



REQUEST FOR PROPOSALS

for

FINANCIAL MANAGEMENT AND ACCOUNTING SERVICES

**Release Date:
Thursday, October 8, 2015**

**Submittal Deadline:
By 4:00 PM Pacific Time
Thursday, October 29, 2015**

**NAPA COUNTY RESOURCE CONSERVATION DISTRICT
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NAPA COUNTY RESOURCE CONSERVATION DISTRICT REQUEST FOR PROPOSALS

I. Background

Napa County Resource Conservation District (NCRCD) is requesting proposals from qualified firms or individuals to provide comprehensive financial management, accounting and bookkeeping services to ensure that NCRCD financial record-keeping is accurate and in accordance with generally accepted accounting principles (GAAP) and the governmental accounting standards board (GASB). The selected respondent will work closely with the NCRCD Executive Director, Office Manager, Finance Committee, and Board of Directors.

NCRCD is a local non-regulatory agency whose mission is to promote responsible watershed management through voluntary community stewardship and technical assistance. Since 1945, NCRCD has facilitated natural resource conservation through community involvement, education, technical expertise and scientific research. NCRCD is committed to using voluntary, cooperative and scientifically sound methods to ensure that the natural resources of our watersheds are sustained, restored and protected. NCRCD covers over 500,000 acres in Napa and Solano Counties - all of Napa County and a small portion of western Solano County.

NCRCD's annual operating budget is approximately \$1,500,000 and the fiscal year is July 1 through June 30. NCRCD has some tax based revenue, but its main source of revenue is grants and professional service contracts. NCRCD employs an Executive Director, an Office Manager who performs day-to-day bookkeeping, and seven project staff. It has a total bi-weekly payroll of approximately \$32,000 covering 9 employees.

All NCRCD funds are held in the County Treasury and disbursed by the Napa County Auditor-Controller who oversees and controls the financial software system (PeopleSoft). At this time, day-to-day bookkeeping and billing functions of NCRCD are performed within the District using QuickBooks, with a complete reconciliation process to tie QuickBooks to the official book of records in PeopleSoft.

NCRCD is part of the California Public Employees Retirement System for its defined benefit pension plan, providing retirement and disability benefits, annual cost of living adjustments and death benefits to plan members and beneficiaries.

For more information regarding the District, as well as last year's audit and the current fiscal year budget, go to: <http://www.naparcd.org>

It is NCRCD's objective to contract with a provider in December 2015. The length of the relationship is open ended and is intended to be long term, subject to annual appropriations and the quality of the service provided by the provider.

Attached to this request for proposals, Appendix B, is a sample professional services agreement. NCRCD is willing to negotiate individual terms of this agreement but will strongly prefer to enter into an agreement substantially similar to the sample.

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II Calendar of Key Events

October 8, 2015	Request for Proposal Released
October 20, 2015	Questions Due By 4 pm (PST)
October 23, 2015	Responses to any questions
October 29, 2015	Proposals Due By 4 pm (PST)
November 19, 2015	Ranking Complete
December 10, 2015	Contract Presented to District Board

These dates are tentative and may be changed at the discretion of the Napa County Resource Conservation District. Changes, if any, to the due date for questions or for the response submittal (and any other changes) will be made by addendum and will be available on the NCRCD website.

II. Scope of Services

Financial Accounting (monthly)

- Oversee all of the District’s financial management, planning, systems, and internal controls.
- Manage and provide monthly reconciliation of the District’s operating general ledger accounting systems (i.e., QuickBooks and PeopleSoft) and ensure that both systems are continuously in sync.
- Perform monthly close of general ledger by recording all necessary accrual journal entries and balancing between QuickBooks general ledger and PeopleSoft general ledger for all accounts.
- Develop, implement, and ensure compliance with internal financial and accounting policies and procedures.
- Work with Office Manger to oversee financial accounting systems for cash management, accounts payable, accounts receivable, credit control, petty cash and payroll.
- Work with Office Manager and Executive Director on production and approval of all contract invoices.
- Assist Office Manager with maintenance of project/grant accounting spreadsheets to track project/grant budgets.
- Provide Executive Director with guidance on cash flow management.
- Manage acquisition of capital asses and ensure that assets are property recorded, amortized, and disposed of as appropriate.
- Liaise with the Finance Committee and the Napa County Auditor-Controller as appropriate.

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Financial Reporting (monthly)

- Prepare and present monthly and quarterly financial reports for the Executive Director, District Administrator, Finance Committee and Board to ensure proper management and monitoring of the District's finances.
- Develop and maintain timely and accurate financial statements and reports in accordance with GAAP and GASB.
- Provide clear and concise interim financial reporting, analysis, and actionable recommendations to staff, Finance Committee, and Board, as needed.
- Liaise with the Board's Finance Committee and the Napa County Auditor-Controller as appropriate.

Audits (annually)

- Prepare all supporting information for the annual audit and liaise with the Board's Finance Committee, the Napa County Auditor-Controller, and the external auditor(s).
- Coordinate and oversee annual audits: liaise with external auditor, provide all documents and reports needed to "test" accuracy of accounting practices, develop the Management Discussion & Analysis (GASB 34 compliance), complete and submit the State Controller's Office Special Districts' District Financial Transactions Report.
- Prepare, coordinate and oversee additional external audits, as necessary.

Budget Preparation and Management (quarterly)

- Assist Executive Director in the preparation of the annual budget and periodic budget amendments.
- Prepare quarterly budget reviews to assess financial performance against budget goals.
- Prepare District's Annual Indirect Cost Allocation Plan and Rate Proposal in accordance with federal requirements (i.e., 2 CFR part 200, Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards).
- Assist Executive Director and Office Manager with project budgets, as necessary.

Risk Management (annually)

- Monitor risk management policies and procedures to ensure that organizational risks are minimized.
- Advise the Executive Director on appropriate insurance coverage for the organization and the Board of Directors.

III. Requirements

Service Level: The successful proposer must have a verifiable track record, have the ability to demonstrate strong verbal and written communication skills, and be able to show successful accountability to consistently deliver services within agreed upon service frameworks and timeframes in a high quality, consistently reliable, professional, and pleasant manner. No subcontracting is acceptable for services under this RFP.

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Fees: Services may be provided on an hourly rate basis but must also include maximum monthly and maximum annual compensation.

IV. Qualifications

A successful proposer:

- Will provide a cover letter containing an executive summary of the services the proposer is able to provide.
- Will possess extensive (at least seven years) experience providing services within all of the above listed Scope of Services for a government organization.
- Will provide information on any previous experience related to performing similar services to Resource Conservation Districts (RCDs) or similar organizations.
- Will provide information regarding the qualifications of the person who would perform accounting services under this contract. Please include a name and a summary resume.
- Will provide the hourly rate schedule, maximum monthly compensation, and maximum annual compensation.
- Will have an advanced degree with major coursework in accounting, finance, business administration, or related field. An active Certified Public Accountant license issued by the State of California's Board of Accountancy is desirable.
- Will provide a minimum of five business client references from clients that are currently receiving comparable services from the proposers firm.
- Will provide an example of financial statements prepared for a client similar to NCRCD (identity of client may be redacted).
- Will return a completed "Proposer's Warranties" Form (Appendix A)
- Will provide any other pertinent information, including why the proposer believes it is the firm best qualified to provide accounting services to NCRCD.

V. Criteria for Evaluation of Proposals

Cover letter – 5%

Experience related to Scope of Services – 20%

Experience related to RCDs or similar organizations – 15%

Qualification of firm and personnel performing accounting services – 15%

Demonstrated capability to perform type of work requested – 15%

Responsiveness to Request for Proposals specifications – 5%

Hourly compensation rates and proposed monthly and annual compensation maximums – 15%

References – 10%

Other pertinent information – to be used if multiple proposers score identically.

A NCRCD Finance Committee will evaluate proposals submitted. During the evaluation process, the Finance Committee and NCRCD reserve the right, where it may serve NCRCD's best

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interest, to request additional information or clarifications from proposers, or to allow corrections of errors or omissions. At the discretion of the Finance Committee, firms submitting proposals may be requested to make oral presentations as part of the evaluation process.

NCRCDD reserves the right to award an agreement without further competition based on the responses received to this RFP.

NCRCDD reserves the right to request additional information not included in this RFP from any or all respondents after October 29, 2015

NCRCDD reserves the right to contact references not provided in the submittals.

VI. RFP Process

NCRCDD reserves the right to cancel, delay, or suspend this request for proposals or to reject any or all proposals with in the best interests of NCRCDD, as determined by NCRCDD in its sole discretion.

There is no expressed or implied obligation for NCRCDD to reimburse responding firms or individuals for any expenses incurred in preparing proposals in response to this request. Should NCRCDD cancel the RFP, reject any or all proposals, delay the RFP, or suspend the RFP, NCRCDD is not liable to any proposer for any loss or expense caused by or resulting from these actions.

NCRCDD reserves the right to retain all proposals submitted and to use any ideas in a proposal regardless of whether that proposal is selected. Submission of a proposal indicates acceptance by the firm of the conditions contained in this request for proposals, unless clearly and specifically noted in the proposal submitted and confirmed in the contract between NCRCDD and the firm selected.

Proposals will become a public record and available for release to the public upon selection of a successful respondent and an agreement is reached.

Any changes to the RFP requirements will be made by addendum. Addenda will be provided to all known interested firms and posted on the NCRCDD website.

NCRCDD intends to award a professional service agreement to the firm who distinguishes itself as capable of the type and breadth of services provided for in the Scope of Work as evident through the selection process. Selection and determination of qualifications is at the sole discretion of NCRCDD. NCRCDD will attempt to negotiate an agreement with the firm submitting the top ranked proposal. If no agreement can be successfully negotiated with the top ranked respondent, then NCRCDD may, at its election enter into negotiations with the next highest ranked respondent; and move down the list of respondents in order of scoring until an agreement can be negotiated. Upon selection of qualified respondent, completion of successful negotiations, the agreement will be presented to the District's Board of Directors for approval.

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NCRCDD reserves the right to negotiate minor deviations to the proposal submitted by the successful proposer. NCRCDD reserves the right to award the agreement to the firm that presents the proposal which, in the sole judgment of the NCRCDD, best accomplishes the District's goals. The lowest cost proposal may not be the highest ranked proposal. The successful firm will be required to comply with the District's insurance coverage requirements for vendors (e.g., workers' compensation, general and professional liability, auto insurance) and show evidence of coverage.

Questions regarding the Request for Proposals should be directed to Leigh Sharp, Executive Director by e-mail at Leigh@NapaRCD.org. All questions must be posed no later than 4:00 p.m. on Tuesday, October 20, 2015 and will be answered by Friday, October 23, 2015. Any proposer wishing to receive notice of questions asked and answers provided must request to be included on a Q&A list and provide an e-mail address to the Executive Director no later than Monday, October 19, 2015.

Proposals must be submitted via email to Leigh Sharp, Executive Director, at Leigh@NapaRCD.org on or before 4:00 p.m. on Thursday, October 29, 2015. All submitted proposals will contain, in the subject line, the following: "Response to RFP for Financial Services." It is anticipated that ranking will be complete by November 19, 2015, and that the NCRCDD Board will consider a Professional Service Agreement between NCRCDD and the successful proponent on December 10, 2015.

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APPENDIX A – PROPOSER’S WARRANTIES

- I. Proposer warrants that it is willing and able to comply with State of California laws with respect to foreign (non-state of California) corporations.
- II. Proposer warrants that it is willing and able to obtain an errors and omissions insurance policy providing a prudent amount of coverage for the willful or negligent acts, or omissions of any officers, employees or agents thereof.
- III. Proposer warrants that it will not delegate or subcontract its responsibilities under an agreement.
- IV. Proposer warrants that all information provided by it in connection with this proposal is true and accurate.
- V. Proposer warrants the information provided is genuine and not a sham, collusive, or made in the interest or in behalf of any party not therein named, and that the respondent has not directly or indirectly induced or solicited any other respondent to put in a sham proposal, or any other respondent to refrain from presenting information and that the prospective provider has not in any manner sought by collusion to secure an advantage.
- VI. Proposer warrants they have not paid or agreed to pay any fee or commission, or any other thing of value contingent upon the award, to any employee, official, or existing contracting consultant of NCRCD.

Signature of Official: _____

Name (Printed):

Title:

Firm:

Date:

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APPENDIX B – NCRCD SAMPLE AGREEMENT
For FINANCIAL MANAGEMENT AND ACCOUNTING SERVICES

THIS AGREEMENT is made and entered into as of this _____ day of _____, _____, by and between NAPA COUNTY RESOURCE CONSERVATION DISTRICT, a political subdivision of the State of California, hereinafter referred to as “NCRCD”, and _____, whose mailing [or business] address is _____, hereinafter referred to as “CONTRACTOR”;

RECITALS

WHEREAS, NCRCD wishes to obtain specialized financial management and accounting services; and

WHEREAS, CONTRACTOR is willing to provide such specialized services to NCRCD under the terms and conditions set forth herein; and

TERMS

NOW, THEREFORE, NCRCD hereby engages the services of CONTRACTOR, and CONTRACTOR agrees to serve NCRCD in accordance with the terms and conditions set forth herein:

1. **Term of the Agreement.** The term of this Agreement shall commence on the date first above written and shall expire on June 30, 2016, unless terminated earlier in accordance with Paragraphs 9 (Termination for Cause), 10 (Other Termination) or 23(a) (Covenant of No Undisclosed Conflict); except that the obligations of the parties under Paragraphs 7 (Insurance) and 8 (Indemnification) shall continue in full force and effect after said expiration date or early termination in relation to acts or omissions occurring prior to such dates during the term of the Agreement, and the obligations of CONTRACTOR to NCRCD shall also continue after said expiration date or early termination in relation to the obligations prescribed by Paragraphs 15 (Confidentiality), 20 (Taxes) and 21 (Access to Records/Retention).

The term of this Agreement shall be automatically renewed for an additional year at the end of each fiscal year, under the terms and conditions then in effect, not to exceed t additional years, unless either party gives the other party written notice of intention not to renew no less than thirty (30) days prior to the expiration of the then current term. For purposes of this Agreement, “fiscal year” shall mean the period commencing on July 1 and ending on June 30.

2. **Scope of Services.** CONTRACTOR shall provide NCRCD those services set forth in Exhibit “A”, attached hereto, in addition to the RFP and CONTRACTOR’s proposal, incorporated by reference herein..

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3. Compensation.

(a) Rates. In consideration of CONTRACTOR's fulfillment of the promised work, NCRCD shall pay CONTRACTOR at the rate of _____.

(b) Expenses. No travel or other expenses will be reimbursed by NCRCD.

(c) Maximum Monthly Amount. Notwithstanding subparagraphs (a) and (b), the maximum payments under this Agreement shall be a total of _____ (\$_____) for professional services per month; provided, however, that such amounts shall not be construed as guaranteed sums, and compensation shall be based upon services actually rendered.

(d) Maximum Annual Amount. Notwithstanding subparagraphs (a), (b) and (c), the maximum payments under this Agreement shall be a total of _____ (\$_____) for professional services per year; provided, however, that such amounts shall not be construed as guaranteed sums, and compensation shall be based upon services actually rendered.

4. Method of Payment.

(a) Professional Services. All payments for compensation and reimbursement for expenses shall be made only upon presentation by CONTRACTOR to NCRCD of an itemized billing invoice in a form acceptable to the Napa County Auditor which indicates, at a minimum, CONTRACTOR's name, address, Social Security or Taxpayer Identification Number, itemization of the hours worked, a detailed description of the tasks completed during the billing period, the names of person(s) performing the services and the position(s) held by such person(s), and the approved hourly or task rate.

(b) Expenses. If the Agreement provides for expense reimbursement, requests for reimbursement shall describe the nature and cost of the expense, the date incurred. With the exception of per diem reimbursements, receipts must be attached.

(c) Fixed Price. If the Agreement provides for a fixed price, if CONTRACTOR presents interim invoices, CONTRACTOR must state the percentage of work completed, which must be verified by NCRCD, i.e., 35% design, 95% design, draft report, et cetera, at which time CONTRACTOR shall be paid the equivalent percentage of the fixed price.

(d) CONTRACTOR shall submit invoices not more often than monthly to the **Executive Director** who, after review and approval as to form and content, shall submit the invoice to the Napa County Auditor no later than fifteen (15) calendar days following receipt. A sample template invoice is attached as Exhibit "B".

(e) Legal status. So that NCRCD may properly comply with its reporting obligations under federal and state laws pertaining to taxation, if CONTRACTOR is or becomes a corporation during the term of this Agreement, proof that such status is currently recognized by and complies with the laws of both the state of incorporation or organization and the State of California, if different, shall be provided to the Executive Director upon request in a form satisfactory to the Napa County Auditor. Such proof shall include, but need not be limited to, a copy of any annual or other periodic filings or registrations required by the state of origin or California, the current address for service of process on the corporation or limited liability partnership, and the name of any agent designated for service of process by CONTRACTOR within the State of California.

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5. **Independent Contractor.** CONTRACTOR shall perform this Agreement as an independent contractor. CONTRACTOR and the officers, agents and employees of CONTRACTOR are not, and shall not be deemed, NCRCD employees for any purpose, including workers' compensation and employee benefits. CONTRACTOR shall, at CONTRACTOR's own risk and expense, determine the method and manner by which duties imposed on CONTRACTOR by this Agreement shall be performed; provided, however, that NCRCD shall monitor the work performed by CONTRACTOR. NCRCD shall not deduct or withhold any amounts whatsoever from the compensation paid to CONTRACTOR, including, but not limited to amounts required to be withheld for state and federal taxes, unless required to do so by court order. As between the parties to this Agreement, CONTRACTOR shall be solely responsible for all such payments.

6. **Specific Performance.** It is agreed that CONTRACTOR, including the agents or employees of CONTRACTOR, shall be the sole providers of the services required by this Agreement. Because the services to be performed by CONTRACTOR under the terms of this Agreement are of a special, unique, unusual, extraordinary, and intellectual or time-sensitive character which gives them a peculiar value, the loss of which cannot be reasonably or adequately compensated in damages in an action of law, NCRCD, in addition to any other rights or remedies which NCRCD may possess, shall be entitled to injunctive and other equitable relief to prevent a breach of this Agreement by CONTRACTOR.

7. **Insurance.** CONTRACTOR shall obtain and maintain in full force and effect throughout the term of this Agreement, and thereafter as to matters occurring during the term of this Agreement, the following insurance coverage:

(a) Workers' Compensation Insurance. To the extent required by law during the term of this Agreement, CONTRACTOR shall provide workers' compensation insurance for the performance of any of CONTRACTOR's duties under this Agreement, including but not limited to, coverage for workers' compensation and employer's liability and a waiver of subrogation, and shall provide NCRCD with certification of all such coverages upon request by NCRCD's Office Manager.

(b) Liability Insurance. CONTRACTOR shall obtain and maintain in full force and effect during the term of this Agreement the following liability insurance coverages, **issued by a company admitted to do business in California and having an A.M. Best rating of A:VII or better, or equivalent self-insurance:**

(1) General Liability. Commercial general liability [CGL] insurance coverage (personal injury and property damage) of not less than ONE MILLION DOLLARS (\$1,000,000) combined single limit per occurrence, covering liability or claims for any personal injury, including death, to any person and/or damage to the property of any person arising from the acts or omissions of CONTRACTOR or any officer, agent, or employee of CONTRACTOR under this Agreement. If the coverage includes an aggregate limit, the aggregate limit shall be no less than twice the per occurrence limit.

(2) Professional Liability/Errors and Omissions. Professional liability [or errors and omissions] insurance for all activities of CONTRACTOR arising out of or in connection with this Agreement in an amount not less than ONE MILLION DOLLARS (\$1,000,000) per claim.

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(3) Comprehensive Automobile Liability Insurance. Comprehensive automobile liability insurance (Bodily Injury and Property Damage) on owned, hired, leased and non-owned vehicles used in conjunction with CONTRACTOR's business of not less than ONE MILLION DOLLARS (\$1,000,000) combined single limit per occurrence. Coverage shall be business auto insurance coverage using Insurance Services Office (ISO) form number CA 0001 06 92 including symbol 1 (any Auto) or the exact equivalent. If CONTRACTOR owns no vehicles, this requirement may be satisfied by a non-owned auto endorsement to the General Liability Insurance described in subparagraph (b)(1) above. If CONTRACTOR or CONTRACTOR's employees, officers, or agents will use personal automobiles in any way in the performance of this Agreement, CONTRACTOR shall provide evidence of personal auto liability coverage for each such person upon request.

(c) Certificates of Coverage. All insurance coverages referenced in 7(b), above, shall be evidenced by one or more certificates of coverage or, with the consent of NCRCD, demonstrated by other evidence of coverage acceptable to NCRCD, which shall be filed by CONTRACTOR with NCRCD prior to commencement of performance of any of CONTRACTOR's duties.

(1) The certificate(s) or other evidence of coverage shall reference this Agreement by its NCRCD number or title; shall be kept current during the term of this Agreement; shall provide that NCRCD shall be given no less than thirty (30) days prior written notice of any non-renewal, cancellation, other termination, or material change, except that only ten (10) days prior written notice shall be required where the cause of non-renewal or cancellation is non-payment of premium; and shall provide that the inclusion of more than one insured shall not operate to impair the rights of one insured against another insured, the coverage afforded applying as though separate policies had been issued to each insured, but the inclusion of more than one insured shall not operate to increase the limits of the company's liability.

(2) Waiver of Subrogation and Additional Insured Endorsements. For the commercial general liability insurance coverage referenced in 7(b)(1) and, for the comprehensive automobile liability insurance coverage referenced in 7(b)(3) where the vehicles are covered by a commercial policy rather than a personal policy, CONTRACTOR shall also file with the evidence of coverage an endorsement from the insurance provider naming NCRCD, its officers, employees, agents and volunteers as additional insureds and waiving subrogation. For the Workers Compensation insurance coverage, CONTRACTOR shall file an endorsement waiving subrogation with the evidence of coverage.

(3) The certificate or other evidence of coverage shall provide that if the same policy applies to activities of CONTRACTOR not covered by this Agreement, then the limits in the applicable certificate relating to the additional insured coverage of NCRCD shall pertain only to liability for activities of CONTRACTOR under this Agreement, and that the insurance provided is primary coverage to NCRCD with respect to any insurance or self-insurance programs maintained by NCRCD. The additional insured endorsements for the general liability coverage shall use Insurance Services Office (ISO) Form No. CG 20 09 11 85 or CG 20 10 11 85, or equivalent, including (if used together) CG 2010 10 01 and CG 2037 10 01; but shall not use the following forms: CG 20 10 10 93 or 03 94.

(4) Upon request by NCRCD, CONTRACTOR shall provide or arrange for the insurer to provide within thirty (30) days of the request, certified copies of the actual insurance policies or relevant portions thereof.

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(d) Deductibles/Retentions. Any deductibles or self-insured retentions shall be declared to, and be subject to approval by, NCRCD, which approval shall not be denied unless the NCRCD determines that the deductibles or self-insured retentions are unreasonably large in relation to compensation payable under this Agreement and the risks of liability associated with the activities required of CONTRACTOR by this Agreement. At the option of and upon request by NCRCD if NCRCD determines that such deductibles or retentions are unreasonably high, either the insurer shall reduce or eliminate such deductibles or self-insurance retentions as respects NCRCD, its officers, employees, agents and volunteers or CONTRACTOR shall procure a bond guaranteeing payment of losses and related investigations, claims administration and defense expenses.

(e) Inclusion in Subcontracts. CONTRACTOR agrees to require all subcontractors and any other entity or person who is involved in providing services under this Agreement to comply with the Workers Compensation and General Liability insurance requirements set forth in this Paragraph 7.

8. Hold Harmless/Defense/Indemnification.

(a) In General. To the full extent permitted by law, CONTRACTOR shall defend at its own expense, indemnify, and hold harmless NCRCD and its officers, agents, employees, volunteers, or representatives from and against any and all liability, claims, actions, proceedings, losses, injuries, damages or expenses of every name, kind, and description, including litigation costs and reasonable attorney's fees incurred in connection therewith, brought for or on account of personal injury (including death) or damage to property, arising from all acts or omissions of CONTRACTOR or its officers, agents, employees, volunteers, contractors and subcontractors in rendering services under this Agreement, excluding, however, such liability, claims, actions, losses, injuries, damages or expenses arising from the sole negligence or willful acts of NCRCD or its officers, agents, employees, volunteers, representatives, or other contractors or their subcontractors. Each party shall notify the other party immediately in writing of any claim or damage related to activities performed under this Agreement. The parties shall cooperate with each other in the investigation and disposition of any claim arising out of the activities under this Agreement, providing that nothing shall require either party to disclose any documents, records or communications that are protected under peer review privilege, attorney-client privilege, or attorney work product privilege.

(b) Employee Character and Fitness. CONTRACTOR accepts responsibility for determining and approving the character and fitness of its employees (including volunteers, agents or representatives) to provide the services required of CONTRACTOR under this Agreement, including completion of a satisfactory criminal/background check and period rechecks to the extent permitted by law. Notwithstanding anything to the contrary in this Paragraph, CONTRACTOR shall hold NCRCD and its officers, agents and employees harmless from any liability for injuries or damages resulting from a breach of this provision or CONTRACTOR's actions in this regard.

9. Termination for Cause. If either party shall fail to fulfill in a timely and proper manner that party's obligations under this Agreement or otherwise breach this Agreement and fail to cure such failure or breach within ten (10) days of receipt of written notice from the other party describing the nature of the breach, the non-defaulting party may, in addition to any other

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remedies it may have, terminate this Agreement by giving five (5) days prior written notice to the defaulting party in the manner set forth in Paragraph 13 (Notices). The NCRCD Executive Director is hereby authorized to make all decisions and take all actions required under this Paragraph to terminate this Agreement on behalf of NCRCD for cause.

10. **Other Termination.** This Agreement may be terminated by either party for any reason and at any time by giving prior written notice of such termination to the other party specifying the effective date thereof at least thirty (30) days prior to the effective date, as long as the date the notice is given and the effective date of the termination are in the same fiscal year; provided, however, that no such termination may be effected by NCRCD unless an opportunity for consultation is provided prior to the effective date of the termination. NCRCD hereby authorizes the NCRCD Executive Director to make all decisions and take all actions required under this Paragraph to terminate this Agreement on behalf of NCRCD for the convenience of NCRCD.

11. **Disposition of, Title to and Payment for Work Upon Expiration or Termination.**

(a) Upon expiration of this Agreement or termination for cause under Paragraph 9 or termination for convenience of a party under Paragraph 10:

(1) To the extent CONTRACTOR has provided services through Software and Applications materials licensed to NCRCD, NCRCD shall promptly return the Software and Application materials to CONTRACTOR. In addition, to the extent CONTRACTOR maintains NCRCD data on those portions of digital software hosted by CONTRACTOR and not controlled by NCRCD ("NCRCD data"), CONTRACTOR shall promptly return NCRCD data to NCRCD in a format designated by NCRCD and shall subsequently purge NCRCD data from CONTRACTOR's systems upon confirmation from NCRCD that the copy of the data provided to NCRCD is comprehensive of the data previously hosted by CONTRACTOR.

(2) All finished or unfinished documents and other materials, if any, and all rights therein shall become, at the option of NCRCD, the property of and shall be promptly returned to NCRCD, although CONTRACTOR may retain a copy of such work for its personal records only, except as otherwise provided under Paragraph 15 (Confidentiality) of this Agreement. Unless otherwise expressly provided in this Agreement, any copyrightable or patentable work created by CONTRACTOR under this Agreement shall be deemed a "work made for hire" for purposes of copyright or patent law and only NCRCD shall be entitled to claim or apply for the copyright or patent thereof. Notwithstanding the foregoing and to the extent services under this Agreement involve the development of previously patented inventions or copyrighted software, then upon expiration or termination of this Agreement, title to, ownership of, and all applicable patents, copyrights and trade secrets in the products developed or improved under this Agreement, shall remain with CONTRACTOR or any other person or entity if such person previously owned or held such patents, copyrights, and trade secrets, and such persons shall retain complete rights to market such product; provided, however, that NCRCD shall receive, at no additional cost, a perpetual license to use such products for its own use or the use of any consortium or joint powers agency to which NCRCD is a party. If the product involves a source code, CONTRACTOR shall either provide a copy of the source code to NCRCD or shall place the source code in an escrow account, at CONTRACTOR's expense, from which the source code may be withdrawn and used by NCRCD for the sole purpose of

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maintaining and updating the system dependent upon such code when such use is necessary to prevent loss of service to NCRCD.

(b) CONTRACTOR shall be entitled to receive compensation for any satisfactory work completed prior to expiration or receipt of the notice of termination or commenced prior to receipt of the notice of termination and completed satisfactorily prior to the effective date of the termination; except that CONTRACTOR shall not be relieved of liability to NCRCD for damages sustained by NCRCD by virtue of any breach of the Agreement by CONTRACTOR whether or not the Agreement expired or otherwise terminated, and NCRCD may withhold any payments not yet made to CONTRACTOR for purpose of setoff until such time as the exact amount of damages due to NCRCD from CONTRACTOR is determined.

12. **No Waiver.** The waiver by either party of any breach or violation of any requirement of this Agreement shall not be deemed to be a waiver of any such breach in the future, or of the breach of any other requirement of this Agreement.

13. **Notices.** All notices required or authorized by this Agreement shall be in writing and shall be delivered in person or by deposit in the United States mail, by certified mail, postage prepaid, return receipt requested. Any mailed notice, demand, request, consent, approval or communication that either party desires to give the other party shall be addressed to the other party at the address set forth below. Either party may change its address by notifying the other party of the change of address. Any notice sent by mail in the manner prescribed by this paragraph shall be deemed to have been received on the date noted on the return receipt or five days following the date of deposit, whichever is earlier.

NCRCD

Leigh Sharp
Executive Director
1303 Jefferson St., Ste. 500B
Napa, CA 94559
707-252-4188 x110
Leigh@NapaRCD.org

CONTRACTOR

[Name]
[Address]

14. **Compliance with NCRCD Policies on Waste, Harassment, Drug/Alcohol-Free Workplace, and Computer Use.** CONTRACTOR hereby agrees to comply, and require its employees and subcontractors to comply, with the following policies, copies of which are on file at NCRCD and incorporated by reference herein. CONTRACTOR also agrees that it shall not engage in any activities, or permit its officers, agents and employees to do so, during the performance of any of the services required under this Agreement, which would interfere with compliance or induce violation of these policies by NCRCD employees or contractors. For purposes of this Paragraph, references in the Policies to “County” and “County of Napa” shall mean NCRCD, to “Board” or “Board of Supervisors” shall mean the NCRCD governing board, and to “personnel director”, “county administrator (or CEO)” or any other specifically-titled Napa County officer shall mean the NCRCD Executive Director.

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(a) Waste Source Reduction and Recycled Product Content Procurement Policy adopted by resolution of the Board of Supervisors on March 26, 1991.

(b) County of Napa "Policy for Maintaining a Harassment and Discrimination Free Work Environment" revised effective August 23, 2005.

(c) County of Napa Drug and Alcohol Policy adopted by resolution of the Board of Supervisors on June 25, 1991.

(d) Napa County Information Technology Use and Security Policy adopted by resolution of the Board of Supervisors on April 17, 2001. To this end, all employees and subcontractors of CONTRACTOR whose performance of services under this Agreement requires access to any portion of the NCRCD computer network shall sign and have on file with NCRCD's ITS Department prior to receiving such access the certification attached to said Policy.

(e) Napa County Workplace Violence Policy, adopted by the BOS effective May 23, 1995 and subsequently revised effective November 2, 2004, which is located in the County of Napa Policy Manual Part I, Section 37U.

15. Confidentiality.

(a) Maintenance of Confidential Information. Confidential information is defined as all information disclosed to CONTRACTOR which relates to NCRCD's past, present, and future activities, as well as activities under this Agreement. CONTRACTOR shall hold all such information as CONTRACTOR may receive, if any, in trust and confidence, except with the prior written approval of NCRCD, expressed through its Executive Director. Upon cancellation or expiration of this Agreement, CONTRACTOR shall return to NCRCD all written and descriptive matter which contains any such confidential information, except that CONTRACTOR may retain for its files a copy of CONTRACTOR's work product if such product has been made available to the public by NCRCD.

(b) Protection of Personally Identifiable Information and Protected Health Information.

(1) To the extent CONTRACTOR is provided, creates, or has access to, Protected Health Information (PHI), Personally Identifiable Information (PII), or any other legally protected confidential information or data in any form or matter (collectively referred to as "Protected Information"), CONTRACTOR shall adhere to all federal, state and local laws, rules and regulations protecting the privacy of such information. CONTRACTOR shall adhere to all existing and future federal, state and local laws, rules and regulations regarding the privacy and security of Protected Information, including, but not limited to, laws and regulations requiring data encryption or policy and awareness programs for the protection of NCRCD Protected Information provided to, or accessed or created by, CONTRACTOR.

(2) CONTRACTOR shall ensure that its staff is trained to its privacy and security policies and procedures and that appropriate physical, technological and administrative safeguards are in place to protect the confidentiality of NCRCD's Protected Information, including, but not limited to, PHI and PII. Upon request, CONTRACTOR shall make available to NCRCD its policies and procedures, staff training records and other documentation of compliance with this Paragraph 15.

(3) CONTRACTOR agrees to notify NCRCD immediately of any unauthorized access to or disclosure of Protected Information that it becomes aware of.

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(4) CONTRACTOR will be responsible for all costs associated with CONTRACTOR's breach of the security and privacy of NCRCD's Protected Information, or its unauthorized access to or disclosure of NCRCD's Protected Information, including, but not limited to, mitigation of the breach, cost to the NCRCD of any monetary sanctions resulting from breach, notification of individuals affected by the breach, and any other action required by federal, state, or local laws, rules or regulations applicable at the time of the breach.

(c) Protection of NCRCD Data. If CONTRACTOR will be processing and storing the NCRCD's data in an offsite location, such as a cloud service site, cloud storage site, hosted application site, or hosted storage site, CONTRACTOR shall guarantee that such data is encrypted using an encryption algorithm that meets the current US Department of Defense minimum requirements in order to protect NCRCD data against a breach of protected data if lost or stolen. All offsite cloud applications and storage systems utilized by CONTRACTOR shall be located in the United States, which includes any backup and failover facilities. Application and storage solutions in any foreign location is prohibited.

All desktop and laptop computers, as well other similar type computer systems, used by CONTRACTOR shall be encrypted using the same encryption algorithm described above. All data in transit shall require the same encryption. Storage of NCRCD data on removable portable storage is prohibited.

Upon termination of this agreement, CONTRACTOR shall purge all NCRCD data from all CONTRACTOR systems using a forensic grade deletion that conforms to US Department of Defense DoD 5220.22-M (E) standards.

CONTRACTOR shall reimburse the NCRCD for all associated costs of a breach, including but not limited to reporting costs and associated penalties the NCRCD must bear.

16. No Assignments or Subcontracts.

(a) In General. A consideration of this Agreement is the personal reputation of CONTRACTOR; therefore, CONTRACTOR shall not assign any interest in this Agreement or subcontract any of the services CONTRACTOR is to perform hereunder without the prior written consent of NCRCD, which shall not be unreasonably withheld. The inability of the assignee to provide personnel equivalent in experience, expertise, and numbers to those provided by CONTRACTOR, or to perform any of the remaining services required under this Agreement within the same time frame required of CONTRACTOR shall be deemed to be reasonable grounds for NCRCD to withhold its consent to assignment. For purposes of this subparagraph, the consent of NCRCD may be given by the Executive Director.

(b) Effect of Change in Status. If CONTRACTOR changes its status during the term of this Agreement from or to that of a corporation, limited liability partnership, limited liability company, general partnership, or sole proprietorship, such change in organizational status shall be viewed as an attempted assignment of this Agreement by CONTRACTOR. Failure of CONTRACTOR to obtain approval of such assignment under this Paragraph shall be viewed as a material breach of this Agreement.

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17. **Amendment/Modification.** Except as specifically provided herein, this Agreement may be modified or amended only in writing and with the prior written consent of both parties. Failure of CONTRACTOR to secure such authorization in writing in advance of performing any extra or changed work shall constitute a waiver of any and all rights to adjustment in the contract price or contract time and no compensation shall be paid for such extra work.

18. **Interpretation; Venue.**

(a) Interpretation. The headings used herein are for reference only. The terms of the Agreement are set out in the text under the headings. This Agreement shall be governed by the laws of the State of California without regard to the choice of law or conflicts.

(b) Venue. This Agreement is made in Napa County, California. The venue for any legal action in state court filed by either party to this Agreement for the purpose of interpreting or enforcing any provision of this Agreement shall be in the Superior Court of California, County of Napa, a unified court. The venue for any legal action in federal court filed by either party to this Agreement for the purpose of interpreting or enforcing any provision of this Agreement lying within the jurisdiction of the federal courts shall be the Northern District of California. The appropriate venue for arbitration, mediation or similar legal proceedings under this Agreement shall be Napa County, California; however, nothing in this sentence shall obligate either party to submit to mediation or arbitration any dispute arising under this Agreement.

19. **Compliance with Laws.** CONTRACTOR shall observe and comply with all applicable Federal, State and local laws, ordinances, and codes. Such laws shall include, but not be limited to, the following, except where prohibited by law:

(a) Non-Discrimination. During the performance of this Agreement, CONTRACTOR and its subcontractors shall not deny the benefits thereof to any person on the basis of race, color, ancestry, national origin or ethnic group identification, religion or religious creed, gender or self-identified gender, sexual orientation, marital status, age, mental disability, physical disability, genetic information, or medical condition (including cancer, HIV and AIDS), or political affiliation or belief, nor shall they discriminate unlawfully against any employee or applicant for employment because of race, color, ancestry, national origin or ethnic group identification, religion or religious creed, gender or self-identified gender, sexual orientation, marital status, age (over 40), mental disability, physical disability, genetic information, or medical condition (including cancer, HIV and AIDS), use of family care leave, or political affiliation or belief. CONTRACTOR shall ensure that the evaluation and treatment of employees and applicants for employment are free of such discrimination or harassment. In addition to the foregoing general obligations, CONTRACTOR shall comply with the provisions of the Fair Employment and Housing Act (Government Code section 12900, et seq.), the regulations promulgated thereunder (Title 2, California Code of Regulations, section 7285.0, et seq.), the provisions of Article 9.5, Chapter 1, Part 1, Division 3, Title 2 of the Government Code (sections 11135-11139.5) and any state or local regulations adopted to implement any of the foregoing, as such statutes and regulations may be amended from time to time. To the extent this Agreement subcontracts to CONTRACTOR services or works required of NCRCD by the State of California pursuant to agreement between NCRCD and the State, the applicable regulations of the Fair Employment and Housing Commission implementing Government Code section 12990 (a) through (f), set forth in Chapter 5 of Division 4 of Title 2 of the California Code of

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Regulations are expressly incorporated into this Agreement by reference and made a part hereof as if set forth in full, and CONTRACTOR and any of its subcontractors shall give written notice of their obligations thereunder to labor organizations with which they have collective bargaining or other agreements.

(b) Documentation of Right to Work. CONTRACTOR agrees to abide by the requirements of the Immigration and Control Reform Act pertaining to assuring that all newly-hired employees of CONTRACTOR performing any services under this Agreement have a legal right to work in the United States of America, that all required documentation of such right to work is inspected, and that INS Form 1-9 (as it may be amended from time to time) is completed and on file for each employee. CONTRACTOR shall make the required documentation available upon request to NCRCD for inspection.

(c) Inclusion in Subcontracts. To the extent any of the services required of CONTRACTOR under this Agreement are subcontracted to a third party, CONTRACTOR shall include all of the provisions of this Paragraph 19 in all such subcontracts as obligations of the subcontractor.

(d) Prevailing Wages. [RESERVED]

20. **Taxes.** CONTRACTOR agrees to file federal and state tax returns or applicable withholding documents and to pay all applicable taxes or make all required withholdings on amounts paid pursuant to this Agreement and shall be solely liable and responsible to make such withholdings and/or pay such taxes and other obligations including, without limitation, state and federal income and FICA taxes. CONTRACTOR agrees to indemnify and hold NCRCD harmless from any liability it may incur to the United States or the State of California as a consequence of CONTRACTOR's failure to pay or withhold, when due, all such taxes and obligations. In the event that NCRCD is audited for compliance regarding any withholding or other applicable taxes or amounts, CONTRACTOR agrees to furnish NCRCD with proof of payment of taxes or withholdings on those earnings.

21. **Access to Records/Retention.** NCRCD, any federal or state grantor agency funding all or part of the compensation payable hereunder, the State Controller, the Comptroller General of the United States, or the duly authorized representatives of any of the above, shall have access to any books, documents, papers and records of CONTRACTOR which are directly pertinent to the subject matter of this Agreement for the purpose of making audit, examination, excerpts and transcriptions. Except where longer retention is required by any federal or state law, CONTRACTOR shall maintain all required records for at least seven (7) years after NCRCD makes final payment for any of the work authorized hereunder and all pending matters are closed, whichever is later.

22. **Authority to Contract.** CONTRACTOR and NCRCD each warrant hereby that they are legally permitted and otherwise have the authority to enter into and perform this Agreement.

23. **Conflict of Interest.**

(a) Covenant of No Undisclosed Conflict. The parties to the Agreement acknowledge that they are aware of the provisions of Government Code section 1090, et seq., and section 87100, et seq., relating to conflict of interest of public officers and employees. CONTRACTOR

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hereby covenants that it presently has no interest not disclosed to NCRCD and shall not acquire any interest, direct or indirect, which would conflict in any material manner or degree with the performance of its services or confidentiality obligation hereunder, except as such as NCRCD may consent to in writing prior to the acquisition by CONTRACTOR of such conflict. CONTRACTOR further warrants that it is unaware of any financial or economic interest of any public officer or employee of NCRCD relating to this Agreement. CONTRACTOR agrees that if such financial interest does exist at the inception of this Agreement, NCRCD may terminate this Agreement immediately upon giving written notice without further obligation by NCRCD to CONTRACTOR under this Agreement.

(b) Statements of Economic Interest. CONTRACTOR acknowledges and understands that NCRCD has developed and approved a Conflict of Interest Code as required by state law which requires CONTRACTOR to file with the **Secretary of the NCRCD Board of Directors** “assuming office”, “annual”, and “leaving office” Statements of Economic Interest as a “consultant”, as defined in section 18701(a)(2) of Title 2 of the California Code of Regulations, unless it has been determined in writing that CONTRACTOR, although holding a “designated” position as a consultant, has been hired to perform a range of duties so limited in scope as to not be required to fully comply with such disclosure obligation.

CONTRACTOR agrees to timely comply with all filing obligations for a consultant under NCRCD’s Conflict of Interest Code unless such a determination is on file on the filing dates for each of the required Statements of Economic Interest.

24. **Third Party Beneficiaries.** Nothing contained in this Agreement shall be construed to create any rights in third parties and the parties do not intend to create such rights.

25. **Attorney's Fees.** In the event that either party commences legal action of any kind or character to either enforce the provisions of this Agreement or to obtain damages for breach thereof, the prevailing party in such litigation shall be entitled to all costs and reasonable attorney's fees incurred in connection with such action.

26. **Severability.** If any provision of this Agreement, or any portion thereof, is found by any court of competent jurisdiction to be unenforceable or invalid for any reason, such provision shall be severable and shall not in any way impair the enforceability of any other provision of this Agreement.

27. **Entirety of Contract.** This Agreement, including any documents expressly incorporated by reference whether or not attached hereto, constitutes the entire agreement between the parties relating to the subject of this Agreement and supersedes all previous agreements, promises, representations, understandings and negotiations, whether written or oral, among the parties with respect to the subject matter hereof.

28. **Special Terms and Conditions. [RESERVED]**

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

[TYPE IN LEGAL NAME OF CONTRACTOR; IF THE CONTRACTOR USES A FICTITIOUS BUSINESS NAME AS WELL, ADD "doing business as _____" FOLLOWED BY THE FICTITIOUS BUSINESS NAME]

By _____
[NAME], [Title]

[IF CONTRACTOR IS A CORPORATION, TWO SIGNATURES ARE NEEDED FROM EACH OF THESE 2 GROUPS: 1. PRESIDENT, OR ANY VICE PRESIDENT and 2. SECRETARY, ASSISTANT SECRETARY, CHIEF FINANCIAL OFFICER OR ASSISTANT TREASURER. IF ONE PERSON CONCURRENTLY HOLDS OFFICES FROM EACH GROUP, ONE SIGNATURE IS ACCEPTABLE BUT LIST BOTH TITLES OF OFFICE; OR OBTAIN EVIDENCE OF AUTHORIZATION FROM THE CORPORATION FOR A SINGLE PERSON OR POSITION TO SIGN THE CORPORATION'S CONTRACTS.]

By _____
[NAME], [Title]

"CONTRACTOR"

NAPA COUNTY RESOURCE CONSERVATION DISTRICT, a political subdivision of the State of California

By _____
BETH PAINTER, President
Board of Directors

"NCRCD"

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<p>APPROVED AS TO FORM Office of County Counsel</p> <p>By: _____ NCRCD Counsel</p> <p>Date: _____</p>		<p>ATTEST: KATHLEEN EDSON Secretary of the Board of Directors</p> <p>By: _____</p>
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EXHIBIT “A”

SCOPE OF WORK

CONTRACTOR shall provide NCRCD with the following services:

DESCRIPTION OF SERVICES

The scope of work will be created based on the successful proposer’s proposal.

