVISIONS

30.1 **No Amendments:** No oral amendment of this Lease shall be valid unless made in writing and signed by the parties hereto, and no prior oral understanding or agreement not incorporated herein shall be binding on either party hereto.

30.2 **Time is of the Essence:** Time is of the essence of each term and provision of this Lease.

30.3 **Binding Effect:** Subject to any provision hereof restricting assignment or subletting by LESSEE, this Lease shall bind the parties, their personal representatives, successors, and assigns.

30.4 **Invalidity:** The invalidity of any provision of this Lease as determined by a court of competent jurisdiction shall in no way affect the validity of any other provision hereof.

30.5 **Warranty of Authority:** If LESSOR is a corporation, the person executing this lease on behalf of LESSOR hereby covenants and warrants that LESSOR is a duly authorized and existing corporation and that he/she is duly authorized to execute this Lease.

30.6 **Addendum:** In the event of conflict between this Lease and any Addendum or Exhibit attached hereto, the provisions of such Addendum or Exhibit shall control.

ARTICLE 31 - MAJOR APPLIANCES

Installation of major appliances such as vending machines, refrigerators, stoves, etc., must be approved by LESSOR prior to installation. The LESSOR will grant installation approval for new appliances only. Such approval shall not be unreasonably withheld.

LESSEE: (County of Monterey)

APPROVED AS TO FORM: (County Counsel)

By:

By:

Title: Contracts/Purchasing Manager

Title: Deputy County Counsel

Date:

Date:

LESSOR:

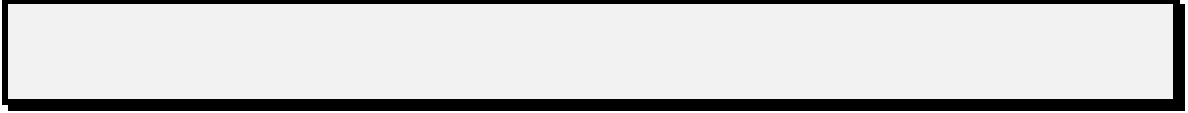
(_____)

By:

Title:

Date:

EXHIBIT A



DESCRIPTION OF PREMISES

(Floor Plan with Dimensions)

(Parking Location or Plan)

(Site Map)

EXHIBIT B

STATEMENT OF SEISMIC ADEQUACY

(c)

If the Premises are contained in a building constructed after 1973, or one of which has undergone major structural renovation since 1973, the LESSOR shall obtain from its design engineer a warranty, which contains the following:

Construction/renovation of the Building containing the Premises occurred in _____.
Construction/renovation plans have been determined to be in compliance with all building codes applicable to seismic safety.

EXHIBIT C

(i) PREMISE IMPROVEMENT AGREEMENT

This Premise Improvement Agreement is made this ____ day of _____, 200__, by and between _____, (“LESSOR”), and **COUNTY OF MONTEREY**, (“LESSEE”).

1. Premise Improvements:

- a. LESSOR shall construct all Premise Improvements in accordance with the Plans and Specifications as approved by LESSOR and LESSEE and as further defined in Article 7 of the County of Monterey Standard Lease Agreement to which this Exhibit is attached. Premise Improvements must satisfy the Federal Americans with Disabilities Act of 1990, as and if applicable.
- b. Premise Improvements are generally described as follows: the remodel of approximately _____ square feet of existing [*general office and retail space*] to [*health care and general office space*] by demolition of existing interior features and construction of new interior features so as to conform to LESSEE’S approved program for the use of the Premises.
- c. LESSOR shall commence construction of the Premises Improvement work at the earliest opportunity, but not more than 5 days following issuance of building permit. Plans and Specifications shall be approved by LESSOR and LESSEE prior to submittal to the _____ Building and Planning Department.
- d. LESSOR shall diligently pursue construction of approved Premises Improvement work and deliver the Premises to LESSEE in a condition suitable for occupancy no later than a date certain, that will be mutually established by LESSOR and LESSEE on or before the date LESSOR’S contractor commences construction of the Premise Improvements.

2. Construction Plans and Specifications, Change Orders and Delay:

- a. LESSOR shall provide for LESSEE’S approval the complete and detailed proposed Plans and Specifications for the Premises Improvements, the design of which shall conform to LESSEE’S approved program for use of the Premises.
- b. LESSEE shall provide LESSOR with written notice of its approval or disapproval of the Plans and Specifications within five (5) business days after receipt of such Plans and Specifications.

- c. During construction, LESSOR and LESSEE'S Representative (as defined below) shall confer periodically regarding the progress of the work and the approximate cost of the work completed. LESSEE'S Representative may request changes, modifications or alterations to the Plans and Specifications by written change order delivered to LESSOR, but no such change shall be made without the written approval of LESSOR, which approval shall not be unreasonably withheld. LESSOR shall approve or deny each LESSEE change order within four (4) business days, and LESSOR shall also provide to LESSEE'S Representative, by written notice to LESSEE, an estimate of the maximum cost of each change order within five (5) business days after the delivery of the change order to LESSOR. No work based upon a change order shall be undertaken unless and until LESSEE'S Representative shall have approved (by notice to LESSOR) LESSOR'S cost estimate.
 - d. If LESSOR determines that a change proposed by LESSEE will delay completion of the construction beyond the period allocated for such construction, LESSOR shall, within four (4) business days, notify LESSEE'S Representative of the estimated length of the delay caused by LESSEE'S request. LESSEE'S Representative shall advise LESSOR within two (2) business days after receipt of such notice as to whether LESSOR shall proceed with requested change, modification or alteration. LESSOR shall not make the requested change to the Plans and Specifications without LESSEE'S approval of any proposed time extensions.
 - e. If LESSOR requires that LESSEE clarify or refine the Plans and Specifications, then LESSEE'S Representative shall meet with LESSOR for the purpose of clarifying or refining the Plans and Specifications within two (2) business days after LESSEE'S receipt of LESSOR'S request therefore. No such clarification or refinement shall be deemed to be a change order.
 - f. If LESSOR determines that the Plans and Specifications must be changed as a result of omissions or errors in the Plans and Specifications, then LESSOR shall, prepare and submit to LESSEE revised Plans and Specifications correcting any such omission or error. LESSEE shall approve or disapprove such revised Plans and Specifications within two (2) business days after receipt and shall not unreasonably withhold its approval.
 - g. LESSOR shall not be responsible for any delays in the time for completion of construction resulting from LESSEE'S delay. For purposes herein, LESSEE'S delay in the completion of the construction of the Premise Improvements are delays that may arise solely as a result of: (1) LESSEE'S failure to comply with its obligations set forth in subsection b, d, e, or f, above, within the time specified; (2) any change directed by LESSEE after notification to LESSEE that the change will delay completion of the construction as provided in subsection d, above; or (3) extra time required to obtain any long lead items specified by LESSEE. For purposes herein, an item shall be considered a long lead item if LESSOR notifies LESSEE within fifteen (15) business days after receipt of LESSEE'S approval of the Plans and Specifications that such item is not readily available or readily installable after the same is requested by LESSEE.
3. Approval of Plans by Public Authorities: LESSOR shall obtain approval of the Plans and Specifications for the Premises from all appropriate government agencies, and a copy of the Plans and Specifications, as approved, shall be dated and initialed by both LESSOR and LESSEE. LESSOR shall exercise due diligence in obtaining any such approval. LESSEE shall cooperate with LESSOR in obtaining all such approvals, and in this regard, LESSEE shall make, or cause it to be made all revisions and changes to the Plans and specifications reasonably required by any governmental agency, with due diligence and without delays.

4. Quality of Work: All work performed hereunder shall be done in a good and workmanlike manner, free from faults and defects and in accordance with the Plans and Specifications. All materials and equipment installed in the Premise Improvements shall be new unless otherwise specified in the Plans and Specifications.
5. LESSEE'S Access during Construction: LESSEE'S Representative, agents, consultants and contractors ("LESSEE Representatives") shall have access to the Premises during the construction of the Premise Improvements for activities and purposes related to construction of the Premises or preparation of the Premises for occupancy. LESSEE'S Representatives on the Premises during construction shall cooperate with LESSOR'S contractor and not delay in any way the performance by LESSOR'S contractors or LESSOR'S representatives of any work (including but not limited to the construction of Premise Improvements).
6. Acceptance of Premises:
 - a. At any time during the construction of the Premise Improvements, LESSEE may reject any work that does not conform to the Plans and Specifications or does not meet good and workmanlike standards as reasonably interpreted by and at the sole discretion of the LESSEE.
 - b. Within five (5) business days after LESSOR delivers to LESSEE a list of work items remaining to be done or corrected and notifies LESSEE that the Premise Improvements are ready for inspection by LESSEE'S representative, LESSEE shall deliver to LESSOR a list of items that LESSEE shall have reasonably determined that LESSOR must complete or correct prior to LESSEE'S acceptance of possession in order for the work to conform to the Plans and Specifications. LESSOR shall immediately commence to complete or correct the items listed by LESSEE, except those it contends are not justified. If LESSEE fails to deliver such a list within the five (5) business day period, LESSEE shall be deemed to have accepted the Premises subject to completion of the corrections on LESSOR'S list of corrections and to have approved the construction.
 - c. Acceptance by LESSEE shall not be unreasonably withheld.

7. Notices: All notices required or permitted hereunder shall be in writing and shall be delivered as follows:

a. If to _____ (LESSOR'S
LESSOR, to: _____ Representative)

b. If to LESSEE, County of Monterey (LESSEE'S
to: _____ Representative)
General Services Department
Real Property Specialist
855 E. Laurel Drive, Building C
Salinas, CA 93905

8. Notice of Non-Responsibility: LESSOR may post such notices of non-responsibility as it reasonably deems appropriate in the Premises during the construction provided for herein.

9. Responsibility for Damage: If LESSEE installs equipment in the Premises prior to completion of the work hereunder, LESSEE shall bear the risk of loss to such equipment other than loss that is a result of negligence or willful misconduct by LESSOR, its agent or contractors.

10. Approval of Agreement: Approval of this Agreement will result in a construction of a facility suitable for the Monterey County _____ Department. This agreement specifically includes the installation of necessary telecommunications/data processing linkages, and alarm systems. Specification for telecommunications/data processing linkages and alarm systems will be developed and provided by the Monterey County Information Technology Department.

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

LESSOR:

LESSEE:

By:

By:

Title:

Title:

Updated:
April 3, 2008

EXHIBIT D

SUMMARY OF SERVICES AND UTILITIES

The following is a summary of services and utilities responsibilities of LESSOR and LESSEE for the proposed use of the Premises:

	N/A	LESSOR	LESSEE
Provide adequate paper supplies, dispensers, and waste and recycling containers for the Premises and restrooms within Premises (not in common area)		X	
Provide adequate custodial service for the interior of the Premises per schedule attached as Exhibit F, "Custodial Service Specifications"		X	
Provide adequate custodial service for exterior of the Premises and the non-exclusive areas of the building as described in Article 1.2 (including steam cleaning or pressure washing sidewalks)		X	
Professionally clean carpets, rugs, tile and linoleum flooring as indicated in Exhibit F		X	
Professionally clean existing drapes, blinds, and window shades as indicated in Exhibit F		X	
Professionally clean interior windows as indicated in Exhibit F		X	
Professionally clean exterior windows as indicated in Exhibit F		X	
Provide adequate pest control for the interior of the Premises		X	
Provide adequate pest control for exterior of Premises		X	
Provide adequate landscape maintenance and gardening (including landscape irrigation system and associated water supply and service)		X	
Provide adequate parking lot area sweeping		X	
Provide adequate refuse, rubbish, garbage, and recyclable (paper, plastic, and aluminum, if available) disposal and pick up service		X	
Provide adequate fire sprinkler systems testing		X	
Provide adequate fire alarm systems monitoring		X	
Provide adequate intrusion/security alarm systems monitoring		X	
Provide adequate patrolled security guard service (to common area only, from 6 am to 9 pm M-F, and 7 am to 4 pm on Sat.) (Subject to change with mutual written consent)		X	
Provide adequate heating, ventilation & air conditioning		X	

(HVAC) systems filter replacements, unit inspections, unit lubrications and record keeping pursuant to the California Code of Regulations, Title 8, Section 5142			
Provide adequate servicing of uninterrupted power source (UPS)		X	
Provide adequate servicing of back up generator		X	
Provide adequate gas utility service		X	
Provide adequate electric utility service		X	
Provide adequate water utility service		X	
Provide adequate telephone and data service (including connection charges)			X



EXHIBIT E

(ii) SUMMARY OF REPAIR AND MAINTENANCE RESPONSIBILITIES

The following is a summary of maintenance and repair responsibilities of LESSOR and LESSEE for the proposed use of the Premises:

	N/A	LESSOR	LESSEE
Common Areas		X	
Foundations and Floor Slabs		X	
Elevators and/or Dumb Waiters		X	
Exterior and Bearing Walls		X	
Exterior Doors and Hardware		X	
Exterior Windows and Window Frames		X	
Roofs (including replacement if deemed necessary)		X	
Gutters, Drains and Downspouts		X	
Parking Lots		X	
Ceilings (damage due to roof leaks only)		X	
Fire Sprinkler Systems		X	
Fire Alarm Systems		X	
Intrusion/Security Alarm Systems (excluding common areas)		X	
Heating, Ventilation and Air Conditioning (HVAC) Systems (including replacement if deemed necessary)		X	
Heating, Ventilation and Air Conditioning (HVAC) control switches, sensors and thermostats		X	
Electrical Systems (including electrical outlets, panels, circuit breakers and wiring)		X	
Plumbing Systems (including sewer and drain stoppages, and fixtures)		X	
Exterior Lighting (including starters, ballasts, transformers and light switches)		X	
Interior Lighting (including starters, ballasts, transformers and light switches)		X	
Interior Light Bulbs and Fluorescent Light Tubes (replacement)		X	
Interior Walls		X	
Interior Wall Surfaces (including repainting every 5 years if Premises wall surfaces are accessible)		X	
Interior Doors and Hardware		X	
Interior Windows and Window Frames		X	
Carpet, VCT, and Linoleum Flooring (including replacement if deemed necessary and with the understanding that LESSEE pays for moving office furniture and equipment).		X	
Base and/or Moldings (including replacement if deemed necessary)		X	
Appliances (excluding common area)		X	
Communication Systems (data/telephone cabling, connections and			X

equipment)			
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***Notwithstanding the forgoing, LESSEE will pay to LESSOR the reasonable cost of any repairs or maintenance required as a direct result of negligent acts or omissions of LESSEE, its agents, employees, or invitees.**

EXHIBIT F

(iii) CUSTODIAL SERVICE SPECIFICATIONS (Page 1 of 3)

DAILY SERVICE (Monday through Friday)
A. General Cleaning
1. Empty wastebaskets; replace liners, place trash in dumpster
2. Sweep outside Premises entrances
3. Remove graffiti from any interior walls
B. Floor and Carpet Care (including stairways)
1. Sweep and dust mop hard surface floors with treated mop
2. Vacuum carpeted floors and entry mats
3. Damp mop all spills on hard surfaces
4. Remove gum/candy from carpet/floors
C. Window Cleaning
1. Clean entry door and lobby glass, inside and outside
2. Clean interior partitions and counter glass
3. Clean interior/exterior door glass
D. Restroom Cleaning (including non-exclusive areas of the building)
1. Empty waste containers
2. Sweep and wet mop floors
3. Restock dispensers with the proper product (common area to have extra service performed in mid-morning and mid-afternoon, M-F)
4. Clean and disinfect all restroom fixtures (common area to have extra service performed in mid-morning and mid-afternoon, M-F)
5. Unstop urinals, toilets and sinks (Notify LESSOR of necessary repairs.) (common area only)
6. Clean restroom mirrors and glass
7. Replenish air fresheners in all restrooms (common area only and as needed)
8. Remove graffiti from interior walls
9. Damp wipe all walls and partitions (as needed)
10. Clean around all door knobs and push plates
E. Dusting
1. Tops of all filing cabinets (only if cleared off and with notice posted by office worker)
2. Tops of desks where cleared (only if cleared off and with posted notice by office worker)
3. Table tops and counters where cleared
WEEKLY SERVICE (Fridays)

A. General Cleaning
1. Remove fingerprints from doors, walls, and light switches
2. Remove marks/clean door kick plates
3. Wash wastebaskets/trash receptacles inside and out
4. Wash all handrails
5. Clean around door knobs/push plates
B. Floor and Carpet Care (including stairways)
1. Damp mop all hard surface floors
2. Buff all hard surface floors using a high speed buffing machine
3. Spot clean all carpeted floors
C. Restroom Cleaning
1. Scrub all sinks with abrasive cleaner
2. Scrub inside toilets and urinals with acid-type bowl cleaner
D. Dusting
1. All windows and door sills
2. Ledges, baseboards, and partitions
3. All chairs
4. Remove cobwebs from ceilings, corners and crevices, etc.
BI-WEEKLY SERVICES (Fridays)
Dry shampoo all carpeted areas.
MONTHLY SERVICE (Last Weekend of the Month)
A. Floor and Carpet Care
1. Scrub and refinish all hard surface floors using an acrylic finish
2. Edge out all carpet areas (areas that are out of reach during normal vacuuming)
B. Restroom Cleaning (including non-exclusive areas of the building)
1. Wash all walls and partitions
C. Dusting
1. Vacuum all upholstered furniture
2. Clean all blinds, drapes and window shades
D. Additional requirements specific to Premises
1. Shampoo all upholstered furniture
QUARTERLY SERVICES (January, April, July, October)

A. General Cleaning
1. Wash exterior of all desks, filing cabinets, and tables
B. Floor and Carpet Care
1. Shampoo all carpeted areas using bonnet method
2. Strip and refinish all hard surface floors using an acrylic finish
C. Window Cleaning
1. Wash inside and outside windows
D. Dusting
1. High dust all light fixtures, HVAC vents and surface/ledges above six (6) feet.
BI-ANNUAL SERVICES (April and October)
A. Restroom Cleaning (including non-exclusive areas of the building)
1. Machine scrub restroom floors (porcelain tile floors)
ANNUAL SERVICES
A. Floor and Carpet Care
1. Steam/Extraction clean all carpeted areas

*** LESSOR and LESSEE agree that it may be necessary to modify the foregoing Custodial Service Specifications to better meet facility needs. Such modification shall be with mutual written consent. LESSOR and LESSEE acknowledge that additional costs may apply.**

EXHIBIT G

COUNTY OF MONTEREY INFORMATION TECHNOLOGY

Article III. CABLING STANDARDS (Page 1 of 3)

This document is to be used as a guide for voice and data cabling in all Monterey County facilities with the exception of Natividad Medical Center. Some of the requirements are dependent on specifications that are specific to a particular job and this information will be made available as necessary.

1. The cable plant shall be star configured, unshielded twisted pair (UTP) system capable of supporting data rates of 350 MBPS.
2. All riser and closet-to-closet voice wiring shall be unshielded twisted pair PVC rated, Outside Plant (OSP) rated for underground use, Riser rated, or Plenum rated as required by local Fire Marshall, and shall be EIA/TIA 568, 569 and TSB-36 Category 3 certified cable. This cable shall be tested for opens, shorts and reversals.
3. All riser and closet-to-closet data wiring shall be color coded tight tube 62.5/125 multimode fiber optic cable PVC, Outside Plant, Riser or Plenum rated as required by specific project specifications or the local Fire Marshall.
4. Only existing communications closets may be used for the termination of voice and data cable. Additional cable consolidation points and intermediate distribution frames will be added only with prior approval from the Monterey County Telecommunications Department.
5. All fiber optic cable shall be terminated on ST or SC connections as required by specific project specifications.
6. All fiber optic cable shall be installed in appropriate fiber optic interduct PVC, Outside Plant, Riser or Plenum rated as required by specific project specifications or the local Fire Marshall.
7. All Fiber optic cable shall be terminated in the equipment rooms in approved fiber optic LIU cabinets Leviton Part # 5R330-OAB or the equivalent with sufficient density to accommodate all fiber optic cable as specified in the project specifications.
8. The cable plant shall meet EIA/TIA-568 "Commercial Building Telecommunications Wiring Standard" and the maximum length of any UTP data drop SHALL NOT exceed 100 meters (322 feet) including patch cables and future jumper cables.
9. All data drop cabling shall be EIA/TIA 568, 569 and TSB-36 Category 5 enhanced certified (5E) cable.

10. All data drop cabling shall be 4 pair unshielded twisted pair, PVC rated, (Outside Plant (OSP) rated for underground use) (Plenum rated as required by local Fire Marshall), and Category 5 enhanced certified cable.
11. Approved cable supplier: Belden enhanced Data Twist CAT-5 #1700A (Blue color for data-1 Black color for data-2 unless otherwise requested) or it's equivalent or data and Belden CAT-5 #1583A (Grey color for voice-1 White color for voice-2 unless otherwise requested) or it's equivalent for voice.
12. All wiring closet data connecting hardware shall be EIA/TIA TSB-40 Category 5 enhanced certified cable.

COUNTY OF MONTEREY INFORMATION TECHNOLOGY

Article IV. CABLING STANDARDS (Page 2 of 3)

13. All wiring closet data connecting hardware shall be modular jack panels with RJ45 jacks on the front and 110 style insulation displacement connectors (IDC) for termination of the drop cable on the back.
14. The modular information outlets shall be housed in a four or six position wall plate.
15. The modular information outlet shall have an identification display and each outlet shall have the assigned specific identification number in the sequence assigned by an appropriate representative of Monterey County ITD displayed on it.
16. All modular jacks shall be eight position jacks with the pin/pair assignments utilizing EIA/TIA T568B.
17. Approved information outlet supplier: Leviton 5G108-R*5 (Orange color for data-1 Black color for data-2 unless otherwise requested) for data and Leviton 41108-R*5 (Ivory color for voice-1 White color for voice-2 unless otherwise requested) for voice.
18. Approved wall plate supplier: Leviton 41080-4IP (single-gang 4 port), 41080-6IP (single-gang 6 port), 42080-4IP (dual-gang 4 port), and 42080-6IP (dual-gang 6 port).
19. Approved surface plate supplier: Leviton 41089-4IP 4 port surface plates permanently attached to the appropriate surface.
20. The patch panel shall be Category 5 enhanced, 8-position modular jack panel with circuit board construction in all IC/MC locations. The 8-position modular jack patch panel shall be with wall mounted or rack mounted with cable management panels.

21. The patch panel shall meet EIA/TIA TSB-40 standards.
22. The patch panel shall be configured for 48 ports maximum or as requested.
23. Approved supplier for patch panels: Leviton #5G484-B48.
24. Approved supplier for vertical wire manager: Panduit #WMP-1 and horizontal wire managers: Panduit #MVPVC45 and #MVPVS45 or approved equivalent.
25. All wiring closet voice connecting hardware shall be EIA/TIA TSB-40 Category 5 compliant.
26. All wiring closet voice connecting hardware shall be wall mounting 66 M150 connecting hardware for termination of drop cable. These blocks should be attached to the wall using Homaco 50M series wall racks and 89B brackets.
27. All data station drop cables shall be tested from the outlet device to the patch panel. Each wire/pair shall be tested at both ends.
28. Testing shall be made utilizing a hand cable tester meeting EIA/TIA 568 standards; all testing equipment shall be calibrated annually and shall have a dated certificate.
29. Printed test results shall be assembled and delivered to county's representative.
30. Test results for each 4 pair; UTP cable must be submitted with identification to match labels on all patch panels and 8 position modular jacks.

COUNTY OF MONTEREY INFORMATION TECHNOLOGY

Article V. CABLING STANDARDS (Page 2 of 3)

31. All voice cables shall be tested for continuity, grounds, split pairs, polarity, shorts between wires, and shorts between pairs.

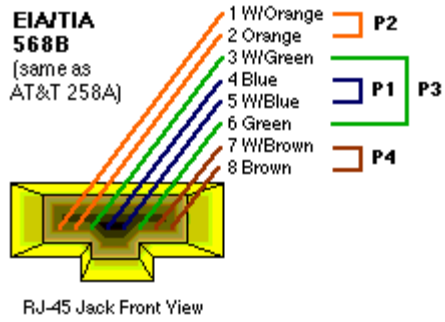


EXHIBIT H

REMEDIAL CONTRACTOR SPECIFICATIONS

A. Scope of Services

Remedial Contractor to provide treatment, cleanup, and damage restoration of:

- Water and/or sewage
- Mold contamination
- Fire and smoke damage
- Hazardous materials within the license and certification capabilities of the Remedial Contractor
- Human bodily fluids, including but not limited to blood, vomitus, urine, feces, and saliva
- Routine sanitation cleanup

B. Work Standards

All work must be done in accordance with the California Health and Safety Code, California Occupational Safety and Health Act (OSHA), and other applicable laws and regulations. The Remedial Contractor must take all care to ensure that work proceeds under the highest standards of safety and prudence, and in compliance with all applicable laws.

EXHIBIT I

SERVICE CONTACT LIST (Page 1 of 2)

Back Up Generator

Carpenter

Ceiling Tile

Electrical

Electronic Gates and Garage Doors

Elevator

Elevator Phone

Exterior Door and Hardware

Flooring

Fire Sprinkler System

Fire Extinguisher Servicing

Fire Alarm

Heating & Air Conditioner

Industrial Hygienist

Interior Door and Hardware

Janitorial

Landscape Maintenance

Light Bulbs and Fluorescent Tubes

Locksmith

Service Contact List (Page 2 of 2)

Painting

Pest Control

Parking Lot Repair

Parking Lot Sweeping

Patrolled Security

Plumbing

Remedial Contractor

Roofing System

Roof Gutters and Downspouts

Security Alarm Company

Sewer and Drain Cleaning

Utility (Gas & Electric)

Utility (Telephone)

Utility (Water)

Waste Disposal & Recycle

Window Replacement and Repair

Window Cleaning

EXHIBIT J

(i) AMORTIZED PREMISE IMPROVEMENT COSTS