



REQUEST FOR PROPOSAL FOR HOMEKEY PROJECTS



**County of Lassen
Department of Health and Social Services
Housing and Grants
1410 Chestnut St.
Susanville, CA 96130**

ISSUE DATE:

June 1, 2023

SUBMITTAL DEADLINE:

June 20, 2023

REQUEST FOR PROPOSAL

Table of Contents

I.	Notice of Invitation	3
II.	Introduction.....	3
III.	Background Information	4
IV.	Project Requirements.....	4
V.	Schedule of Activities	6
VI.	Submission Guidelines.....	7
VII.	Pre-Submittal Inquiries and Points of Contact.....	8
VIII.	Format of Proposal and Content	8
IX.	Selection Process.....	9
X.	Proposal Review and Evaluation Process.....	9
	Exhibit A. Contact Information and Signature Page.....	12
	Exhibit B. Proposal Checklist.....	13
	Exhibit C: Sample Contract.....	14

REQUEST FOR PROPOSAL

FOR
HOMEKEY PROJECTS

LASSEN COUNTY, CALIFORNIA

Issue Date:	June 1, 2023
Submittal Deadline:	June 20, 2023

I. Notice of Invitation

NOTICE IS HEREBY GIVEN that the County of Lassen (County) is issuing this Request for Proposals (RFP). The County is seeking proposals from qualified entities (Applicants) to collaborate with the County on the development of permanent affordable housing through the California Department of Housing and Community Development (HCD) Homekey Program.

Multiple Applicants may be selected to meet the requirements of this solicitation. The Applicant(s) selected through this RFP will be a joint Applicant(s) with the County for a Homekey application. This RFP contains the information needed by all Applicants responding to this invitation and sets forth the process, submission requirements, and criteria the County will use when selecting an Applicant(s) to acquire and rehabilitate or construct a property, as well as, operate, manage, and maintain, a property for an eligible Homekey Project. All submissions in response to this RFP will become the property of the County and will be considered public records. As such, they may be subject to public review.

II. Introduction

Lassen County is in Northeast California with a total population of approximately 29,904 (2022 Census Bureau estimate). Geographically, the county is one of the largest counties in California incorporating 4,547 square miles. Susanville, the county seat, is the only incorporated city in the County and has a population of 13,707 (2022 Census Bureau estimate).

Lassen County hosts two prisons, High Desert State Prison and Herlong Federal Prison. It is important to note that the U.S. Census data includes the inmates at these facilities which skews both Lassen County’s and Susanville’s data in terms of population, ethnicity and gender. Lassen County has a few commercial and industrial developments and contains rail, highway, and airport access. The predominant sector of employment in Lassen County is Federal, State, and Local Government, which comprises approximately 50 percent of the jobs in the County.

Due to the relatively mild climate and natural beauty, Lassen County appeals to locals and visitors alike for year-round recreational activities.

Within Lassen County there is a tremendous need for safe, affordable rental housing. Households who are low income, seniors, and people with disabilities are especially affected by the shortage. Data from Lassen County's Coordinated Entry System (CES) shows that at any given time, there are (on average) 185 individuals who are experiencing homelessness or at imminent risk of homelessness in the County. This number is likely an underrepresentation as it only includes families and individuals who have completed intakes and been entered into CES. There are significant wait times for Housing Choice Vouchers and for local subsidized apartment complexes. Based on this need, the County is seeking qualified Applicants to propose potential Homekey Projects to increase the amount of affordable housing in the County.

III. Background Information

On March 29, 2023, The California Department of Housing and Community Development (Department) announced the availability of approximately \$736 million in Round 3 Homekey funding to sustain and rapidly expand the inventory of housing for the target population of people experiencing homelessness or at risk of homelessness and who are, thereby, inherently impacted by or at increased risk for medical diseases or conditions due to the COVID-19 pandemic or other communicable diseases.

Homekey is an opportunity for state, regional, and local public entities to develop a broad range of housing types, including but not limited to hotels, motels, hostels, single family homes and multifamily apartments, adult residential facilities, manufactured housing, and to convert commercial properties and other existing buildings to interim or permanent housing for the target population.

Applicants can access the Homekey Program Round 3 Notice of Funding Availability (Homekey NOFA) at: <https://www.hcd.ca.gov/grants-and-funding/homekey>.

IV. Project Requirements

The requirements included in this RFP are based on the Homekey NOFA. The project must meet the requirements of the Homekey NOFA including, but not limited to the following:

1. The County and Applicant will be joint applicants to HCD for Homekey funding and will collaborate to prepare all application materials. The County will upload and submit the application through the Homekey portal. If awarded funds, HCD will execute a Standard Agreement with the County and the Applicant.

2. The County will consider a variety of housing solutions that meet Homekey requirements. Eligible projects are listed in the Homekey NOFA. All projects must serve the target population.
3. The County will not directly acquire properties for Homekey Projects. Applicants must acquire, own, develop and manage the proposed properties.
4. The Applicant must have site control of the project site prior to the submittal of the Homekey application to HCD. Examples of site control can be found in the Homekey NOFA.
5. The Applicant will be fully, actively, and monetarily responsible for all property operations including maintaining a balanced budget and forward-looking projections; all property management activities including lease-up; compliance with fair housing laws, disability access requirements, and all other applicable housing laws; collection of rent; enforcement of tenant lease requirements, accounting, bookkeeping, and reporting as applicable; and all maintenance and upkeep of the property.
6. In compliance with the requirements of the Homekey Program, the County and Applicant shall record a 55-Year Regulatory Agreement, subject to the review and approval of HCD on the project restricting its use, operation, and occupancy as affordable housing for people experiencing homelessness or at risk of homelessness.
7. Homekey funds are subject to California's prevailing wage law. Prior to disbursing the Homekey funds, HCD will require a certification of compliance with California's prevailing wage law, as well as all applicable federal prevailing wage law. The certification must verify that prevailing wages have been or will be paid, and that labor records will be maintained and made available to any enforcement agency upon request.
8. The County will support the selected Applicant(s) in accessing the CEQA and land use streamlining tools provided by the Homekey NOFA, and expects Applicants to seek counsel for legal advice in applying the exemptions and obligations to the projects.
9. The Homekey Projects will likely require an operating subsidy. Applicants should provide plans for ongoing operations. The County will work with the selected Applicant(s) to further develop plans to fund ongoing operations. The County may pursue other grant funds for operating expenses. However, the County encourages proposals that have a long-term plans (5, 15, and 55 years) for covering the project's operational costs and will prioritize projects that have secured funding sources for operating subsidies.
10. Program Deadlines:
 - a. Applications for Homekey funding are due to HCD on July 28, 2023.
 - b. Acquisition, rehabilitation, and/or construction must be completed 12 months from the date of award letter;
 - c. Capital expenditure must be completed within 8 months, or up to 15 months from the date of award if requesting an expenditure deadline extension; and

- d. Full occupancy must be achieved by 15 months from date of award letter.
- 11. All Homekey Projects must provide project specific supportive services. These services may be offered by the County and/or the Applicant. The County will prioritize proposals that have strong plans to provide and fund supportive services.
- 12. All projects must employ the core components of Housing First. Projects shall accept tenants and participants regardless of sobriety, participation in services or treatment, history of incarceration, credit history, or history of eviction in accordance with practices permitted pursuant to Housing First practices, including local Coordinated Entry System prioritization protocols, or other federal or state Project funding sources.
- 13. Referrals to Homekey units shall be made through the local Coordinated Entry System (CES). All referral protocols for Homekey units must be developed in collaboration with the local CoC and implemented consistent with the requirements set forth in the Homekey NOFA.
- 14. Projects must enter Universal and Common Data Elements as defined by HUD on the individuals and families served into the Homeless Management Information System (HMIS).
- 15. The selected Applicant(s) shall not discriminate against any employee or applicant for employment because of race, creed, color, or national origin. The Applicant(s) shall take affirmative action to ensure that all employees and applicants for employment shall be treated with equality in all aspects of employment processes including, but not limited to, hiring, transfer, promotion, training, compensation and termination, regardless of their race, creed, color, sex, national origin, age, or physical handicap.
- 16. The selected Applicant(s) will enter into a contract with the County. See Appendix C for a Sample Contract. The County reserves the right to change the County’s terms conditions or insurance requirements.
- 17. The Applicant(s) will be expected to indemnify, defend and hold the County harmless from and against any and all liabilities, losses, costs, claims, judgements, settlements, damages, liens, fines, penalties, and expenses.

V. Schedule of Activities

The County intends to progress in this procurement in a series of orderly steps. The schedule that follows has been developed in order to provide adequate information for Applicants to prepare definitive proposals and for the County to fully consider various factors that may affect its decision. This schedule is subject to change at the discretion of the County.

Scheduled Activity	Date
Release of Request for Proposals	June 1, 2023
Inquiry Deadline	June 5, 2023
RFP Amendment Deadline	June 9, 2023
RFP Submission Deadline	June 20, 2023

Review of Proposals	June 21, 2023
Potential Interview of Applicant(s)	June 22, 2023
RFP Recommendation and Notification	June 22, 2023
Board of Supervisors Approval of Recommendation(s)	June 27, 2023

VI. Submission Guidelines

All Applicants are solely responsible for ensuring proposals are received by the County on or before the submittal deadline. Proposals must be received vial mail or email no later than 5:00 PM on June 20, 2023 at the following:

Lassen County Health and Social Services
 Housing and Grants Division
 Attn: Grace Poor
housing@co.lassen.ca.us
 PO Box 1180
 Susanville, CA 96130

The proposal shall be signed by a representative authorized to bind the company. Proposals submitted by facsimile are not acceptable and will not be considered. Applicants shall submit its proposal via email as a PDF attachment with the email subject line: Lassen County Homekey Project Proposal. Verification of receipt of proposal is the responsibility of the submitting Applicant. In the event that an electronic proposal cannot be submitted, the Applicant may submit a hard copy with the name of the Applicant and RFP title: Lassen County Homekey Project Proposal. clearly marked on the outside of the package submitted by the deadline listed above. Late proposals will not be considered.

Failure to comply with the requirements set forth in this RFP may result in disqualification. Proposals and/or modifications received subsequent to the hour and date specified above will not be considered. Submitted proposals may be withdrawn at any time prior to the submission time specified in this RFP, provided notification is received in writing before the submittal deadline. Proposals cannot be changed or withdrawn after the submittal deadline. No handwritten notations or corrections will be allowed. The responding Applicant is solely responsible for all costs related to the preparation of the proposal.

The County reserves the right to reject all proposals and to waive any minor informalities or irregularities contained in any proposal. Acceptance of any proposal submitted pursuant to this RFP shall not constitute any implied intent to enter into a contract. Any future contract award resulting from the RFP will be entered upon with the Applicant who, in the County’s sole discretion, is best able to perform the required services in a manner most beneficial to the County.

The RFP and any addenda to the RFP can be viewed and/or obtained from the County of Lassen Housing and Grants Division website at: <https://www.lassen-county.org/dept/housing-and-grants/public-notice>

VII. Pre-Submittal Inquiries and Points of Contact

Pre-submittal inquiries and correspondence shall be directed to:

Grace Poor
housing@co.lassen.ca.us

or
PO Box 1180
Susanville, CA 96130

All questions regarding this RFP shall be submitted in writing by June 5, 2023. Questions submitted after the inquiry deadline will not be answered. Only answers to questions communicated by formal written addenda will be binding.

The questions and answers should be provided by the County in writing, in the form of an addendum to all known interested applicants after the inquiry deadline. If any addenda are issued by the County, they shall be sent via email and/or first-class U.S. mail to the last known business address of each Applicant known to have received a copy of this RFP.

VIII. Format of Proposal and Content

Proposals submitted in response to this RFP should include the following elements:

1. A completed Contact Information and Signature Page signed by the authorized representative. (Exhibit A)
2. A Proposal Checklist (Exhibit B)
3. An executive summary, including detailed description of the Applicant's experience, business structure, history, and qualifications to develop a Homekey Project, based on past experience, depth of personnel, etc. Applicant must demonstrate that they have the minimum experience requirements per the Homekey NOFA.
4. A narrative that includes:
 - a. A summary of the proposed project that includes site location, number of units, target population, and description of project type. The project summary should contain details on how the project would meet the Community Impact and Site Selection Criteria listed in the Homekey NOFA, including an outline for community outreach and acceptance.
 - b. A detailed development plan that supports acquisition of a site, completion of rehabilitation or construction, occupancy, and fund expenditure before all program deadlines, factoring in entitlements, permits, procurement, potential construction delays and supply chain issues, and demonstrates evidence of strong organizational and financial capacity to develop the project.
 - c. A detailed operational plan that supports the delivery of operations including utilities, property management, supportive services, maintenance, taxes, licenses, and fees. The narrative should demonstrate

- a detailed plan for 5 years of operation and projected plans to fund operations for 15 and 55 years of operation.
- d. A statement about whether the Applicant can provide supportive services or would require collaboration with County and/or a subcontractor. If the Applicant is able to provide the supportive services, a detailed plan should be included.
 5. Proof of site control or a written plan for securing site control in the required timeline.
 6. Organizational chart listing names and positions of all persons who will be assigned to provide the services described herein.
 7. Resumes for each person, who will, or who it is expected will perform work against the resulting contract, including any applicable licenses or professional certifications.
 8. Proof of insurance coverage
 9. Any letters of reference (not required but can be used to show experience and quality of work)

IX. Selection Process

The County reserves the sole right to judge the contents of the proposals. The selection process will be governed by the following process:

- Proposals must adhere to the instructions and format as specified in this RFP.
- The evaluation will include a review of all documents and information relating to the applicant's services, project proposal, organizational structure, capabilities, qualifications, and past performance.
- Applicants may be required to make an oral presentation and interview before the final selection is made.
- The County may evaluate any information from any source it deems relevant to the evaluation.
- False, incomplete, or unresponsive statements in a proposal may be sufficient cause for its rejection.

X. Proposal Review and Evaluation Process

The proposal(s) considered responsive from the Pass/Fail Criteria and receiving the highest overall scoring in the Evaluation will be presented to the Lassen County Board of Supervisors for selection and award of a contract.

- **Pass/Fail Criteria:**

The County will evaluate each proposal based on a pass/fail basis of compliance with the following criteria. Each proposal must pass all of the items to be considered responsive to the RFP and proceed to the Evaluation.

1. Is the proposed project an eligible Homekey project?
2. Does the Applicant meet the minimum experience requirements per the Homekey NOFA?
3. Is the Applicant in good standing with the State of California and all agencies and departments thereof? By way of example and not limitation,

an Applicant must be qualified to do business in the State of California and must be in good standing with the California Secretary of State and the California Franchise Tax Board.

4. Applicants must not be presently debarred, suspended, proposed for disbarment, declared ineligible, or voluntarily excluded from covered transactions by the United States Department of Urban Development or any other Federal department or agency.
5. Applicants must not have had any unfavorable judgments or bankruptcies in the last seven years and is not currently involved in any pending or threatened lawsuits or judgment or bankruptcy involving itself or any entity in which it has been or is now involved, or provide a complete description of any and all known bankruptcies, unfavorable judgments and/or pending lawsuits involving itself or any entity in which they have been or is now involved. All entities are required to disclose pending disputes with the County when bids, proposals or applications are submitted for a County contract or transaction.
6. Applicants must have site control or a plan and a timeline for obtaining site control.

▪ **Evaluation:**

The following evaluation criteria will be used to evaluate proposals received in response to this RFP:

1. Knowledge of:
 - The project's target population
 - Of the Homekey Program requirements
 - Lassen County or other rural communities
2. Past Performance and Experience
 - Specialized experience and technical competence in the type of work required
 - Experience with similar projects in the past beyond the threshold requirement
 - Experience working in Lassen County and/or other rural communities
3. Project Feasibility:
 - Capacity to complete project within the required timeline
 - Site Selection
 - Strength of plan for development
 - Strength of plan for operating funds
 - Strength of plan for supportive services.

▪ **Rating Scale:**

Score	Characteristics
5	Meets or exceeds reasonable expectations and requirements.
4	Meets expectations and requirements with minor issues. Response lacked insight or detail.
3	Meets expectations and requirements with significant issues. Response lacks evidence.
2	Does not meet significant expectations. Response shows lack of understanding.
1	Minimally meets requirements. Response is unconvincing, empty claims.
0	Does not meet requirements.

▪ **Scoring:**

After the evaluation committee rates each proposal, County staff will average the scores. The average score and weighted multiplier of each factor is multiplied and totaled for a total score.

Factor	Weighted Multiplier
Knowledge	10
Past Performance and Experience	15
Project Feasibility	25

Exhibit A. Contact Information and Signature Page

This document must be completed, signed by an authorized representative, and be included with your submittal in order to validate your proposal.

Applicant’s Authorized Representative

Applicant Name: _____ Date: _____

Representative: _____

Title: _____

Address: _____

Phone: _____ Fax: _____

Federal Tax ID No.: _____ Email: _____

RFP Contact Information (if different then above)

Contact Person: _____

Title: _____ Email: _____

Address: _____

Phone: _____ Fax: _____

Certifications:

1. Do you agree to comply with specifications, RFP instructions, draft contract requirements and other pertinent references contained in this RFP?
 YES NO

2. Do you certify that all statements in the qualifications are true? This shall constitute a warranty, the falsity of which shall entitle the County to pursue any remedy authorized by law, and shall include the right, at the option of the County, of declaring any contract made as a result thereof to be void.
 YES NO

3. Do you agree to provide the County with any other information the County determines is necessary for accurate determination of your qualifications to provide services?
 YES NO

To the best of my knowledge and belief, the information provided in this initial determination of responsibilities is true and correct.

Signature of Authorized Representative Date

Exhibit B. Proposal Checklist

This proposal checklist identifies the various components that must be submitted with your proposal. This form is to be completed and included in the proposal and must be located directly behind Exhibit A.

Follow this sequence in presenting your proposal with the checklist serving as your table of contents.

Proposal Check List/Table of Contents	Page #
Contact Information and Signature Page (Exhibit A)	
Proposal Check List/Table of Contents (Exhibit B)	
Executive Summary	
Proposal Narrative	
Site Control Documentation	
Organizational Chart	
Resumes	
Insurance Coverage (Certificate of Insurance)	
Letters of Reference (if applicable)	

Exhibit C: Sample Contract

AGREEMENT BETWEEN LASSEN COUNTY AND *

THIS AGREEMENT is made between the COUNTY OF LASSEN, a political subdivision of the State of California (hereinafter "COUNTY"), and *, *, with a principal place of business at *, (hereinafter "CONTRACTOR").

This Agreement is made with reference to the following facts and circumstances:

WHEREAS COUNTY has need for *and,

WHEREAS CONTRACTOR desires to provide those services.

In consideration of the services to be rendered, the sums to be paid, and each and every covenant and condition contained herein, the parties hereto agree as follows:

1. SERVICES.

The CONTRACTOR shall provide those services described in Attachment "A".

CONTRACTOR shall provide said services at the time, place and in the manner specified in Attachment "A".

2. TERM.

The term of the agreement shall be for the period of July 1, 20* through June 30, 20*.

3. PAYMENT.

COUNTY shall pay CONTRACTOR for services rendered pursuant to this Agreement at the time and in the amount set forth in Attachment "B". The payment specified in Attachment "B" shall be the only payment made to CONTRACTOR for services rendered pursuant to this Agreement. CONTRACTOR shall submit all billing for said services to COUNTY in the manner specified in Attachment "B".

4. FACILITIES, EQUIPMENT AND OTHER MATERIALS AND OBLIGATIONS OF COUNTY.

CONTRACTOR shall, at its sole cost and expense, furnish all facilities, equipment, and other materials which may be required for furnishing services pursuant to this Agreement.

COUNTY shall:

- 4.1 Pay the CONTRACTOR on the terms agreed upon herein in writing, provided that: (1) the CONTRACTOR timely submits appropriate invoices to the COUNTY, (2) the CONTRACTOR is not in breach of the terms and conditions of this Agreement, its attachments, or the standards or/specifications referenced or applicable thereto; (3) the CONTRACTOR is not in violation of laws or regulations substantially impairing the value of the CONTRACTOR'S performance or the CONTRACTOR'S entitlement to payment; (4) funds to be paid to the CONTRACTOR are not the subject of any active levy, execution, claim, offset, or stop notice by any third party or the COUNTY; and (5) appropriate public funds are available to the COUNTY for such payment.

- 4.2 Retain ownership and have prompt access to any report, evaluations, intellectual property, findings, or data assembled/developed by CONTRACTOR under this Agreement.

5. ADDITIONAL PROVISIONS.

Those additional provisions unique to this Agreement are set forth in Attachment "C".

6. GENERAL PROVISIONS.

The general provisions set forth in Attachment "D" are part of this Agreement. Any inconsistency between said general provisions and any other terms or conditions of this Agreement shall be controlled by the other terms or conditions insofar as the latter are inconsistent with the general provisions.

7. DESIGNATED REPRESENTATIVES.

*, * is the designated representative of the COUNTY and will administer this Agreement for the COUNTY. * is the authorized representative for CONTRACTOR. Changes in the designated representatives shall occur only by advance written notice to the other party.

8. ATTACHMENTS.

All attachments referred to herein are attached hereto and by this reference incorporated herein. Attachments include:

- Attachment A Services
- Attachment B Payment
- Attachment C Additional Provisions
- Attachment D General Provisions

*

IN WITNESS WHEREOF, the parties hereto have executed this Agreement on the dates shown opposite their respective signatures.

CONTRACTOR

*

Dated: _____

By: _____

*

COUNTY

County of Lassen

Dated: _____

By: _____

Richard Egan
County Administrative Officer

Dated: _____

By: _____

Barbara Longo, Director
Health and Social Services

Approved as to form:

By: _____

Amanda Uhrhammer
Lassen County Counsel

ATTACHMENT B
AGREEMENT BETWEEN LASSEN COUNTY AND
*
SCOPE OF SERVICES

A.1 SCOPE OF SERVICES AND DUTIES.

The services to be provided by CONTRACTOR and the scope of CONTRACTOR's duties include the following:

*

END OF ATTACHMENT "A"

**ATTACHMENT B
AGREEMENT BETWEEN LASSEN COUNTY AND**
*

PAYMENT

COUNTY shall pay CONTRACTOR as follows:

*

END OF ATTACHMENT "B"

ATTACHMENT C
AGREEMENT BETWEEN LASSEN COUNTY AND
*
ADDITIONAL PROVISIONS

- C.1 CONFIDENTIALITY.** All communications, written notes of calls, identification of callers, and any and all information obtained by Les Hall in performance of this contract shall be kept confidential and not conveyed to anyone without the prior written permission of the Lassen County Mental Health Director or Director of Health and Human Services.
- C.2 PATIENTS' RIGHTS.** The parties to the Agreement will comply with all applicable laws, regulations and state policies relating to patients' rights.
- C.3 HIPAA COMPLIANCE.** CONTRACTOR will comply with the requirements of the Federal Health Insurance Portability and Accountability Act ("HIPAA"). The Business Associate Agreement attached hereto as Attachment E is made a part of this Agreement by this reference.
- C.4 AUDITS.** The contracting parties shall be subject to the examination and audit of the Auditor General for a period of three years after final payment under Agreement.

END OF ATTACHMENT "C"

ATTACHMENT D GENERAL PROVISIONS

D.1. INDEPENDENT CONTRACTOR. For all purposes arising out of this Agreement, CONTRACTOR shall be: an independent contractor and CONTRACTOR and each and every employee, agent, servant, partner, and shareholder of CONTRACTOR (collectively referred to as "The Contractor") shall not be, for any purpose of this Agreement, an employee of COUNTY. Furthermore, this Agreement shall not under any circumstance be construed or considered to be a joint powers agreement as described in California Government Code sections 6000, et seq., or otherwise. As an independent contractor, the following shall apply:

D.1.1 CONTRACTOR shall determine the method, details and means of performing the services to be provided by CONTRACTOR as described in this Agreement.

D.1.2 CONTRACTOR shall be responsible to COUNTY only for the requirements and results specified by this Agreement and, except as specifically provided in this Agreement, shall not be subject to COUNTY's control with respect to the physical actions or activities of CONTRACTOR in fulfillment of the requirements of this Agreement.

D.1.3 CONTRACTOR shall be responsible for its own operating costs and expenses, property and income taxes, workers' compensation insurance and any other costs and expenses in connection with performance of services under this Agreement.

D.1.4 CONTRACTOR is not, and shall not be, entitled to receive from or through COUNTY, and COUNTY shall not provide or be obligated to provide the CONTRACTOR with workers' compensation coverage, unemployment insurance coverage or any other type of employee or worker insurance or benefit coverage required or provided by any federal, state or local law or regulation for, or normally afforded to, any employee of COUNTY.

D.1.5 The CONTRACTOR shall not be entitled to have COUNTY withhold or pay, and COUNTY shall not withhold or pay, on behalf of the CONTRACTOR any tax or money relating to the Social Security Old Age Pension Program, Social Security Disability Program or any other type of pension, annuity or disability program required or provided by any federal, state or local law or regulation for, or normally afforded to, an employee of COUNTY.

D.1.6 The CONTRACTOR shall not be entitled to participate in, or receive any benefit from, or make any claim against any COUNTY fringe benefit program including, but not limited to, COUNTY's pension plan, medical and health care plan, dental plan, life insurance plan, or other type of benefit program, plan or coverage designated for, provided to, or offered to COUNTY's employees.

D.1.7 COUNTY shall not withhold or pay on behalf of CONTRACTOR any federal, state or local tax

including, but not limited to, any personal income tax owed by CONTRACTOR.

D.1 .8. The CONTRACTOR is, and at all times during the term of this Agreement shall represent and conduct itself as, an independent contractor and not as an employee of COUNTY.

D.1.9 CONTRACTOR shall not have the authority, express or implied, to act on behalf of, bind or obligate the COUNTY any way without the written consent of the COUNTY.

D.2 LICENSES, PERMITS, ETC. CONTRACTOR represents and warrants to COUNTY that it has all

licenses, permits, qualifications, and approvals of whatsoever nature which are legally required for CONTRACTOR to practice its profession. CONTRACTOR represents and warrants to COUNTY that CONTRACTOR shall, at its sole cost and expense, keep in effect or obtain at all times during the term of this Agreement any licenses, permits, and approvals which are legally required for CONTRACTOR to practice its profession at the time the services are performed.

D.3 CHANGE IN STATUTES OR REGULATIONS. If there is a change of statutes or regulations applicable to the subject matter of this Agreement, both parties agree to be governed by the new provisions, unless either party gives notice to terminate pursuant to the terms of this Agreement.

D.4 TIME. CONTRACTOR shall devote such time to the performance of services pursuant to this Agreement as may be reasonably necessary for the satisfactory performance of CONTRACTOR's obligations pursuant to this Agreement. Neither party shall be considered in default of this Agreement to the extent performance is prevented or delayed by any cause, present or future, which is beyond the reasonable control of the party.

D.5 INSURANCE.

D.5.1 Prior to rendering services provided by the terms and conditions of this Agreement, CONTRACTOR shall acquire and maintain during the term of this Agreement insurance coverage (hereinafter referred to as "the insurance") through and with an insurer acceptable to COUNTY. The insurance shall contain the following coverages:

D.5.1.1 Comprehensive general liability insurance including comprehensive public liability insurance with minimum coverage of One Million Dollars (\$1,000,000) per occurrence and with not less than One Million Dollars (\$1,000,000) aggregate; CONTRACTOR shall insure both COUNTY and CONTRACTOR against any liability arising under or related to this Agreement.

D.5.1.2 During the term of this Agreement, CONTRACTOR shall maintain in full force and effect a policy of professional errors and omissions insurance with policy limits of not less than One Million Dollars (\$1,000,000) per incident and One Million Dollars (\$1,000,000)

annual aggregate, with deductible or self-insured portion not to exceed Two Thousand Five Hundred Dollars (\$2,500).

D.5.1.3 Comprehensive automobile liability insurance with minimum coverage of Five Hundred Thousand Dollars (\$500,000) per occurrence and with not less than Five Hundred Thousand Dollars (\$500,000) on reserve in the aggregate, with combined single limit including owned, non-owned and hired vehicles.

D.5.1.4 Workers' Compensation Insurance coverage for all of CONTRACTOR=s employees and other persons for whom CONTRACTOR is responsible to provide such insurance coverage, as provided by Division 4 and 4.5 of the California Labor Code.

D.5.2 The limits of insurance herein shall not limit the liability of the CONTRACTOR hereunder.

D.5.3 In respect to any insurance herein, if the aggregate limit available becomes less than that required above, other excess insurance shall be acquired and maintained immediately. For the purpose of any insurance term of this Agreement, "aggregate limit available" is defined as the total policy limits available for all claims made during the policy period.

D.5.4 Except for automobile liability insurance, the insurance shall name the COUNTY and COUNTY's officers, employees, agents and independent contractors as additional insureds and shall include an endorsement that no cancellation or material change adversely affecting any coverage provided by the insurance may be made until twenty (20) days after written notice is delivered to COUNTY.

D.5.5 The insurance policy forms, endorsements and insurer(s) issuing the insurance shall be satisfactory to COUNTY at its sole and absolute discretion. The amount of any deductible payable by the insured shall be subject to the prior approval of the COUNTY and the COUNTY, as a condition of its approval, may require such proof of the adequacy of CONTRACTOR's financial resources as it may see fit.

D.5.6 Prior to CONTRACTOR rendering services provided by this Agreement, and immediately upon acquiring additional insurance, CONTRACTOR shall deliver a certificate of insurance describing the insurance coverages and endorsements to:

*

Upon COUNTY's request, CONTRACTOR shall deliver certified copies of any insurance policies to COUNTY.

- D.5.7 CONTRACTOR shall not render services under the terms and conditions of this Agreement unless each type of insurance coverage and endorsement is in effect and CONTRACTOR has delivered the certificate(s) of insurance to COUNTY as previously described. If CONTRACTOR shall fail to procure and maintain said insurance, COUNTY may, but shall not be required to, procure and maintain the same, and the premiums of such insurance shall be paid by CONTRACTOR to COUNTY upon demand. The policies of insurance provided herein which are to be provided by CONTRACTOR shall be for a period of not less than one year, it being understood and agreed that twenty (20) days prior to the expiration of any policy of insurance, CONTRACTOR will deliver to COUNTY a renewal or new policy to take the place of the policy expiring.
- D.5.8 COUNTY shall have the right to request such further coverages and/or endorsements on the insurance as COUNTY deems necessary, at CONTRACTOR's expense. The amounts, insurance policy forms, endorsements and insurer(s) issuing the insurance shall be satisfactory to COUNTY in its sole and absolute discretion.
- D.5.9 Any subcontractor(s), independent contractor(s) or any type of agent(s) performing or hired to perform any term or condition of this Agreement on behalf of CONTRACTOR, as may be allowed by this Agreement (hereinafter referred to as the "SECONDARY PARTIES"), shall comply with each term and condition of this Section D.5 entitled "INSURANCE". Furthermore, CONTRACTOR shall be responsible for the SECONDARY PARTIES' acts and satisfactory performance of the terms and conditions of this Agreement.

D.6 INDEMNITY.

COUNTY shall not be liable for, and CONTRACTOR shall defend and indemnify COUNTY and its officers, agents, employees, and volunteers (collectively "County Parties"), against any and all claims, deductibles, self-insured retentions, demands, liability, judgments, awards, fines, mechanics; liens or other liens, labor disputes, losses, damages, expenses, charges or costs of any kind or character, including attorney's fees and court costs (hereinafter collectively referred to as "Claims"), which arise out of or are in any way connected to the work covered by this Agreement arising either directly or indirectly from any act, error, omission or negligence of CONTRACTOR or its officers, employees, agents, contractors, licensees or servants, including, without limitation, Claims caused by the concurrent negligent act, error or omission, whether active or passive of County Parties. CONTRACTOR shall have no obligation, however, to defend or indemnify County Parties from a Claim if it is determined by a court of competent jurisdiction that such Claim was caused by the sole negligence or willful misconduct of County Parties.

County shall not be liable for, and CONTRACTOR shall defend and indemnify COUNTY and its officers, agents, employees and volunteers (collectively 'County Parties'), against any and all claims, deductibles, self-insured retentions, demands, liability, judgments, awards, fines, mechanics' liens or other liens, labor disputes, losses, damages, expenses, charges or costs of any kind or character, including attorneys' fees and court costs (hereinafter collectively referred to as ('Claims')), which arise out of or are in any way connected to the work covered by this Agreement arising either directly or indirectly from any act, error, omission or negligence of CONTRACTOR or its officers, employees, agents, contractors, licensees or servants, including, without limitation, claims caused by the concurrent negligent act, error or omission, of County Parties. However, CONTRACTOR shall have no obligation to defend or indemnify County Parties against claims caused by the active negligence, sole negligence or willful misconduct of County Parties.

D.6.1. Claims Arising from Sole Acts or Omissions of COUNTY:

The County of Lassen (COUNTY) does hereby agree to defend and indemnify the *[OTHER PUBLIC AGENCY], its agents, officers and employees (hereinafter collectively referred to in this paragraph as *[OTHER PUBLIC AGENCY]), from any claim, action or proceeding against *[OTHER PUBLIC AGENCY], arising solely out of the acts or omissions of County in the performance of this Agreement. At its sole discretion, *[OTHER PUBLIC AGENCY] may participate at its own expense in the defense of any claim, action or proceeding, but such participation shall not relieve county of any obligation imposed by this Agreement. *[OTHER PUBLIC AGENCY] shall notify County promptly of any claim, action or proceeding and cooperate fully in the defense.

D.6.2. Claims arising From Sole Acts or Omissions of *[OTHER PUBLIC AGENCY]:

The *[OTHER PUBLIC AGENCY] hereby agrees to defend and indemnify the County of Lassen, its agents, officers and employees, (hereinafter collectively referred to in this paragraph as County), from any claim, action or proceeding against County, arising solely out of the acts or omissions of *[OTHER PUBLIC AGENCY] in the performance of this MOA. At its sole discretion, County may participate at its own expense in the defense of any claim, action or proceeding, but such participation shall not relieve *[OTHER PUBLIC AGENCY] of any obligation imposed by this Agreement. County shall notify *[OTHER PUBLIC AGENCY] promptly of any claim, action or proceeding and cooperate fully in the defense.

D.6.3. Claims Arising From Concurrent Acts or Omissions:

The County of Lassen (COUNTY) hereby agrees to defend itself, and the *[OTHER PUBLIC AGENCY] hereby agrees to defend itself, from any claim, action or proceeding arising out of the concurrent acts or omissions of County and *[OTHER PUBLIC AGENCY]. In such cases, county and *[OTHER PUBLIC AGENCY] agree to retain their own legal counsel, bear their own defense costs, and waive their right to seek reimbursement of such costs, except as provided in paragraph 5 below.

D.6.4. Joint Defense:

Notwithstanding paragraph D.6.3 above, in cases where COUNTY and *[OTHER PUBLIC AGENCY] agree in writing to a joint defense, County and *[OTHER PUBLIC AGENCY] may appoint joint defense counsel to defend the claim, action or proceeding arising out of the concurrent acts or omissions of *[OTHER PUBLIC AGENCY]. Joint defense counsel shall be selected by mutual agreement of County and *[OTHER PUBLIC AGENCY]. County and [OTHER PUBLIC AGENCY] agree to share the costs of such joint defense and any agreed settlement in equal amounts, except as provided in paragraph D.6.5 below. County and *[OTHER PUBLIC AGENCY] further agree that neither party may bind the other to a settlement agreement without the written consent of both County and *[OTHER PUBLIC AGENCY].

D.6.5. Reimbursement and/or Reallocation:

Where a trial verdict or arbitration award allocates or determines the comparative fault of the parties, County and *[OTHER PUBLIC AGENCY] may seek reimbursement and/or reallocation of defense costs, settlement payments, judgments and awards, consistent with such comparative fault.

- D.7 CONTRACTOR NOT AGENT.** Except as COUNTY may specify in writing, CONTRACTOR shall have no authority, express or implied, to act on behalf of COUNTY in any capacity whatsoever as an agent. CONTRACTOR shall have no authority, express or implied, pursuant to this Agreement to bind COUNTY to any obligation whatsoever.
- D.8 ASSIGNMENT PROHIBITED.** CONTRACTOR may not assign any right or obligation pursuant to this Agreement. Any attempted or purported assignment of any right or obligation pursuant to this Agreement shall be void and of no legal effect.
- D.9 PERSONNEL.** CONTRACTOR shall assign only competent personnel to perform services pursuant to this Agreement. In the event that COUNTY, in its sole discretion at any time during the term of this Agreement, desires the removal of any person or persons assigned by CONTRACTOR to perform services pursuant to this Agreement, CONTRACTOR shall remove any such person immediately upon receiving written notice from COUNTY of its desire for removal of such person or persons.

- D.10 STANDARD OF PERFORMANCE.** CONTRACTOR shall perform all services required pursuant to this Agreement in the manner and according to the standards observed by a competent practitioner of the profession in which CONTRACTOR is engaged. All products of whatsoever nature which CONTRACTOR delivers to COUNTY pursuant to this Agreement shall be prepared in a first class and workmanlike manner and shall conform to the standards of quality normally observed by a person practicing in CONTRACTOR's profession.
- D.11 POSSESSORY INTEREST.** The parties to this Agreement recognize that certain rights to property may create a "possessory interest", as those words are used in the California Revenue and Taxation Code section 107. For all purposes of compliance by COUNTY with Section 107.6 of the California Revenue and Taxation Code, this recital shall be deemed full compliance by the COUNTY. All questions of initial determination of possessory interest and valuation of such interest, if any, shall be the responsibility of the County Assessor and the contracting parties hereto. A taxable possessory interest may be created by this, if created, and the party in whom such an interest is vested will be subject to the payment of property taxes levied on such an interest.
- D.12 TAXES.** CONTRACTOR hereby grants to the COUNTY the authority to deduct from any payments to CONTRACTOR any COUNTY imposed taxes, fines, penalties and related charges which are delinquent at the time such payments under this Agreement are due to CONTRACTOR.

D.13 TERMINATION.

D.13.1 COUNTY shall have the right to terminate this Agreement at any time by giving notice in writing of such termination to CONTRACTOR. In the event COUNTY gives notice of termination, CONTRACTOR shall immediately cease rendering service upon receipt of such written notice and the following shall apply:

D.13.1.1 CONTRACTOR shall deliver to COUNTY copies of all writings prepared by it pursuant to this agreement. The term "writings" shall be construed to mean and include: handwriting, typewriting, printing, photocopying, photographing computer storage medium (tapes, disks, diskettes, etc.) and every other means of recording upon any tangible thing, and form of communication or representation, including letters, pictures, sounds, or symbols, or combinations thereof.

D.13.1.2 COUNTY shall pay CONTRACTOR the reasonable value of services rendered by CONTRACTOR to the date of termination pursuant to this Agreement not to exceed the amount documented by CONTRACTOR and approved by COUNTY as work accomplished to date; provided, however, that in no event shall any payment hereunder exceed *

_____ Dollars (\$*_____). Further provided, however, COUNTY shall not in any manner be liable for lost profits which might have been made by CONTRACTOR had CONTRACTOR completed the services required by this Agreement. In this regard, CONTRACTOR shall furnish to COUNTY such financial information as in the judgment of

the COUNTY is necessary to determine the reasonable value of the services rendered by CONTRACTOR. In the event of a dispute as to the reasonable value of the services rendered by CONTRACTOR, the decision of the COUNTY shall be final. The foregoing is cumulative and does not affect any right or remedy which COUNTY may have in law or equity.

D.13.2 CONTRACTOR may terminate its services under this Agreement upon thirty (30) working days written notice to the COUNTY, without liability for damages, if CONTRACTOR is not compensated according to the provisions of the Agreement or upon any other material breach of the Agreement by COUNTY, provided that CONTRACTOR has first provided COUNTY with a written notice of any alleged breach, specifying the nature of the alleged breach and providing not less than ten (10) working days within which the COUNTY may cure the alleged breach.

D.14 OWNERSHIP OF INFORMATION. All professional and technical information developed under this Agreement and all work sheets, reports, and related data shall become and/or remain the property of COUNTY, and CONTRACTOR agrees to deliver reproducible copies of such documents to COUNTY on completion of the services hereunder. The COUNTY agrees to indemnify and hold CONTRACTOR harmless from any claim arising out of reuse of the information for other than this project.

D.15 WAIVER. A waiver by any party of any breach of any term, covenant or condition herein contained or a waiver of any right or remedy of such party available hereunder at law or in equity shall not be deemed to be a waiver of any subsequent breach of the same or any other term, covenant or condition herein contained or of any continued or subsequent right to the same right or remedy. No party shall be deemed to have made any such waiver unless it is in writing and signed by the party so waiving.

D.16 COMPLETENESS OF INSTRUMENT. This Agreement, together with its specific references and attachments, constitutes all of the agreements, understandings, representations, conditions, warranties and covenants made by and between the parties hereto. Unless set forth herein, neither party shall be liable for any representations made, express or implied.

D.17 SUPERSEDES PRIOR AGREEMENTS. It is the intention of the parties hereto that this Agreement shall supersede any prior agreements, discussions, commitments, representations, or agreements, written or oral, between the parties hereto.

D.18 ATTORNEY'S FEES. If any action at law or in equity, including an action for declaratory relief, is brought to enforce or interpret provisions of this Agreement, the prevailing party shall be entitled to reasonable attorney's fees, which may be set by the Court in the same action or in a separate action brought for that purpose, in addition to any other relief to which such party may be entitled.

D.19 MINOR AUDITOR REVISION. In the event the Lassen County Auditor's office finds a mathematical discrepancy between the terms of the Agreement and actual invoices or payments, provided that such discrepancy does not exceed one percent (1%) of the Agreement amount, the Auditor's office may make the adjustment in any payment or payments without requiring an amendment to the Agreement to provide

for such adjustment. Should the COUNTY or the CONTRACTOR disagree with such adjustment, they reserve the right to contest such adjustment and/or to request corrective amendment.

D.20 CAPTIONS. The captions of this Agreement are for convenience in reference only and the words contained therein shall in no way be held to explain, modify, amplify or aid in the interpretation, construction or meaning of the provisions of this Agreement.

D.21 DEFINITIONS. Unless otherwise provided in this Agreement, or unless the context otherwise requires, the following definitions and rules of construction shall apply herein.

D.21.1 **Number and Gender.** In this Agreement, the neuter gender includes the feminine and masculine, the singular includes the plural, and the word "person" includes corporations, partnerships, firms or associations, wherever the context so requires.

D.21.2 **Mandatory and Permissive.** "Shall" and "will" and "agrees" are mandatory. "May" is permissive.

D.22 TERM INCLUDES EXTENSIONS. All references to the term of this Agreement or the Agreement Term shall include any extensions of such term.

D.23 SUCCESSORS AND ASSIGNS. All representations, covenants and warranties specifically set forth in this Agreement, by or on behalf of, or for the benefit of any or all of the parties hereto, shall be binding upon and inure to the benefit of such party, its successors and assigns.

D.24 MODIFICATION. No modification or waiver of any provisions of this Agreement or its attachments shall be effective unless such waiver or modification shall be in writing, signed by all parties, and then shall be effective only for the period and on the condition, and for the specific instance for which given.

D.25 COUNTERPARTS. This Agreement may be executed simultaneously and in several counterparts, each of which shall be deemed an original, but which together shall constitute one and the same instrument.

D.26 OTHER DOCUMENTS. The parties agree that they shall cooperate in good faith to accomplish the object of this Agreement and, to that end, agree to execute and deliver such other and further instruments and documents as may be necessary and convenient to the fulfillment of these purposes.

D.27 PARTIAL INVALIDITY. If any term, covenant, condition or provision of this Agreement is held by a court of competent jurisdiction to be invalid, void or unenforceable, the remainder of the provision and/or

provisions shall remain in full force and effect and shall in no way be affected, impaired or invalidated.

D.28 VENUE. It is agreed by the parties hereto that unless otherwise expressly waived by them, any action brought to enforce any of the provisions hereof or for declaratory relief hereunder shall be filed and remain in a court of competent jurisdiction in the County of Lassen, State of California.

D.29 CONTROLLING LAW. The validity, interpretation and performance of this Agreement shall be controlled by and construed under the laws of the State of California.

D.30 CALIFORNIA TORT CLAIMS ACT. Notwithstanding any term or condition of the Agreement, the provisions, and related provisions, of the California Tort Claims Act, Division 3.6 of the Government Code, are not waived by COUNTY and shall apply to any claim against COUNTY arising out of any acts or conduct under

the terms and conditions of this Agreement.

D.31 TIME IS OF THE ESSENCE. Time is of the essence of this Agreement and each covenant and term herein.

D.32 AUTHORITY. All parties to this Agreement warrant and represent that they have the power and authority to enter into this Agreement in the names, titles and capacities herein stated and on behalf of any entities, persons, estates or firms represented or purported to be represented by such entity(s), person(s), estate(s) or firm(s) and that all formal requirements necessary or required by any state and/or federal law in order to enter into this Agreement are in full compliance. Further, by entering into this Agreement, neither party hereto shall have breached the terms or conditions of any other contract or agreement to which such party is obligated, which such breach would have a material effect hereon.

D.33 CORPORATE AUTHORITY. If CONTRACTOR is a corporation or public agency, each individual executing this Agreement on behalf of said corporation or public agency represents and warrants that he or she is duly authorized to execute and deliver this Agreement on behalf of said corporation, in accordance with a duly adopted resolution of the Board of Directors of said corporation or in accordance with the bylaws of said corporation or Board or Commission of said public agency, and that this Agreement is binding upon said corporation or public entity in accordance with its terms. If CONTRACTOR is a corporation, CONTRACTOR shall, within thirty (30) days after execution of this Agreement, deliver to COUNTY a certified copy of a resolution of the Board of Directors of said corporation authorizing or ratifying the execution of this Agreement.

D.34 CONFLICT OF INTEREST.

D.34.1 Legal Compliance. CONTRACTOR agrees at all times in performance of this Agreement to comply with the law of the State of California regarding conflicts of interest, including, but not limited to, Article 4 of Chapter 1, Division 4, Title 1 of the California Government Code,

commencing with Section 1090 and Chapter 7 of Title 9 of said Code, commencing with Section 87100, including regulations promulgated by the California Fair Political Practices Commission.

D.34.2 **Advisement.** CONTRACTOR agrees that if any facts come to its attention which raise any questions as to the applicability of this law, it will immediately inform the COUNTY designated representative and provide all information needed for resolution of the question.

D.34.3 **Admonition.** Without limitation of the covenants in subparagraphs D.34.1 and D.34.2, CONTRACTOR is admonished hereby as follows:

The statutes, regulations and laws referenced in this provision D.34 include, but are not limited to, a prohibition against any public officer, including CONTRACTOR for this purpose, from making any decision on behalf of COUNTY in which such officer has a direct or indirect financial interest. A violation occurs if the public officer influences or participates in any COUNTY decision which has the potential to confer any pecuniary benefit on CONTRACTOR or any business firm in which CONTRACTOR has an interest of any type, with certain narrow exceptions.

D.35 NONDISCRIMINATION. During the performance of this Agreement, CONTRACTOR shall not unlawfully discriminate against any employee of the CONTRACTOR or of the COUNTY or applicant for employment or for services or any member of the public because of race, religion, color, national origin, ancestry, physical handicap, medical condition, marital status, age or sex. CONTRACTOR shall ensure that in the provision of services under this Agreement, its employees and applicants for employment and any member of the public are free from such discrimination. CONTRACTOR shall comply with the provisions of the Fair Employment and Housing Act (Government Code Section 12900 et seq.). The applicable regulations of the Fair Employment Housing Commission implementing Government Code Section 12900, set forth in Chapter 5, Division 4 of Title 2 of the California Code of Regulations are incorporated into this Agreement by reference and made a part hereof as if set forth in full. CONTRACTOR shall also abide by the Federal Civil Rights Act of 1964 and all amendments thereto, and all administrative rules and regulation issued pursuant to said Act CONTRACTOR shall give written notice of its obligations under this clause to any labor agreement. CONTRACTOR shall include the non-discrimination and compliance provision of this paragraph in all subcontracts to perform work under this Agreement.

D.36 JOINT AND SEVERAL LIABILITY. If any party consists of more than one person or entity, the liability of each person or entity signing this Agreement shall be joint and several.

D.37 TAXPAYER I.D. NUMBER. The COUNTY shall not disburse any payments to CONTRACTOR pursuant to this Agreement until CONTRACTOR supplies the latter's Taxpayer Identification Number or Social

Security Number by providing COUNTY with a completed IRS Form W-9.

- D.38 NOTICES.** All notices and demands of any kind which either party may require or desire to serve on the other in connection with this Agreement must be served in writing either by personal service or by registered or certified mail, return receipt requested, and shall be deposited in the United States Mail, with postage thereon fully prepaid, and addressed to the party so to be served as follows:

If to
"COUNTY":

*

If to "CONTRACTOR":

*

- D.39 NO THIRD PARTY BENEFICIARIES.** This Agreement is made solely and specifically among and for the benefit of the parties to it, the COUNTY and the CONTRACTOR, and their respective successors and assigns, subject to the express provisions of the agreement relating to successors and assigns, and no other person, including any person receiving placement or services facilitated by the Agreement, has or will have any rights, interest, or claims under this Agreement as a third-party beneficiary or otherwise. This Agreement shall not establish any actionable duty of the COUNTY or COUNTY personnel inuring to any third party or to anyone claiming under or on behalf of such a third party.

END OF ATTACHMENT "D".