



SAN JOAQUIN COUNTY
PURCHASING AND SUPPORT SERVICES
PURCHASING DIVISION

David M. Louis, C.P.M., CPPO, CPPB
Director

Jon Drake, C.P.M.
Deputy Director

DATE: March 4, 2010

TO: ALL PROSPECTIVE BIDDERS

RE: REQUEST FOR BID NO. 6691
Qualified Broker for Sale of Emission Reduction Credits

Ladies and Gentlemen:

Enclosed please find an invitation to bid with a bid form, a sample contract and job specification.

Sealed responses are to be received no later than **FRIDAY, MARCH 26, 2010 at 3:00 PM, PDT. Please return your Bid in a sealed envelope with the Bid number and the date and time of bid opening.**

Mail or deliver your response by the above date and time to the following address:

San Joaquin County
Purchasing and Support Services
County Administration Building
44 N. San Joaquin Street, Suite 540
Stockton, CA 95202

If you have any further questions, please contact me at (209) 468-2074 or email me at gigutierrez@sjgov.org

Sincerely,

Gina Gutierrez
Purchasing Assistant



BID #6691

**Qualified Broker
for
Sale of Emission Reduction Credits**

**COUNTY OF SAN JOAQUIN
44 N. SAN JOAQUIN STREET, SUITE 540
STOCKTON, CA. 95202**

**FOR: SOLID WASTE
BUYER: GINA GUTIERREZ
(209) 468-2074**

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KEY ACTION EVENTS AND DATES

Listed below are the events and dates for this Request for Bid. All dates are predicted on the issue date of the Request for Bid.

EVENT #	DESCRIPTION	DATE
1.	Release of Request for Bid	Thursday March 4, 2010
2.	Last day for contractors to submit questions (For clarification prior to submitting Bid)	By 3:00 PM, PDT, Thursday March 18, 2010
3.	Last day for County to answer questions	By 5:00 PM, PDT, Tuesday March 23, 2010
4.	Bid is due no later than 3:00 PM, PST.	By 3:00 PM, PDT, Friday March 26, 2010
5.	Award of Contract	During April 2010

SUBMITTAL OF BIDS

Sealed bids will be received at the Office of the Purchasing Agent, at 44 N. San Joaquin Street, Suite 540, Stockton, CA. 95202-2930, until **3:00 PM, PDT, Friday, MARCH, 26, 2010** and will be publicly opened at that time.

ALL MAILED BIDS SHALL BE ADDRESSED AS FOLLOWS:

**Bid No. 6691
Purchasing Agent
County of San Joaquin
Administration Building
44 N. San Joaquin Street, Suite 540
Stockton, CA 95202-2930**

The envelope shall also have stated therein the name and address of the submitting firm.

HAND DELIVERED COURIER OR PACKAGE DELIVERY SERVICE SHALL BE DELIVERED DIRECTLY TO:

**Purchasing Division
Administration Building
44 N. San Joaquin Street, Suite 540
Stockton, CA 95202-2930**

BIDS WILL NOT BE ACCEPTED THEREAFTER. ALL BIDS RECEIVED AFTER SAID TIME/DATE WILL BE TIME STAMPED AND RETURNED UNOPENED TO THE BIDDER.

THE COUNTY DOES NOT ACCEPT BIDS SUBMITTED BY FAX OR BY EMAIL

INTRODUCTION AND SCOPE OF WORK

General: The County of San Joaquin is soliciting Bids for its Public Works Department (Solid Waste Division) for the sale of Emission Reduction Credits. Prospective Bidders are responsible for having full knowledge of this project and all issues affecting it.

The objective of this sale is to maximize the return to the County.

The awarding of any contract shall be subject to such prior governmental approvals or determinations as may be required or appropriate. Bids are submitted at the bidder's sole risk and discretion. The County is not responsible for the proposer's cost of Bid preparation.

Bids received in response to this Invitation to Bid become the property of the County upon receipt. All Bids and financial offerings shall be held as confidential until an Agreement is executed with CONTRACTOR. Afterward, all Bids shall be open to public inspection.

Scope of Work: The successful Bidder shall perform the following services:

- Advertise the availability of the Emission Reduction Credits through normal channels
- Facilitate a bi-lateral transaction for the sale of Emission Reduction Credits
- File for transfer
- Declare the trade
- Clear the trade

The sale shall be made to the end-user of the Emission Reduction Credits. Sale to another broker or purchase by the successful bidder for this Bid will not be permitted. The firm selected for this sale will provide the County with the contact name and phone number of the buyer prior to filing for transfer.

The County will open Bids that have been verified to meet the minimum criteria. It is the intent of this proposal that the selection will be based on the lowest proposed percentage broker fee.

Minimum Requirements: Minimum requirement to submit a Bid include:

- Firm's Brokerage License
- Documentation of active business for a minimum of two (2) years in California
- Documentation of a minimum of five (5) Emission Reduction Credit completed trades in California in the past twelve (12) months
- Attachments A – C

GENERAL INFORMATION

1. **SUBMITTAL OF BIDS:** Sealed bids must be received in the Office of the Purchasing Agent at the San Joaquin County Administration Building, 44 N. San Joaquin Street, Stockton, CA 95202-2930 by **3:00 PM, PDT on Friday, MARCH 26, 2010**. All bids received after said time and date will be timed-stamped and returned unopened to the submitter. The County will not accept bids submitted by fax.

Bidders must submit two (2) copies of Bid, one (1) copy clearly marked "ORIGINAL" and one (1) copy, clearly marked "COPY".

2. **BASIS FOR SELECTION AND CONDITIONS:**

Any bidder before being awarded a contract may be required to furnish evidence satisfactory to the County that bidder and their proposed subcontractors meet the minimum requirements. . The County reserves the right to reject the bid of any bidders as not responsible and not qualified to do the particular work under consideration who have previously failed to perform properly or to complete on time contracts with the County of a nature similar to this project

A responsive bid is one that meets all terms, conditions, and specifications of the bid. The bid must comply with the content requirements of the bid documents. The bidder must perform and do what the bid documents and contract required and said they must do, whether it be pricing in a certain way, , providing bonds, etc. Other examples where a bid might be declared and found to be non-responsive include:

- Bid is substantially incomplete
- Bid is not signed
- Bid is delivered late
- No acknowledgement of critical addenda

A responsive bid conforms to bid specifications. However, a bid which substantially conforms, though not strictly responsive, to a call for bids may be accepted if the variance cannot have affected the amount of the bid or given a bidder an advantage or benefit not allowed other bidders or, in other words, if the variance is inconsequential. The County reserves the right to reject any and all bids or alternatives and waive any informality or irregularity in the bids or in the bidding, and to determine responsiveness and responsibility of bidder, including but not limited to those areas mentioned above.

3. **EXAMINE SPECIFICATIONS:** Bidders shall thoroughly examine and be familiar with the specifications. The failure or omission of any Bidder to receive or examine any form, instrument, addendum or other document or become acquainted with all existing conditions shall in no way relieve any bidder from any obligations with respect to Bidder's offer or to the contract. The submission of a Request for Bid shall be taken as prima facie evidence of compliance with this section.

Should a Bidder find discrepancies in or omissions from the drawings or other contract document, or should be in doubt as to their meaning, he shall at once notify Gina Gutierrez at (209) 468-2074, who is the Owner's representative. The Owner, San

Joaquin County Purchasing Department, will send written instructions to all bidders. Neither Owner nor its representative will be responsible for any oral instructions. No interpretations will be issued later than three (3) calendar days prior to the bid date so that all inquiries can be answered in writing and distributed to all bidders in the form of addendum to the contract in ample time before the bid opening date.

4. **SPECIFICATION CHANGES:** The County may, during the Request for Bid period, advise the Bidder in writing of any additions, omissions or alterations in the specifications. All such changes shall be included in the Request for Bid and become part of the specifications as if originally submitted.
5. **ADDENDA:** No one is authorized to amend any of the Request for Bid requirements in any respect, by an oral statement, or to make any representation or interpretation in conflict with the provisions herein. If necessary, supplementary information in addendum form will be prepared and posted on the "Purchasing Open Bids" website. **It is the Bidder's responsibility to indicate acknowledgement, sign, and return addenda with their response.** The County reserves the right to reject any responses deemed to be non-responsive.

<http://www.sjgov.org/supportserv/Control/PurchasingBids.asp>

Failure of Bidder to not submit signed addendum(s) with their Bid shall be cause for rejection.

Any exceptions taken to this Bid shall be clearly stated in writing.

6. **BID WITHDRAWAL:** Any Bidder may withdraw his bid, either personally or by written request, at any time prior to the scheduled opening time of receipt of bids.
7. **OPENING OF BIDS:** Bids will be opened and read at or about the time set in the advertised Notice Inviting Bids. Bidders, or their representatives, and other interested persons may be present at the opening of bids.
8. **AWARD OR REJECTION OF BIDS:** The contract, if awarded, will be awarded to the lowest responsible bidder based on the lowest total bid received and in compliance with these instructions and the advertised Notice Inviting Bids, provided it is to the interest of the Owner to accept it. Any bidder before being awarded a contract, may be required to furnish evidence satisfactory to the Owner that he and his proposed subcontractors have sufficient means and experience in the type of work called for to assure completion of the contract in a satisfactory manner. The owner reserves the right to reject the bid of any bidders who have previously failed to perform properly or to complete on time, contracts with the Owner of a nature similar to this project. The Owner reserves the right to reject any or all bids or alternates and waive any informality or irregularity in the bids or in the bidding.

The County reserves the right to reject any or all bids or parts thereof, and to award the contract to the Bidder whose response is most advantageous to the County. False, incomplete or unresponsive statements in connection with a bid submittal maybe sufficient cause for rejection. The County will be the sole judge in making such determinations.

The County of San Joaquin has a 5% local vendor preference; however the preference shall not exceed \$5,000.00 per bid. Click on the link below to view San Joaquin County's Policy and Procedures.

<http://www.sjgov.org/SupportServ/dynamic.aspx?id=10217>

9. **SAN JOAQUIN COUNTY GREEN PURCHASING POLICY:**

San Joaquin County has a Green Purchasing Policy, please click on the link to view.

<http://www.sjgov.org/SupportServ/dynamic.aspx?id=10128>

10. **ALL BID DOCUMENTS PART OF FINAL CONTRACT:** Any bid documents, letters, and materials submitted by the Bidder shall be binding and included as part of the final contract. Unauthorized conditions, limitations or provisions attached to this bid may render it non responsive and may cause its rejection.
11. **EQUAL EMPLOYMENT OPPORTUNITY:** The Bidder awarded this contract shall not discriminate against any employee and applicant for employment because of race, color, religion, sex, age, marital status, or national origin. Such action shall include but not be limited to the following: employment upgrading, demotion or transfer, rate of pay or other forms of compensation and selection for training, including apprenticeship. In the event of Bidder non-compliance with the provisions of this clause, the contract may be canceled, terminated or suspended in whole or in part and the Bidder may be declared ineligible for further County contracts. The rights and remedies of the County provided in this paragraph shall not be exclusive but are in addition to any remedies provided by law.
12. **DRUG FREE WORKPLACE:** Bidder shall comply with the provisions of Government Code section 8350 et seq., otherwise known as the Drug-Free Workplace Act.
13. **CONTRACT PERFORMANCE:** The performance of the contract resulting from this bid shall be governed by and interpreted under and construed according to the laws of the State of California. Venue is San Joaquin County
14. **NOTICE:** Any notice, demand, request, or consent approval required to be given pursuant to the terms and conditions hereof shall be in writing, and shall be effected by one of the following methods: personal delivery, prepaid Certified First-Class Mail, or prepaid Priority Mail with delivery confirmation. Unless otherwise designated in writing by either party, such notice shall be mailed to the addresses shown below. :

County of San Joaquin,
Administration Building
Purchasing Department and Support Services
44 N. San Joaquin Street, Suite 540
Stockton, CA 95202-2930

Attention: Gina Gutierrez

15. **INDEPENDENT CONTRACTOR:** Bidder agrees that any and all persons performing any services and/or work whatsoever contemplated by this bid and/or related or incidental thereto, shall be an employee of the Bidder and Bidder shall, by way of example but not by way of limitation, withhold federal and state income taxes as well as the required and all regulations regarding employees, and Bidder shall also pay and/or contribute its required share as the employer of said persons.

Bidder acknowledges the fact that it is an independent contractor and is in no way to be construed as an employee of the County, nor are any of the persons employed by the Bidder to be so construed.

16. **INDEMNIFICATION:** Bidder shall, at its expense, defend, indemnify and hold harmless the County of San Joaquin and its employees, officers, directors, contractors and agents from and against any losses, liabilities, damages, penalties, costs, fees, including without limitation reasonable attorneys' fees, and expenses from any claim or action, including without limitation for bodily injury or death, to the extent caused by or arising from the active and/or passive negligence or willful misconduct of Bidder, its employees, officers, agents or Subcontractors.

17. **INSURANCE REQUIREMENTS:** During the term of this Agreement, Bidder will carry and maintain in full force, insurance of the following types and minimum amounts with a company or companies as are acceptable to County, insuring Bidder while Bidder is performing duties under this Agreement.

BIDDER agrees that BIDDER is responsible to ensure that the requirements set forth in this article/paragraph are also be met by BIDDER'S subcontractors/consultants who provide services pursuant to this Agreement. Copies of insurance certificates shall be filed with the COUNTY'S Purchasing Agent.

- A. **Workers' Compensation** – A program of Workers' Compensation Insurance or a state-approved self-insurance program in an amount and form to meet all applicable requirements of the Labor Code of the State of California.

ATTACHMENT A
IDENTIFICATION SHEET

RESPONDENT TO COMPLETE AND RETURN WITH BID

Type or print the following information:

Company: _____

Address: _____

(City) (State) (Zip)

Name: _____

Title: _____

Telephone: () _____ Fax: () _____

MY BID IS ATTACHED AND IDENTIFIED AS:

Bid # 6691 Qualified Broker for Sale of Emissions Reduction Credits

Documentation of minimum two Years in business: (attach documentation)

Brokerage License No. (Attach documentation) _____

Documentation of a minimum of five (5) Emission Reduction Credit completed trades in California in the past twelve (12) months (attach documentation)

Name of Insurance carriers: _____

Workers' Compensation: _____ Expires: _____

NOTE: Proof of maintenance of required insurance will be required before an award will be made to CONTRACTOR. If not already on file with the Purchasing Office, be sure it accompanies your Bid response.

The undersigned, having carefully read and examined the contract documents, and being familiar with (1) all the conditions applicable to the work for which this bid is submitted; (2) with availability of the required equipment, materials and labor hereby agrees to provide everything necessary to complete the work for which this bid is submitted in accordance with the Bid documents for the amounts quoted herein and further agrees that if this bid is accepted, within five (5) days after the contract is presented for acceptance, will execute, and mail a signed contract to the County of San Joaquin Purchasing Agent.

Signature

Date

ATTACHMENT B

NONCOLLUSION AFFIDAVIT

(Title 23 United States Code Section 112 and Public Contract Code Section 7106)

In accordance with Title 23, United States Code Section 112, and Public Contract Code 7106, the bidder declares 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 submit 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.

NOTE: The above Noncollusion Affidavit is part of the Proposal. Signing this Proposal on the signature portion thereof shall also constitute signature of this Noncollusion Affidavit.

Bidders are cautioned that making a false certification may subject the certifier to criminal prosecution.

Signature

Date

ATTACHMENT C

COST PROPOSAL

The selection will be based on the lowest proposed percentage broker fee.

Broker Fee- _____% of sale price of Emissions Reduction Credits

Bid pricing shall remain valid for sixty (60) days from Bid opening date.

Signature

Date

EXHIBIT A – Emission Reduction Credit Certificates



San Joaquin Valley
Air Pollution Control District

Southern Regional Office • 2700 M Street, Suite 275 • Bakersfield, CA 93301-2370

**Emission Reduction Credit Certificate
S-2267-4**

ISSUED TO: COUNTY OF SAN JOAQUIN SOLID WASTE DIV
ISSUED DATE: January 31, 2006
LOCATION OF REDUCTION: 217 W. TERRA BELLA AVENUE, PIXLEY

For PM10 Reduction In The Amount Of:

Quarter 1	Quarter 2	Quarter 3	Quarter 4
None	None	None	8,813 lbs

Conditions Attached

Method Of Reduction

- Shutdown of Entire Stationary Source
 Shutdown of Emissions Units
 Other

SHUTDOWN COTTON GIN S-514

Use of these credits outside the San Joaquin Valley Unified Air Pollution Control District (SJVUAPCD) is not allowed without express written authorization by the SJVUAPCD.

David L. Crow, Executive Director / APCO

David Warner, Director of Permit Services



Feb 5 2008 4:02PM - SJVUAPCD



San Joaquin Valley
Air Pollution Control District

Southern Regional Office • 2700 M Street, Suite 275 • Bakersfield, CA 93301-2370

Emission Reduction Credit Certificate S-2264-4

ISSUED TO: COUNTY OF SAN JOAQUIN SOLID WASTE DIV
ISSUED DATE: January 31, 2006
LOCATION OF REDUCTION: 12490 GARZOLI ROAD
MCFARLAND, CA

For PM10 Reduction In The Amount Of:

Quarter 1	Quarter 2	Quarter 3	Quarter 4
None	None	None	471 lbs

Conditions Attached

Method Of Reduction

- Shutdown of Entire Stationary Source
- Shutdown of Emissions Units
- Other

SHUTDOWN OF COTTON GIN #3; S-695-2

Use of these credits outside the San Joaquin Valley Unified Air Pollution Control District (SJVUAPCD) is not allowed without express written authorization by the SJVUAPCD.

David L. Crow, Executive Director / APCO

David Warner, Director of Permit Services



Form 4008 - 4/03/06 - SANJOAQUIN



San Joaquin Valley
Air Pollution Control District

Southern Regional Office • 2700 M Street, Suite 275 • Bakersfield, CA 93301-2370

**Emission Reduction Credit Certificate
S-2266-4**

ISSUED TO: COUNTY OF SAN JOAQUIN SOLID WASTE DIV
ISSUED DATE: January 31, 2006
LOCATION OF REDUCTION: 3 MI NORTH OF TWISSELMAN ON HIGHWAY 33
SECTION: 12 TOWNSHIP: 25S RANGE: 18E

For PM10 Reduction In The Amount Of:

Quarter 1	Quarter 2	Quarter 3	Quarter 4
None	None	None	1,000 lbs

Conditions Attached

Method Of Reduction

- Shutdown of Entire Stationary Source
- Shutdown of Emissions Units
- Other

SHUTDOWN COTTON GIN S-1353-1-2

Use of these credits outside the San Joaquin Valley Unified Air Pollution Control District (SJVUAPCD) is not allowed without express written authorization by the SJVUAPCD.

David L. Crow, Executive Director / APCO

David Warner, Director of Permit Services



FA-9 (2006) 4/03/06 - BARGENTL

EXHIBIT B – Sample Contract



INDEPENDENT CONTRACTOR AGREEMENT

SAN JOAQUIN COUNTY

CONTRACT ID# _____

Contract Amount \$

PARTIES:	COUNTY:	County of San Joaquin Purchasing & Support Services 44 N. San Joaquin Street, Suite 540 Stockton, CA 95202-2931
	With copies to:	County of San Joaquin Public Works Solid Waste Division 1810 E. Hazelton Ave. Stockton, CA 95205
	CONTRACTOR:	

This Agreement is made and entered into this _____ day of _____, 201____, by and between _____, an Independent CONTRACTOR (hereinafter "CONTRACTOR"), and San Joaquin County, a political subdivision of the State of California for _____(hereinafter "COUNTY").

ORDER OF PRECEDENCE

Each of the items listed below is hereby incorporated into this Agreement by this reference. In the event of an inconsistency in this Agreement, the inconsistency shall be resolved by giving precedence in the following order:

1. Applicable Federal and State of California statutes and regulations, this Agreement and its exhibits.
2. COUNTY Invitation to Bid Number _____.
3. CONTRACTOR'S Bid dated _____.

1. Scope of Professional Services:

CONTRACTOR agrees to provide services

CONTRACTOR shall perform the CONTRACTOR'S work in accordance with currently approved methods and standards of practice in the CONTRACTOR'S professional specialty.

2. Term of Agreement:

This Agreement shall commence _____, 200__ through _____, 200__, unless said work is completed on a date prior thereto or unless terminated earlier as provided herein or extended upon mutual agreement.

3. Interpretation

This Agreement shall not be interrupted in favor of any Party by virtue of said Party not having prepared this Agreement.

If any time period provided for in this Agreement ends on the day other than a Business Day, the time period shall be extended to the next Business Day.

4. Compensation:

COUNTY agrees to pay CONTRACTOR an hourly amount of (\$). The total payments made for services performed pursuant to this Agreement shall not exceed _____ DOLLARS (\$00,000.00).

5. Invoicing:

CONTRACTOR shall submit one original and one copy of each invoice to County of San Joaquin, **Public Works Solid Waste Division, 1810 E. Hazelton Ave., Stockton, CA 95205**. All invoices must reference this Agreement Number/Contract ID # and the service performed. Payments shall be made within 30 days of receipt of invoice from CONTRACTOR.

6. CONTRACTOR'S Status:

In the performance of work, duties and obligations imposed by this Agreement, the CONTRACTOR is at all times acting as an Independent CONTRACTOR practicing his or her profession and not as an employee of the COUNTY. **A copy of CONTRACTOR'S current professional, local, state or other business licenses required to conduct the services stated herein, will be provided to COUNTY.** The CONTRACTOR shall not have any claim under this Agreement or otherwise against the COUNTY for vacation, sick leave, retirement benefits, social security or workers' compensation benefits. The CONTRACTOR shall be responsible for federal and state payroll taxes such as social security and unemployment. COUNTY will issue a Form 1099 at year-end for fees earned.

7. Assignments:

Inasmuch as this Agreement is intended to secure the specialized services of the CONTRACTOR, CONTRACTOR may not assign, transfer, delegate or subcontract their obligation herein without the prior written consent of San Joaquin County. Any such assignment, transfer, delegation or subcontract without the prior written consent shall be considered null and void.

8. Non Exclusive Rights:

This Agreement does not grant to CONTRACTOR any exclusive privileges or rights to provide services to COUNTY. CONTRACTOR may contract with other counties, private companies or individuals for similar services.

9. Indemnification:

CONTRACTOR shall, at its expense, defend, indemnify and hold harmless the County of San Joaquin and its employees, officers, directors, contractors and agents from and against any losses, liabilities, damages, penalties, costs, fees, including without limitation reasonable attorneys' fees, and expenses from any claim or action, including without limitation for bodily injury or death, to the extent caused by or arising from the active and/or passive negligence or willful misconduct of CONTRACTOR, its employees, officers, agents or Subcontractors.

CONTRACTOR shall hold the COUNTY, its officers and employees, harmless from liability, of any nature or kind on account of use of any copyrighted, or un-copyrighted composition, secret process, patented or un-patented invention articles or appliance furnished or used under this order.

10. Insurance:

CONTRACTOR, shall submit proof of insurance with liability limits as set forth below to the Purchasing Department showing COUNTY, its officers, employees, agents and volunteers named as Additional Insured to include ongoing operations and products completed operations (On Additional Insured Endorsement CG 20 10 10 93), except for Workers' Compensation and professional Liabilities, and insurance policy shall contain provisions that such policy may not be canceled or reduced except after thirty (30) days written notice to the COUNTY. The COUNTY at its discretion, may waive in part or in full insurance requirements. CONTRACTOR is required to provide insurance unless notified by the COUNTY'S Purchasing Agent of any waivers.

CONTRACTOR agrees that CONTRACTOR is responsible to ensure that the requirements set forth in this article/paragraph are also to be met by CONTRACTOR'S subcontractors/CONTRACTOR'S who provide services pursuant to this Agreement. Copies of insurance certificates shall be filed with the COUNTY'S Purchasing Agent.

11. Discrimination:

CONTRACTOR shall not discriminate because of age, ancestry, color, creed, marital status, medical condition (cancer or genetic characteristics), national origin, physical or mental disability, political affiliation or belief, pregnancy, race, religion, sex (includes sexual harassment) and sexual orientation.

12. ADA Compliance:

CONTRACTOR shall comply with the Americans with Disabilities Act (ADA) of 1990, which prohibits discrimination on the basis of disability, as well as all applicable regulations and guidelines issued pursuant to the ADA. (42 U.S.C. Sections 12101 et seq.)

13. Notices:

Any notice required to be given pursuant to the terms and conditions hereof shall be in writing, and shall be effected by one of the following methods: personal delivery, prepaid Certified First-Class Mail, or prepaid Priority Mail with delivery confirmation. Unless otherwise designated in writing by either party, such notice shall be mailed to the addresses shown on page one (1) of this Agreement.

14. Termination:

If the CONTRACTOR breaches or habitually neglects the CONTRACTOR'S duties under this Agreement without curing such breach or neglect upon fifteen (15) working days written notice, the COUNTY may, by written notice, immediately terminate this Agreement without prejudice to any other remedy to which COUNTY may be entitled, either at law, in equity, or under this Agreement. In addition, either party may terminate this Agreement upon thirty (30) days written notice to other party.

If the County Board of Supervisors fails to appropriate funds to enable County Departments to continue to make purchases under this Agreement, this Agreement will be cancelled immediately and CONTRACTOR will be given written notice of such termination.

15. Conflict of Interest Statement:

CONTRACTOR covenants that CONTRACTOR, its officers, employees or their immediate family, presently has no interest, including, but not limited to, other projects or independent contracts, and shall not acquire any such interest, direct or indirect, which would conflict in any manner or degree with the performance of services required to be performed under this Agreement. CONTRACTOR further covenants that in the performance of this Agreement no person having any such interest shall be employed or retained by CONTRACTOR under this Agreement. CONTRACTOR shall not hire COUNTY'S employees to perform any portion of the work or services provided for herein including secretarial, clerical and similar incidental services except upon the written approval of COUNTY. Performance of services under this Agreement by associates or

employees of CONTRACTOR shall not relieve CONTRACTOR from any responsibility under this Agreement.

16. Drug Free Workplace:

CONTRACTOR shall comply with the provisions of Government Code Section 8350 et seq., otherwise known as the Drug-Free Workplace Act.

17. Force Majeure:

It is agreed that neither party shall be responsible for delays in delivery, acceptance of delivery, or failure to perform when such delay or failure is attributable to Acts of God, war, strikes, riots, lockouts, accidents, rules or regulations of any governmental agencies or other matters or conditions beyond the control of either the CONTRACTOR or the COUNTY.

18. Compliance:

CONTRACTOR shall comply with all federal, state and local laws, regulations and requirements necessary for the provision of contracted services. Furthermore, CONTRACTOR shall comply with all laws applicable to wages and hours of employment, occupational safety, fire safety, health and sanitation. CONTRACTOR shall maintain current throughout the life of this Agreement, all permits, licenses, certificates and insurances that are necessary for the provision of contracted services.

19. Governing Law and Venue:

The Laws of the State of California shall govern this Agreement. Venue is San Joaquin County. The provision of this paragraph shall survive expiration or other termination of this Agreement regardless of the cause of such termination.

20. Documents:

All drawings, specifications, documents and other memoranda or writings relating to the work and services hereunder, shall remain or become the property of the COUNTY whether executed by or for the CONTRACTOR for COUNTY, or otherwise by or for the CONTRACTOR, or by or for a subcontractor operating under the CONTRACTOR'S supervision, or direction, and all such documents and copies thereof shall be returned or transmitted to COUNTY forthwith upon COUNTY written demand, termination or completion of the work under this Agreement.

21. Attorney Fees:

In any action brought to enforce any provision of this Agreement, the losing party shall pay the prevailing party's reasonable attorney fees and losses.

22. Work Product:

COUNTY and CONTRACTOR acknowledge and agree that "Work Product", and all components of it, provided or developed by CONTRACTOR hereunder or in connection herewith shall constitute "works made for hire" within the meaning of Title 17 United

States Code Section 101 et seq. (the "Copyright Act"), and all right, title, and interest in and to the Custom Products shall vest in the COUNTY immediately upon development. To the extent any such Custom Products may not be the sole and exclusive property of the COUNTY and/or may not be a "work made for hire" as defined in the Copyright Act upon development, then CONTRACTOR agrees to and hereby does sell, transfer, grant and assign to the COUNTY all copyrights, patents, trade secrets, inventions, and other proprietary rights, title, and interest in and to such Custom Products upon development. On all written material, whether in print, electronic, or any media form, constituting "Work Product", CONTRACTOR shall place or cause to be placed the following legend preferably in the lower right corner:

© 200_ County of San Joaquin. All rights reserved.

23. Data Security – Confidentiality

a. Acknowledgment of access to information characterized as covered data

Contractor acknowledges that its contract/purchase order ("Agreement") with the County of San Joaquin, California ("County") may allow the Contractor access to confidential County information or County provided information including, but not limited to, personal information, records, data, or financial information notwithstanding the manner in which or from whom it is received by Contractor ("Covered Data") which is subject to state laws that restrict the use and disclosure of County information, including the California Information Practices Act (California Civil Code Section 1798 et seq.), California Constitution Article 1, Section 1, and other existing relative or future adopted State and/or Federal requirements. Contractor shall maintain the privacy of, and shall not release, Covered Data without full compliance with all applicable state and federal laws, County policies, and the provisions of this Agreement. Contractor agrees that it will include all of the terms and conditions contained in this clause in all subcontractor or agency contracts providing services under this Agreement. Where a federal, state or local law, ordinance, rule or regulation is required to be made applicable to this Agreement, it shall be deemed to be incorporated herein without amendment to this Agreement.

b. Prohibition on unauthorized use or disclosure of covered data and information

Contractor agrees to hold Covered Data received from or created on behalf of County in strictest confidence. Contractor shall not use or disclose Covered Data except as permitted or required by the Agreement or as otherwise authorized in writing by County. If required by a court of competent jurisdiction or an administrative body to disclose Covered Data, Contractor will notify County in writing prior to any disclosure in order to give County an opportunity to oppose any such disclosure. Any work using, or transmission or storage of, Covered Data outside the United States is subject to prior written authorization by the County.

c. Safeguard standard

Contractor agrees that it will protect the Covered Data according to commercially acceptable standards and no less rigorously than it protects its own confidential information, but in no case less than reasonable care. Contractor shall develop, implement, maintain and use appropriate administrative, technical and physical security measures which may include but not be limited to encryption techniques, to preserve the confidentiality, integrity and availability of all such Covered Data.

d. Return or destruction of covered data and information

Upon termination, cancellation, expiration or other conclusion of the Agreement, Contractor shall return the Covered Data to County unless County requests that such data be destroyed. This provision shall also apply to all Covered Data that is in the possession of subcontractors or agents of Contractor. Contractor shall complete such return or destruction not less than thirty (30) calendar days after the conclusion of this Agreement. Within this thirty (30) day period, Contractor shall certify in writing to County that the return or destruction has been completed.

e. Reporting of unauthorized disclosures or misuse of covered data and information

Contractor shall report, either orally or in writing, to County any use or disclosure of Covered Data not authorized by this Agreement or in writing by County, including any reasonable belief that an unauthorized individual has accessed Covered Data. Contractor shall make the report to County immediately upon discovery of the unauthorized disclosure, but in no event more than two (2) business days after Contractor reasonably believes there has been unauthorized use or disclosure. Contractor's report shall identify: (i) the nature of the unauthorized use or disclosure, (ii) the County Covered Data used or disclosed, (iii) who made the unauthorized use or received the unauthorized disclosure, (iv) what Contractor has done or shall do to mitigate any deleterious effect of the unauthorized use or disclosure, and (v) what corrective action Contractor has taken or shall take to prevent future similar unauthorized use or disclosure. Contractor shall provide County other information, including a written report, as reasonably requested by County.

f. Examination of records

County and, if the applicable contract or grant so provides, the other contracting party or grantor (and if that be the United States, or an agency or instrumentality thereof, then the Controller General of the United States) shall have access to and the right to examine any pertinent books, documents, papers, and records of Contractor involving transactions and work related to this Agreement until the expiration of five years after final payment hereunder. Contractor shall retain project records for a period of five years from the date of final payment.

g. Assistance in litigation or administrative proceedings

Contractor shall make itself and any employees, subcontractors, or agents assisting Contractor in the performance of its obligations under the Agreement

available to County at no cost to County to testify as witnesses, or otherwise, in the event of litigation or administrative proceedings against County, its directors, officers, agents or employees based upon a claimed violation of laws relating to security and privacy and arising out of this Agreement.

h. No third-party rights

Nothing in this Agreement is intended to make any person or entity who is not signatory to the Agreement a third-party beneficiary of any right created by this Agreement or by operation of law.

i. Attorney's fees

In any action brought by a party to enforce the terms of this Agreement, the prevailing party shall be entitled to reasonable attorney's fees and costs, including the reasonable value of any services provided by in-house counsel. The reasonable value of services provided by in-house counsel shall be calculated by applying an hourly rate commensurate with prevailing market rates charged by attorneys in private practice for such services.

j. Survival

The terms and conditions set forth shall survive termination of the Agreement between the parties.

(This space intentionally left blank.)

24. Entire Agreement and Modification:

This Agreement and all documents incorporated by reference supersedes all previous Agreements either oral or in writing and constitutes the entire understanding of the parties hereto. No changes, amendments or alterations shall be effective unless in writing and signed by both parties.

IN WITNESS WHEREOF, COUNTY and CONTRACTOR have executed this Agreement on the day and year first written above.

CONTRACTOR Name
Address
City, State and Zip

COUNTY OF SAN JOAQUIN, a
political subdivision of
the State of California

By: _____ Date: _____
Signature, Authorized Agent

By: _____ Date: _____
David M. Louis, C.P.M., CPPO, CPPB
Director, Purchasing & Support Services

By: _____
Printed Name of Authorized Agent

APPROVED AS TO FORM
Office of County Counsel

By _____ Date: _____
Gilberto Gutierrez
Deputy County Counsel

Buyer of Record: GG