

EXHIBIT B - HUMBOLDT COUNTY RFP #14-200-RP

SAMPLE UMBRELLA AGREEMENT

This Agreement made and entered into this _____ day of _____, 201_, at Eureka, California, by and between the County of Humboldt ("COUNTY"), a political subdivision of the State of California, and _____ ("CONTRACTOR"),[insert organizational status].

WHEREAS, COUNTY desires to obtain confidential paper shred services from CONTRACTOR and CONTRACTOR desires to provide such services to COUNTY,

NOW THEREFORE BE IT AGREED:

1. DESCRIPTION OF SERVICES

- 1.1** CONTRACTOR shall provide all the services described in Exhibit A. Services shall be provided in accordance with the prices listed in CONTRACTOR proposal. Exhibit A and proposal are attached hereto and incorporated herein by reference.
- 1.2** CONTRACTOR represents that it has the skills, experience and knowledge necessary to fully and adequately perform under this Agreement and COUNTY relies upon this representation. CONTRACTOR shall perform to the satisfaction of COUNTY and in conformance to and consistent with the highest standards of firms/professionals in the same discipline in the State of California. CONTRACTOR shall comply with COUNTY'S HIPAA Business Associate Agreement, a copy of which is attached hereto and incorporated herein as Exhibit C.
- 1.3** CONTRACTOR affirms that it is fully apprised of all the work to be performed under this Agreement and CONTRACTOR agrees it can properly perform this work at the prices stated in Exhibit D.

2. TERM OF AGREEMENT

This Agreement shall commence upon execution by both parties and continue in effect through June 30, 2020, unless terminated earlier in accordance with Section 6 (TERMINATION). By mutual agreement, this Agreement may be extended for additional one (1) year terms at agreed prices by written amendment signed by both parties. CONTRACTOR shall commence performance upon execution of this Agreement by both parties and shall diligently and continuously perform thereafter.

3. COMPENSATION

3.1 COUNTY shall pay CONTRACTOR for services performed in accordance with the prices set forth in Exhibit D. The quantity of services shall be determined by individual Departments of COUNTY through Contractor service agreements as described in Section 4 (ADMINISTRATION OF AGREEMENT AND CONTRACTOR SERVICE AGREEMENTS). COUNTY shall have no obligation to purchase any specified quantity of services. Unless otherwise specifically stated in Exhibit D, COUNTY shall not be responsible for payment of any of CONTRACTOR'S expenses related to this Agreement.

3.2 CONTRACTOR shall be paid by COUNTY in accordance with the terms of payment described. Unless otherwise directed by County Purchasing Agent, CONTRACTOR shall submit invoices to Departments within fifteen (15) working days of the last day of each calendar month. COUNTY shall pay the invoice within thirty (30) working days from the date of receipt of the invoice. Payment shall be made to CONTRACTOR only after services have been rendered.

Each invoice shall contain the following information: invoice number and date, remittance address, bill-to and ship-to addresses of ordering Department/Division, Agreement number (INSERT CONTRACT ID #), service date(s), unit price, price extension and an invoice total.

3.3 COUNTY'S obligation for payment under this Agreement beyond the current fiscal year is contingent upon and limited by the availability of County funding from which payment can be made. No legal liability on the part of COUNTY shall arise for payment beyond June 30 of each fiscal year unless funds are made available for such payment. In the event that such funds are not forthcoming for any reason, COUNTY shall immediately notify CONTRACTOR in writing, and this Agreement shall be deemed terminated and have no further force and effect.

4. ADMINISTRATION OF AGREEMENT AND CONTRACTOR SERVICE AGREEMENTS

4.1 COUNTY'S Purchasing Agent or his designee shall administer this Agreement on behalf of COUNTY. The Purchasing Team shall serve as necessary as the liaison between CONTRACTOR and any COUNTY Department utilizing CONTRACTOR'S services pursuant to this Agreement, provided, however, that each Department may determine its own service needs and pay for CONTRACTOR'S services.

- 4.2** Specific services requested and provided shall be documented on Contractor service agreement forms. Agreements to establish a basic level of service for each Department shall be approved by the Purchasing Agent or his designee. Subsequent service additions or deletions may be executed by the Department.
- 4.3** CONTRACTOR understands and agrees that all Contractor service agreements are subordinate to this Agreement and that all Contractor service agreements shall be deemed to incorporate all the terms and conditions of this Agreement. Contractor service agreements shall not be construed as amendments to this Agreement or as authority for CONTRACTOR to increase the price of any product or service or to modify any term or condition of this Agreement. In the event of any conflict between a Contractor service agreement and this Agreement, the terms of this Agreement shall control. CONTRACTOR understands and agrees that Contractor service agreements are primarily for the convenience of CONTRACTOR and individual COUNTY Departments in documenting numerous service quantity needs that may change on short notice and for which a formal amendment to the Agreement is not feasible.

5. AMENDMENTS

- 5.1** No addition to, or alteration of, any term of this Agreement shall be valid unless made in writing and signed by both parties. The Humboldt County Board of Supervisors, COUNTY'S Purchasing Agent and his designee are the only authorized COUNTY representatives who may modify this Agreement.

6. TERMINATION

- 6.1** At any time and for any reason, COUNTY may terminate this Agreement upon thirty (30) days written notice to CONTRACTOR.
- 6.2** If, in the opinion of COUNTY, CONTRACTOR fails to perform the services required under this Agreement within the time limits specified herein, or otherwise fails to comply with the terms of this Agreement, or violates any ordinance, regulation, or other law which applies to its performance herein, COUNTY may terminate this Agreement immediately, upon notice.
- 6.3** In the event of any termination of this Agreement, CONTRACTOR shall be entitled to compensation for uncompensated services rendered under this Agreement through and including the effective date of termination.

7. CONDUCT OF CONTRACTOR AND CONFLICT OF INTEREST

- 7.1** CONTRACTOR covenants that it presently has no interest, including, but not limited to other projects or contracts, and shall not acquire any such interest, direct or indirect, which would conflict in any manner or degree with CONTRACTOR'S performance under this Agreement. CONTRACTOR further covenants that no person or subcontractor having any such interest shall be employed or retained by CONTRACTOR under this Agreement. CONTRACTOR agrees to inform COUNTY of all CONTRACTOR'S interests, if any, which are or may be perceived as incompatible with COUNTY'S interest.
- 7.2** CONTRACTOR shall not, under circumstances which could be interpreted as an attempt to influence the recipient in the conduct of his/her duties, accept any gratuity or special favor from individuals or firms with whom CONTRACTOR is doing business or proposing to do business, in accomplishing the work under this Agreement.
- 7.3** CONTRACTOR or its employees shall not offer gifts, gratuities, favors, or entertainment directly or indirectly to COUNTY officers or employees.

8. SUBCONTRACTING AND ASSIGNMENT

CONTRACTOR shall not delegate its duties or assign its rights hereunder, or both, either in whole or in part, without prior written consent of COUNTY. CONTRACTOR shall not contract with any other party for furnishing any of the work or services under this Agreement without prior written consent of COUNTY. This provision shall not require the approval of contracts of employment between CONTRACTOR and personnel assigned under this Agreement, or for parties named in the proposal and agreed to under this Agreement. This section shall not be applicable to service agreements or contracts or similar arrangements usually or customarily entered into by CONTRACTOR to obtain or arrange for supplies, technical support or professional services.

9. LICENSING AND PERMITS

CONTRACTOR shall comply with all State or other licensing requirements, including but not limited to the provisions of Chapter 9, Division 3 of the Business and Professions Code. All licensing requirements shall be met at the time proposals are submitted to COUNTY. CONTRACTOR warrants that it has all necessary permits, approvals, certificates, waivers and exemptions necessary for performance of this Agreement as required by the laws and regulations of the United States, the State of California, the County of Humboldt, and all other governmental agencies with jurisdiction, and shall maintain these throughout the term of this Agreement.

10. RECORDS AND DOCUMENTS

CONTRACTOR shall make available, upon written request by any duly authorized Federal, State or County agency, a copy of this Agreement and such books, documents and records as are necessary to certify the nature and extent of CONTRACTOR'S costs related to this Agreement. All such books, documents and records shall be maintained by CONTRACTOR for at least five (5) years following termination of this Agreement and be available for audit by COUNTY. CONTRACTOR shall provide to COUNTY reports and information related to this Agreement as requested by COUNTY.

11. NOTICES

Any and all notices required to be given pursuant to the terms of this Agreement shall be in writing and either served personally or sent by certified mail, return receipt requested, to the respective addresses set forth below. Notice shall be effective upon actual receipt or refusal as shown on the receipt obtained pursuant to the foregoing.

COUNTY: Humboldt County Purchasing Team
Humboldt County Courthouse
825 5th Street, Room 112
Eureka, CA 95501

CONTRACTOR:

12. RELATIONSHIP OF PARTIES

It is understood that this is an agreement by and between two independent contractors and is not intended to, and shall not be construed to, create the relationship of agents, servant, employee, partnership, joint venture, or any other similar association. Both parties further agree that CONTRACTOR shall not be entitled to any benefits to which COUNTY employees are entitled, including, but not limited to, overtime, retirement benefits, worker's compensation and injury leave or other leave benefits.

13. COMPLIANCE WITH LAWS

CONTRACTOR agrees to comply with all applicable local, state and federal laws and regulations, including, but not limited to, the Americans with Disabilities Act.

14. ENTIRETY OF AGREEMENT

This Agreement contains all the terms and conditions agreed upon by the parties hereto, and no other agreements, oral or otherwise, regarding the subject matter of this Agreement shall be deemed to exist or to bind either of the parties hereto. In addition, this Agreement shall supersede in its entirety any and all prior agreements of the parties.

15. SEVERABILITY

In the event that any provision of this Agreement be declared or found to be illegal, unenforceable, ineffective or void by any court of law, then each party shall be relieved of any obligations arising in such provision; the balance of this Agreement, if capable of performance, shall remain in full force and effect.

16. BINDING EFFECT

All provisions of this Agreement shall be fully binding upon, and inure to the benefit of, the parties and to each of their heirs, executors, administrators, successors and assigns.

17. NO WAIVER

The waiver by either party of any breach or violation of any requirement of this Agreement shall not be deemed to be a waiver of any such breach in the future, or of the breach of any other requirement of this Agreement.

18. ATTORNEYS' FEES

If either party shall commence any legal action or proceeding, including an action for declaratory relief, against the other by reason of the alleged failure of the other to perform or keep any provision of this Agreement to be performed or kept, the party prevailing in said action or proceeding shall be entitled to recover court costs and reasonable attorneys' fees (including reasonable value of services rendered by County Counsel) to be fixed by the court, and such recovery shall include court costs and attorneys' fees (including reasonable value of services rendered by County Counsel) on appeal, if any. As used herein, "the party prevailing" means the party who dismisses an action or proceeding in exchange for payment of substantially all sums allegedly due, performance of provisions allegedly breached, or other considerations substantially equal to the relief sought by said party, as well as the party in whose favor final judgment is rendered.

19. JURISDICTION AND VENUE

This Agreement shall be construed in accordance with the laws of the State of California. Any dispute arising hereunder or relating to this Agreement shall be litigated in the State of California and venue shall lie in the County of Humboldt unless transferred by court order pursuant to Code of Civil Procedure sections 394 and 395.

20. NONDISCRIMINATORY EMPLOYMENT

In connection with the execution of this Agreement, CONTRACTOR shall not discriminate against any employee or applicant for employment because of race, religious creed, color, national origin, ancestry, physical disability, mental disability,

medical condition, marital status, political affiliation, sex, age or sexual orientation. This policy does not require the employment of unqualified persons.

CONTRACTOR further assures that it will abide by the provisions of Title VI and Title VII of the Civil Rights Act of 1974, Section 504 of the Rehabilitation Act of 1973, as amended, the Age Discrimination Act of 1975, the Welfare and Institutions Code Section 10000, CDSS MPP Division 21, and other applicable federal and state laws to ensure that employment practices are non-discriminatory.

CONTRACTOR shall comply with United State Executive Order 11246, entitled "Equal Employment Opportunity." United States Executive Order 11375 and supplemented in 45 CFR, Part 60, amends this. Practices in hiring, compensation, benefits and firing are among the employment practices subject to this requirement.

21. HUMBOLDT COUNTY NUCLEAR FREE ORDINANCE COMPLIANCE

CONTRACTOR certifies by its signature below that CONTRACTOR is not a nuclear weapons contractor, in that CONTRACTOR is not knowingly or intentionally engaged in the research, development, production or testing of nuclear warheads, nuclear weapons systems, or nuclear weapons components as defined by the Nuclear Free Humboldt County Ordinance. CONTRACTOR agrees to notify COUNTY immediately if it becomes a nuclear weapons contractor, as defined above. COUNTY may immediately terminate this Agreement if it determines that the forgoing certification is false or if CONTRACTOR becomes a nuclear weapons contractor.

22. HOLD HARMLESS/INDEMNIFICATION

COUNTY shall defend, indemnify, and hold harmless CONTRACTOR, its officers, officials, employees and volunteers, for any liability for injury to or death of any person or damage to or loss of any property caused by any negligent or wrongful act or omission occurring in the performance of this Agreement by COUNTY, and CONTRACTOR shall defend, indemnify and hold harmless COUNTY, its officers, officials, employees and volunteers for any liability for injury to or death of any person or damage to or loss of any property caused by any negligent or wrongful act or omission occurring in the performance of this Agreement by CONTRACTOR.

23. INSURANCE

23.1 This Agreement shall not be executed by COUNTY and CONTRACTOR is not entitled to any rights, unless certificates of insurances, or other sufficient proof that the following provisions have been complied with, are filed with the Clerk of the Humboldt County Board of Supervisors.

23.2 Without limiting CONTRACTOR'S indemnification obligations provided for herein, CONTRACTOR and any of its subcontractors shall take out and maintain, throughout the period of this Agreement and any extended term thereof, the

following policies of insurance placed with insurers authorized to do business in California and with a current A.M. Bests rating of no less than A:VII or its equivalent against injury/death to persons or damage to property which may arise from or in connection with the activities hereunder of CONTRACTOR, its agents, officers, directors, employees, licensees, invitees, assignees or subcontractors:

1. Comprehensive or Commercial General Liability Insurance at least as broad as Insurance Services Office Commercial General Liability coverage (occurrence form CG 0001), in an amount of \$1,000,000 per occurrence for any one incident, including, personal injury, death and property damage. If a general aggregate limit is used, either the general aggregate limit shall apply separately to this project or the general aggregate shall be twice the required occurrence limit.
2. Automobile/Motor Liability Insurance with a limit of liability of not less than one million dollars (\$1,000,000) combined single limit coverage. Such insurance shall include coverage of all "owned," "hired," and "non-owned" vehicles or coverage for "any auto."
3. Workers Compensation and Employers Liability Insurance providing workers' compensation benefits as required by the Labor Code of the State of California. Said policy shall contain or be endorsed to contain a waiver of subrogation against COUNTY, its officers, agents, and employees. In all cases, the above insurance shall include Employers Liability coverage with limits of not less than one million dollars (\$1,000,000) per accident for bodily injury and disease.
4. Insurance certificates:
County of Humboldt
Attn: Risk Management
825 Fifth Street, Room 131
Eureka, CA 95501

23.3 Special Insurance Requirements. Said policies shall, unless otherwise specified herein, be endorsed with the following provisions:

1. The Comprehensive General Liability Policy shall provide that COUNTY, its officers, officials, employees and volunteers, are covered as additional insured for liability arising out of the operations performed by or on behalf of CONTRACTOR. The coverage shall contain no special limitations on the scope of protection afforded to COUNTY, its officers, officials, employees, and volunteers. Said policy shall also contain a provision stating that such coverage:
 - a. Includes contractual liability.
 - b. Does not contain exclusions as to loss or damage to property caused by explosion or resulting from collapse of buildings or structures or damage to property underground, commonly referred to "XCU Hazards."
 - c. Is primary insurance as regards to County of Humboldt.

- d. Does not contain a pro-rata, excess only, and/or escape clause.
 - e. Contains a cross liability, severability of interest or separation of insured's clause.
2. The policies shall not be canceled, non-renewed or materially reduced in coverage without thirty (30) days prior written notice being provided to COUNTY and in accordance with the Notice provisions set forth under **Section 11 (NOTICES)**. It is further understood that CONTRACTOR shall not terminate such coverage until it provides COUNTY with proof satisfactory to COUNTY that equal or better insurance has been secured and is in place.
 3. The inclusion of more than one insured shall not operate to impair the rights of one insured against another insured, and the coverage afforded shall apply as though separate policies had been issued to each insured, but the inclusion of more than one insured shall not operate to increase the limits of the insurer's liability.
 4. For claims related to this project, CONTRACTOR'S insurance is primary coverage to COUNTY, and any insurance or self-insurance programs maintained by COUNTY are excess to CONTRACTOR'S insurance and will not be called upon to contribute with it.
 5. Any failure to comply with reporting or other provisions of the Parties, including breach of warranties, shall not affect coverage provided to COUNTY, its officers, officials, employees, and volunteers.
 6. CONTRACTOR shall furnish COUNTY with certificates and original endorsements affecting the required coverage prior to execution of this Agreement by COUNTY. The endorsements shall be on forms as approved by COUNTY'S Risk Manager or County Counsel. Any deductible or self-insured retention over \$100,000 shall be disclosed to and approved by COUNTY. If CONTRACTOR does not keep all required policies in full force and effect, COUNTY may, in addition to other remedies under this Agreement, take out the necessary insurance, and CONTRACTOR agrees to pay the cost of said insurance. COUNTY is also hereby authorized with the discretion to deduct the cost thereof from the monies owed to CONTRACTOR under this Contract.
 7. COUNTY is to be notified immediately if twenty-five percent (25%) or more of any required insurance aggregate limit is encumbered and CONTRACTOR shall be required to purchase additional coverage to meet the aggregate limits set forth above.

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

Date: _____

Authorized CONTRACTOR Signatures:

By: _____

Print Name: _____

Title: _____

Name of Corporation:

Date: _____

Authorized CONTRACTOR Signatures:

By: _____

Print Name: _____

Title: _____

Name of Corporation:

County Counsel approved as to form:

Date: _____

Insurance certificates reviewed and approved:
County Human Resources Risk Manager:

Date: _____

County Purchasing Agent:

Date: _____