

COUNTY OF SHASTA		Number
ADMINISTRATIVE MANUAL		6-101
SECTION:	Contracts	Shasta County Contracts Manual
INITIAL ISSUE DATE:	July 23, 1991	
LATEST REVISION DATE:	<u>October 3, 2017</u>	
PAGE NO:	Page 1 of 3	

Deleted: July 12, 2017

The Board of Supervisors has adopted the accompanying document, the *Shasta County Contracts Manual* (Manual), for use by County staff.

The Manual was formerly referred to as Policy 5-101, *Purchasing, Leasing and Contracting Policies and Procedures*. In 2003, it was amended to incorporate Policy 6-101, *Delegation of Contract Authority*, and Policy 3-201, *Insurance Requirements for Contractors and County-Funded Entities*, and to make other changes, and was renamed and given a new policy number. At that time, Policy 6-101, *Delegation of Contract Authority*, was repealed and readopted, and Policy 3-301, *Insurance Requirements for Contractors and County-Funded Entities*, was repealed. In 2008, Policy 5-305, *Contracts to Provide Work to Private Companies and Government Entities by the Opportunity Center*, was repealed, and its text was inserted into the Manual. In 2011, Chapter 7, Section 7.7, *Waivers of Liability*, was moved to Policy 3-205; Chapter 8, *Disposition of Surplus Property*, was moved to Policy 5-201; and Chapter 9, *Acceptance of Donations*, was moved to Policy 2-401.

### **RESPONSIBLE DEPARTMENTS**

County Counsel  
County Administrative Office

### **REFERENCES** (Policy 6-101, *Shasta County Contracts Manual*)

#### **BOS Policy Resolution No. 2017-xx—10/3/2017 (Amended)**

Administrative Update 07/12/17 (non-substantive changes)  
Administrative Update 05/22/17 (personal services agreement template)  
Administrative Update--01/30/15 (indemnification/insurance coverage clauses)  
BOS Policy Resolution No. 2014-02--04/22/14 (Amended)  
BOS Policy Resolution No. 2013-05--08/27/13 (Amended)  
BOS Policy Resolution No. 2013-02--04/16/13 (Amended) (effective 07/01/13)  
Administrative Update--07/13/2012  
BOS Policy Resolution No. 2012-02--2/7/12 (Amended)  
BOS Policy Resolution No. 2011-09--10/11/11 (Amended)  
BOS Policy Resolution No. 2011-05--6/28/11 (Amended, effective 7/1/11)  
BOS Policy Resolution No. 2010-03--4/27/10 (Amended)

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BOS Policy Resolution No. 2008-03--3/4/08 (Amended)  
 BOS Policy Resolution No. 2007-1--4/27/07 (Amended)  
 BOS Policy Resolution No. 2006-1--5/2/06 (Amended)  
 BOS Policy Resolution No. 2005-7--8/2/05 (Amended)  
 BOS Policy Resolution No. 2004-4--7/27/04 (Amended)  
 BOS Policy Resolution No. 2004-1--3/16/04 (Amended)  
 BOS Policy Resolution No. 2003-3--11/25/03 (Repealed and readopted)

**REFERENCES** (Former Policy 5-101, *Purchasing, Leasing and Contracting Policies and Procedures*)

BOS Policy Resolution No. 2003-3--11/25/03 (Repealed)  
 BOS Policy Resolution No. 2002-1--3/26/02 (Amended)  
 BOS Policy Resolution No. 99-9--12/28/99 (Amended)  
 BOS Policy Resolution No. 99-2--3/2/99 (Amended)  
 BOS Policy Resolution No. 96-6--8/6/96 (Amended)  
 BOS Policy Resolution No. 95-8--7/25/95 (Amended)  
 BOS Policy Resolution No. 95-4--3/14/95 (Amended)  
 BOS Policy Resolution No. 94-7--8/2/94  
 BOS Policy Resolution No. 93-9--10/5/93 (Repealed by Policy Resolution No. 94-7)

**REFERENCES** (Former Policy 3-201, *Insurance Requirements for Contractors and County-Funded Entities*)

BOS Policy Resolution No. 2003-3--11/25/03 (Repealed)  
 BOS Policy Resolution No. 2001-13--8/14/01 (Amended)  
 BOS Policy Resolution No. 98-6--12/29/98 (Amended)  
 Board Action--4/10/90  
 BOS Policy Resolution No. 90-3--2/13/90 (Amended)  
 Risk Management Policy No. 8-1--11/1/85 (Amended 2/13/90)

**REFERENCES** (Former Policy 6-101, *Delegation of Contract Authority*)

BOS Policy Resolution No. 2003-3--11/25/03 (Repealed and readopted)  
 BOS Policy Resolution No. 2001-12--8/14/01 (Amended)  
 BOS Policy Resolution No. 96-6--8/06/96 (Amended)

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BOS Policy Resolution No. 93-5--6/01/93 (Amended)  
BOS Policy Resolution No. 91-6--7/23/91

**REFERENCES** (Former Policy 5-305, *Contracts to Provide Work to Private Companies and Government Entities by the Opportunity Center*)

BOS Policy Resolution No. 2008-02--3/4/08 (Repealed)  
BOS Policy Resolution No. 2004-4--7/27/04 (Amended)  
BOS Policy Resolution No. 2001-10--8/14/01 (Amended)  
BOS Policy Resolution No. 1-58--1/7/85

**SHASTA COUNTY**

**CONTRACTS MANUAL**  
**(Including Policies and Procedures for**  
**Leasing and Purchasing)**



Administrative Policy 6-101  
Effective October 3, 2017,

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**ATTACHMENT A Real Property Lease Agreement**

**ATTACHMENT B Personal Services Agreement**

**ATTACHMENT C Withholding Waiver Request Form**

**ATTACHMENT D Addendum to Contract/Agreement (HIPAA Business Associate Agreement)**

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Portability and Accountability Act

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**ATTACHMENT E Sample Agreement Amendment**

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**ATTACHMENT F Public Works Construction Contract**

**ATTACHMENT G Hold Harmless Addendum**

**ATTACHMENT H Request for Personal Services Agreement Review/Approval**

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## Chapter 1.0 GENERAL PROVISIONS

### Section 1.1 Purpose of these policies and procedures.

This Contracts Manual (Manual)\* is a compilation of the policies and procedures to be followed when County department or agency heads or managers obtain personal services by agreement or contract;\*\* purchase materials, equipment, supplies or furnishings; lease or rent buildings, office or storage space or equipment; perform minor remodeling or repair projects; or enter into public works contracts.

This Manual applies to all entities of which the Board of Supervisors is the governing body (for example, the IHSS Public Authority and Air Pollution Control Board).

This Manual prescribes who (either the department head or the County Executive Officer/Purchasing Agent) has been delegated by the Board of Supervisors the authority to undertake the tasks identified in this Manual and under what circumstances that authority may be exercised.\*\*\*

Included as attachments to this Manual are [a Real Property Lease Agreement](#) (ATTACHMENT A), [a Personal Services Agreement](#) (ATTACHMENT B), a Withholding Waiver Request Form (ATTACHMENT C), an [Addendum to Contract/Agreement](#) (HIPAA Business Associate Agreement) (ATTACHMENT D), a Sample [Agreement](#) Amendment (ATTACHMENT E), [a Public Works Construction Contract](#) (ATTACHMENT F), a Hold

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\* This Manual was first adopted in 1991, and has been revised nearly every year thereafter. In 2003, it was revised to combine three policies, former Policies 5-101, *Purchasing, Leasing, and Contracting Policies and Procedures*; 6-101, *Delegation of Contract Authority*; and 3-201, *Insurance Requirements for Contractors and County-Funded Entities*. This Manual is posted on the County's Intranet. The reader should refer to the County's Intranet for the latest revision.

\*\* For the purposes of this Manual, the terms "agreement" and "contract" are synonymous and may be used interchangeably. As a general rule, however, "agreement" will refer to personal services and "contract" will refer to purchases or public works construction projects.

\*\*\* The County Executive Officer (CEO) is the County's Purchasing Agent. Unless otherwise indicated, wherever the term "Purchasing Agent" is used in this Manual, it refers to the CEO and to the staff of the Department of Support Services, Purchasing Division, (who act as Deputy Purchasing Agents). The term "department" includes all County agencies, branches, and departments. The term "department head" includes an agency director, a branch director, and an assistant or deputy agency or department head.

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Harmless Addendum (**ATTACHMENT G**), and a Request for Personal Services Agreement Review/Approval (**ATTACHMENT H**).

## **1.2 Sources of authority; priorities in case of conflict.**

Pursuant to section 23500 of the Government Code, “[a] county may exercise its powers only through the board of supervisors or through agents and officers acting under authority of the board or authority conferred by law.” Thus, as a general rule, County officers and employees have only that contracting and purchasing authority expressly delegated to them by the Board of Supervisors, and if they act without that authority, they may be held personally liable for any monetary damages resulting from a transaction undertaken without such express delegation.

Throughout this Manual, reference will be made to state laws and County ordinances or resolutions. Should there be any conflict between this Manual and a state law or County ordinance or resolution, the state law, County ordinance, or County resolution will govern, in that order.

## **1.3 Policies and procedures that apply generally.**

This section of the Manual describes the responsibilities and procedures that apply generally to contracts, including leases and contracts for the purchase of goods or equipment. In the event of a conflict between this section and another more specific provision of this Manual, the more specific provision should be followed.

### **1.3.1 Definition of a contract.**

The Civil Code defines a contract as “an agreement to do or not to do a certain thing.” (Civil Code, section 1549) A contract gives rise to an obligation or legal duty, enforceable in an action at law. (Civil Code, sections 1427 & 1428) It sets forth terms, conditions, and a description of the work to be performed or things to be purchased.

A legally valid contract has four elements. “It is essential to the existence of a contract that there should be: (1) parties capable of contracting; (2) their consent; (3) a lawful object; and (4) a sufficient cause or consideration.” (Civil Code, section 1550)

Note that contracts may be titled “contract,” “agreement,” “grant agreement,”\* “memorandum [or letter] of understanding (MOU or LOU),” or something similar. No matter what the document is called, if it includes the essential elements set forth in section 1550 of the Civil Code, it is a contract and if the proper procedures to enter into a contract have been followed, it constitutes a legally binding obligation of the County.

Unless otherwise specifically authorized by this Manual, all County contracts regardless of compensation amount must be in writing and signed on behalf of the County by the Board of Supervisors or by a County agent or officer delegated authority in writing by the Board of Supervisors. Oral contracts are not permitted.

### **1.3.2 Initiating contracts and amendments.**

Contracts, including leases, are initiated by the department that requires the service, goods, office space, etc. Each department is responsible for making sure that all its contracts comply with applicable state and federal legal requirements (including, but not limited to, applicable grant requirements); comply with County ordinances, resolutions, policies, and procedures; and are based on sound business practices.

The department head is responsible for obtaining the proper signatures and for the administration of a County contract once it is signed.

The department head must also prepare and process any needed contract amendments and see to the termination of the contract in accordance with its terms in appropriate cases. See Sections 5.15 and 5.16, respectively, for more information about amending and terminating contracts.

### **1.3.3 Role of the County Counsel, County Executive Officer, Risk Manager, and Auditor-Controller.**

Four County officials or their designees -- the County Counsel, the CEO, the Risk Manager,\*\* and the Auditor-Controller -- will routinely play a role in the processing of County contracts.

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\* See Administrative Policy 2-301, *Grants Policy*, which includes special procedures for processing grant applications and agreements.

\*\* As used in this policy, “Risk Manager” means that employee of the Department of Support Services or his/her designee who is assigned the responsibilities of the Risk Manager (or his/her designee) as defined in state law and County ordinances, resolutions, and policies.

With the exception of certain pre-approved standard contracts and other specified low-risk contracts identified in this Manual (see e.g., Section 5.6), all contracts must be reviewed and signed for approval as to form by County Counsel. Approval of a contract by County Counsel only means that it has been determined that the essential clauses are included and that the contract is legally enforceable. County Counsel approval as to form does not mean that the contract contains all clauses which may be advisable, that the language clearly expresses the intent of the parties, or that the best deal has been negotiated.

County Counsel provides legal advice to all County departments on contract procurement, negotiations, and drafting. For contracts already in effect, County Counsel may interpret language, provide advice in contract disputes, participate in dispute resolution procedures (such as mediation or arbitration), and litigate contract issues. Although there are charges for contract related services, County Counsel does not directly charge attorneys' fees to a particular department for those services so cost concerns should not impede a department's consultation with County Counsel. Further, this manual is not intended to be a substitute for consultation with the County Counsel's Office, as specific circumstances may require unique procedures or contract clauses.

County Counsel also develops standard form agreements or contract provisions for general use.

The CEO's role depends on the type of contract, the duration of the contract, and the amount of compensation. As discussed in Sections 5.6.1 and 6.2, the CEO, as the County's Purchasing Agent, may sign certain personal services agreements and public works construction contracts, as well as inter-department agreements. In addition, the CEO reviews all of the contracts which are submitted to the Board of Supervisors.

The Risk Manager (who manages the County's insurance program) must approve and sign all County contracts except those standard format contracts which department heads or the CEO can independently sign. However, the Risk Manager must approve and sign all contracts and amendments in which the standard insurance clause or indemnification clause is modified. (See Section 5.6.)

The Auditor-Controller may only pay claims related to: (1) expenditures that have been authorized by contract, ordinance, resolution, or order of the Board of Supervisors; (2) expenditures that have been authorized by Purchase Orders properly issued by the

Purchasing Agent or the Board of Supervisors; (3) expenditures under any statute authorizing payment of public aid or assistance that have been ordered by the Board of Supervisors; (4) expenditures for charges incurred by the County pursuant to Government Code section 29600; and (5) refunds of unearned business license fees, permit fees, and similar fees authorized by the Board of Supervisors. (Government Code, section 29741.)

Therefore, all County contracts executed under delegated authority must be submitted to the Auditor-Controller prior to payment. The name and job description of any subordinate to whom the department head has delegated authority to execute contracts must be submitted in writing to the Auditor-Controller before the delegation is effective. That delegation remains in effect unless a written notice is submitted to the Auditor-Controller changing or rescinding the delegation or until the person to whom such authority has been delegated no longer holds the job classification specified in the delegation.

The County is also responsible for reporting to the State of California Employment Development Department certain information about payments made to sole proprietors. Copies of the reports must be provided to the Auditor-Controller. (See Section 5.13.)

#### **1.3.4 Preference for competitive procurement.**

When contracting for services, purchasing goods, or leasing or remodeling facilities, the County should always take steps to get the best price, as well as the most appropriate service, product, or facility (See Sections 2.7 and 5.3 for policies regarding competitive procurement).

The responsibility for obtaining the best terms (i.e., price, quantity, quality, warranty, delivery, setup, or training) is placed on the County employee charged with the negotiation process. That person will ordinarily be the department head or department contract administrator (for personal services agreements and minor purchases), a member of the Purchasing Division staff (for major purchases and leases of personal property), or a member of the County Administrative Office staff (for leases of real property).

The best terms are usually achieved through competitive procurement practices. These practices range from rather simple efforts (such as calling three or four vendors to get the best price for a minor purchase), to issuing a Request for Proposals (RFP) or a Request for Quotes (RFQ) (for a major new program), or a Request for Bids (for the purchase of a major capital asset). A department head must be prepared to justify not using competitive procurement practices.

Note that a better price can usually be negotiated if the department does not reveal to a potential seller, contractor, or lessor information regarding the amount of money the department has available or is prepared to spend for the purchase, service, or lease. When the seller, contractor, or lessor is advised that comparison shopping will take place, a better price can often be obtained. A major point in the County's favor when negotiating prices is that the County is a good customer; it pays its bills on time, and is generally easy to work with.

See Section 2.7 regarding competitive procurement for purchases and Section 5.3 for competitive procurement for services.

It is never permissible to split a contract or project to evade bidding or other procurement requirements or compensation limits.

#### **1.3.5 Negotiating and administering the contract.**

Regardless of what type of purchase, service, or lease is contemplated, there are several basic concepts which should be kept in mind when negotiating a contract.

Before entering the market place, it is important to know with specificity what must be acquired or accomplished. Without a clearly defined need or objective, it is impossible to negotiate the best terms for the County. (See Section 5.3).

A purchase contract should include provisions describing how a product will perform, particularly if representations as to performance were made during negotiations. Terms that a seller is reluctant to put in writing may never be honored. Beware of the seller who is in too big a hurry to close a deal. If something sounds too good to be true, it probably is. Ask for, and follow up on, references.

If the contract is for the purchase of equipment, or some other item of personal property, the department should insist that the vendor not waive or limit warranties, or limit the County's ability to recover damages. When the County is buying equipment -- a computer, a large printer, etc. -- the department's contract should require "acceptance testing" to demonstrate

that the equipment works to the department's satisfaction. The contract should provide that if the item does not meet the department's standards for operation, the vendor will remove the equipment at the vendor's expense and return the entire purchase price.

The person negotiating the contract on behalf of the department should always advise the other party that the contract is subject to approval by the department head, County Counsel, the Risk Manager, the Chief Information Officer, the County Executive Officer, and/or the Board of Supervisors, as may be required, and is subject to the appropriation of funds by the Board of Supervisors. If County Counsel, Risk Manager, or Chief Information Officer approval is necessary, it should always be obtained **before** the contract is submitted to the vendor, consultant, or contractor for signature.

At the beginning of negotiations, the department should find out whether the other party is a corporation, a limited liability company (LLC), a partnership, someone "doing business as," an individual, or some other legal entity. If the other party is a corporation, an LLC, a partnership, or some such entity, the department should find out where its headquarters is located (is it in another state?) and verify that whomever is signing has the legal authority to negotiate on behalf of, and bind the company to, the contract (with respect to the authority to sign on behalf of a corporation, see Section 5.17, item <21>. The California Secretary of State's online business website is a good place to find out about a company, including whether it is authorized to do business in California.

One of the goals of contract negotiation is to assign the risk of failure, loss, or non-performance to the vendor, consultant, or contractor, since the vendor, consultant, or contractor is in control of production or retail distribution of the item, or provides the service. Risk is assigned by use of indemnity and insurance provisions. The department is responsible for ensuring that insurance policy endorsements or amendments, certificates of insurance, and bonds required by the contract are complete, received and remain in effect during the life of the contract. Insurance policy endorsements or amendments, certificates of insurance, and bonds should have been received prior to the time the contract is to be executed by the County.

Contracts should be signed by the vendor, consultant, or contractor **before** being signed by the department head or the County Executive Officer, or submitted to the Board of Supervisors for approval and signature, as may be required. If approval and signature by the Board of Supervisors is required, the department must provide the Clerk of the Board of

Supervisors with the appropriate number of originals of the contract signed by the vendor, consultant, or contractor (usually three originals, depending on the distribution requirements for the contract).

If a contract is signed by the Chairman or Vice-Chairman of the Board of Supervisors, one original will be kept by the Clerk of the Board. If a contract is signed by the CEO or a department head, the department will forward one original to the Auditor-Controller. A scanned electronic copy of every signed contract will be forwarded by the department to the Auditor-Controller either by email or alternative media. Copies or duplicate originals must be kept by the department consistent with the department's records retention schedule.

The department is required to monitor the progress of the work or services to be provided, and the quality and functioning of purchased items. Monitoring the contract includes confirming compliance with any performance measures included in the contract and any grant requirements. Each department should devise and use an internal procedure, suited to the needs of the department, to continually monitor the progress of the work or services to be provided, the quality and functioning of purchased items, the amount of funds expended, and the renewal and expiration dates of all the department's contracts. Monitoring is necessary to assure performance as intended, to allow for timely contract amendment in response to unforeseen circumstances, to renew a contract (if renewal is not automatic), or to terminate the contract if necessary. Performance monitoring facilitates detection of problems at the earliest possible stage, prevents costly overruns and scheduling difficulties, and allows the department to identify and address unacceptable performance. The department must also monitor the vendor's, consultant's, or contractor's performance of all required services, whether bills should be paid or disputed, whether a formal evaluation of services should be made, whether services should be continued or stopped, whether a purchased item is functioning properly, and in what ways the terms of the contract (or subsequent contracts of a similar nature) can be improved.

Departments should start work on amendments or new contracts early enough to avoid lapses in service or the need to have retroactive contracts approved. (See Section 5.2 regarding retroactive contracts.)

#### **1.3.6 Advance payments to contractors/consultants are discouraged.**

A personal services agreement may provide for advance payments by the County to a consultant or contractor before the County obtains products or services, only if the advance

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**Deleted:** Once a contract has been signed, the original of the contract, if signed by the Chairman or Vice-Chairman of the Board of Supervisors, will be kept by the Clerk of the Board. The department will scan the signed contract into Integrated Financial and Administrative Solution ("IFAS"). If the contract is signed by the CEO or a department head, the original will be forwarded to the Auditor-Controller. Copies or duplicate originals must be kept by the department consistent with the department's record retention policy. ¶

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payments are first specifically approved by the Board of Supervisors or the County Executive Officer. Advance payments may not be authorized by department heads. State regulations may also limit cash advances for certain contracted services.

Advance payments are discouraged because of the potential for the consultant's, or contractor's default after receipt of the advance payment, but before the service is performed. Advance payments for services should only be made if such payments are essential for the implementation of a necessary program. If advance payments are appropriate, the total of advance payments should not be more than 25 percent of the total contract amount. In addition, each advance payment should be based on actual services to be rendered.

Any contract which includes an advance payment must include a clause in which the contracting party warrants that advance payments will be used only for providing services. The contract must also require the return of any unexpended advance payments should the contract be terminated. Furthermore, the contract must provide that any advance payment over \$10,000 is to be deposited in an interest-bearing account and that any interest earned is to be used to reduce the contract price; however, the Board of Supervisors may waive this requirement. If a contract with advance payment(s) requires approval by the Board of Supervisors, the Board Report must justify the need for the advance payment(s) and state the amount and timing of any advance payment.

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The County Executive Officer, Auditor-Controller, or Risk Manager may condition an advance payment on the acquisition of performance and fidelity bonds naming the County as loss payee. Any such condition must be reflected in the language of the contract. The bonds must accompany the contract when it is delivered to the Board of Supervisors for its consideration or when it is delivered to the County Administrative Office, as applicable.

#### **1.4 Agreements not covered by this Manual.**

Certain contracts are governed by state or federal law; those provisions of law prevail over this Manual. Further, agreements for legal brief printing, legal notices, road construction or maintenance work, insurance services, or reimbursement for ordinary travel expenses are not covered by this Manual. Court-ordered expenditures, and purchases from the Inmate Welfare Fund (maintained by the Sheriff's Office) are not covered by this Manual. Agreements by the the Shasta Area Safety Communications Agency (SHASCOM), and the Shasta Interagency

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Narcotics Task Force (SINTF) are not covered by this Manual. Questions about agreements not covered in this Manual should be directed to County Counsel.

**1.5 Determining the correct procedure for acquiring property or obtaining services (Chart).**

The following chart indicates who is authorized to negotiate and sign the necessary documents for various kinds of contractual transactions and refers to the relevant provisions of this Manual (or to the Shasta County Code (SCC)) regarding the procedures that must be followed.

**Because this chart indicates only basic information, the references should always be consulted to be sure that County procedure is followed.**

Purpose	Monetary or Other Limitations	Who Has Authority	Reference
1. Buy routine materials, supplies, furnishings, or equipment	Items available from Blanket Purchase Order vendor.	Department orders directly from vendor, under the Blanket Purchase Order.	Manual Section 2.3
2. Buy materials, supplies, furnishings, or equipment	Each item or group of items costs \$2,000 or less. Items <u>not</u> available from Blanket Purchase Order vendor.	Department orders directly from vendor.	Manual Section 2.4
3. Buy materials, supplies, furnishings, or equipment	Items over \$2,000. Items not covered by Blanket Purchase Order.	Department sends Requisition to Purchasing, which issues Purchase Order to vendor.	Manual Section 2.5
4. Buy materials, supplies, furnishings, or equipment	When department wants assistance from Purchasing in locating best product at best price. No \$ limit.	Department sends Requisition to Purchasing, which orders item. Purchasing conducts formal bid if over \$25,000.	Manual Sections 2.1, 2.5 and 2.7
5. Buy capital asset	Item costing \$5,000 or more (capital asset) which is budgeted.	Department sends Requisition to Purchasing, which conducts formal bidding if over \$25,000. Purchasing issues Purchase Order to vendor.	Manual Section 2.5
6. Buy computer hardware or software; obtain software license	<i>All</i> such purchases, regardless of price.	Requires IT advance approval every time. If \$2,000 or more, department sends Requisition to Purchasing. If under \$2,000, department makes direct purchase.	Manual Section 2.5.3

Purpose	Monetary or Other Limitations	Who Has Authority	Reference
7. Lease or rent equipment (photo-copiers, microfiche equipment, tools, vehicles, etc.)	All leases and rentals of equipment or other personal property (may include maintenance of the leased or rented item). Can be an aggregate lease.	Purchasing prepares, negotiates, and signs rental/lease agreements. CEO signs if aggregate leases. Goes to Board of Supervisors if over \$50,000 over the entire term.	Manual Chapter 3.0
8. Lease office or storage space or other real property for use by County	Rent does not exceed \$7,500/month and term, with any extensions including any hold over period, is no more than 5 years.	Property located by County Administrative Office staff. Lease approved by County Counsel and Risk Manager and signed by CEO.	Manual Chapter 4.0
9. Lease office or storage space or other real property for use by County	Rent exceeds \$7,500/month or term, with extensions, is more than 5 years.	Property located by County Administrative Office staff. Lease approved by County Counsel and Risk Manager and signed by Board of Supervisors.	Manual Chapter 4.0
10. Obtain equipment maintenance services (main-tenance of photocopiers, typewriters, etc.)	All ongoing equipment maintenance agreements (see #11 for minor, one-time repairs).	Contract negotiated by Purchasing. Signed by CEO or approved by the Board of Supervisors, depending on amount. County Counsel and the Risk Manager must approve.	Manual Section 5.9
11. Obtain repair of equipment, tools, etc. (but not vehicles)	One-time repair, no more than \$2,000.	Department head arranges for repair. Submits claim to Auditor-Controller.	Manual Section 5.6.4
12. Repair, upgrades, or service to vehicles, boats, large equipment, and laboratory equipment	One-time repair or servicing, no more than \$5,000.	Department head arranges for repair. Submits claim to Auditor-Controller.	Manual Section 5.6.4

Purpose	Monetary or Other Limitations	Who Has Authority	Reference
13. Obtain personal services	Compensation from \$0 to \$10,000.	Department head can sign (but only if complying with Section 5.6.3). Please note that for select services totaling \$5,000 or less, a simplified PO for services form may be used if the service meets the criteria cited in Administrative Manual 2-201.	Manual Section 5.6.3
14. Obtain personal services	Compensation over \$10,000 but not over \$50,000 over entire term. Uses standard agreement format and complies with Sections 5.6.1 and 5.6.2.	Department prepares using standard format. CEO signs.	Manual Sections 5.6.1 and 5.6.2
15. Obtain personal services	Compensation from \$0 to \$50,000 over entire term. Does <i>not</i> use standard agreement format.	Department negotiates and drafts agreement. Approved by County Counsel and Risk Manager. Signed by CEO. See Section 5.6.2 for those agreements under \$50,000 which must go to Board of Supervisors.	Manual Section 5.6.1, SCC Section 3.04.010
16. Obtain personal services	Over \$50,000.	Department negotiates and drafts agreement. Reviewed by County Counsel, Risk Manager and County Administrative Office staff. Approved by Board of Supervisors.	Manual Section 5.7
17. Obtain a series of related services ("aggregate personal services agreement")	Not more than \$50,000 for aggregate of all services, including any travel or materials costs, over entire term.	Department negotiates agreement. County Counsel and Risk Manager approve. Signed by CEO. Administered by department.	Manual Section 5.8
18. Take part in a fair, symposium, etc.	Consideration under \$3,000, limited term, other conditions.	Department head signs space lease, entry fee agreement, etc.	Manual Section 5.6.4

Purpose	Monetary or Other Limitations	Who Has Authority	Reference
19. Real property maintenance services	All real property (building or fixtures) maintenance agreements.	Negotiated by Public Works. Signed by CEO if up to \$50,000 over entire term, If over \$50,000 Board of Supervisors approves. County Counsel and the Risk Manager approve.	Manual Chapter 6.0
20. Construct small public works project (remodel, repairs to structures or fixtures, minor construction)	Not more than \$45,000, including labor and materials. May be "aggregate public works contract," similar to #17 above. Not applicable to maintenance contracts.	Public Works or IT as permitted by this Manual negotiate contract. Approved by County Counsel and Risk Manager. Signed by Public Works Director or Chief Information Officer as permitted by this Manual if under \$10,000, by CEO if \$10,000-\$45,000.	Manual Chapter 6.0
21. Construct public works projects	In excess of \$45,000.	Bidding and contract handled by Public Works. Contract approved by County Counsel and Risk Manager, reviewed by County Administrative Office Staff and approved by Board of Supervisors.	Not covered by this Manual
22. Obtain printing or copying services	Up to \$2,000.	Use of Opportunity Center recommended for copying. Should obtain quotes for printing. Department orders directly.	Manual Section 2.4.3
23. Obtain printing or copying services	\$2,000 or more.	Use of Opportunity Center recommended for copying. For printing, 3 quotes required. Requisition to Purchasing, which places order.	Manual Section 2.4.3
24. Purchase advertising space or services	Varies by department and type of advertising.	Limited authority to department heads and CEO.	Manual Section 5.11
25. Pay for memberships, licenses, permits, or certifications	Varies.	Limited authority to department heads and CEO.	Manual Section 2.4.2

## **Chapter 2.0 PURCHASES OF SUPPLIES, EQUIPMENT, AND OTHER PERSONAL PROPERTY**

### **Section 2.1 Purchasing Division's role in the purchase of personal property.**

This Chapter deals with the purchase of materials, supplies, furnishings, equipment, and any other kind of “personal property” (property which is movable -- not permanently affixed to a building or to the ground), even if part of the purchase price includes a separate charge for incidental services such as fabrication, delivery, set-up, installation, testing, or training.\*

This Chapter does *not* apply to agreements for expert or professional services or other personal services, or public works projects. (See Chapter 5.0 for personal services agreements and Chapter 6.0 for public works contracts costing less than \$45,000.)

Except as otherwise provided by law, by the provisions of this Manual, or by action of the Board of Supervisors, **all** purchases of materials, supplies, furnishings, or equipment required by any department shall be made on behalf of the County by or under the direction of the Purchasing Agent in accordance with the procedures prescribed in this Manual. The County Executive Officer is the County’s Purchasing Agent. (Shasta County Code, Section 3.04.010) The Director of Support Services and the staff of the Support Services Purchasing Division are hereby designated deputy purchasing agents.

Departments may only make direct purchases from vendors when the vendor has a “blanket purchase” arrangement with the County (see Section 2.3) or when purchasing goods costing \$2,000 or less (see Section 2.4). All other purchases must go through the Purchasing Division.

The Purchasing Agent retains **sole** authority to establish, amend, or close all accounts with vendors, including credit card accounts.

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\* The test for determining whether the County is making a purchase of goods rather than acquiring services is the end product sought. If the County is getting a product (even though some incidental labor is involved), use the purchasing procedure. If the contract is primarily aimed at acquiring a consultant’s or contractor’s specialized skills (even though those skills may be used in connection with improving personal property owned by the County), use the procedure for personal services agreements. If in doubt, contact County Counsel. If the Department is acquiring goods costing over \$2,000 and incidental services cost are not more than 25 percent of the total cost being charged by the vendor, see Section 2.5.5 of this Manual. Otherwise, charges for ongoing maintenance can be paid only if a maintenance (personal services) agreement is executed in accordance with Chapter 5.0 of this Manual.

County employees are not authorized to enter into “oral contracts” to purchase personal property. All purchases must be accompanied by written or electronic documentation, except for: (1) utility and fuel purchases (Section 2.12), (2) purchases from petty cash accounts (Section 2.13), and (3) certain emergency purchases (Section 2.10). The department must use one of the following for the purchase of materials, supplies, furnishings, equipment, or other goods in an amount over \$2,000:

- A Requisition Form (completed by the department to request a purchase order);
- A Purchase Order (completed by Purchasing Division staff using the department's requisition form); or
- A properly executed contract.

The Requisition Form and Purchase Order and their uses are described in detail in Sections 2.5.1 through 2.5.6. Note that departments are prohibited from using any Requisition Form or Purchase Order form other than the forms approved by the Purchasing Division except that departments may generate an informal purchase order via the County's financial management system if the purchase is under \$2,000.

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In addition to issuing Purchase Orders and negotiating contracts with vendors for the purchase of goods and equipment, Purchasing Division staff consult with departments in order to assist with the purchasing process. Purchasing Division staff have specialized knowledge of a large variety of products, product specifications, and vendors. If a department is unaware of the identity of a vendor for a particular product, Purchasing Division staff will locate an appropriate vendor. If the department has already identified a vendor, Purchasing Division staff will either approve the vendor or help the department select an alternate vendor whose product may be a better value to the department.

**2.2 Limitations on items which may be purchased.** State law limits the things that a County may purchase. In general terms, a County, acting through its Board of Supervisors, or through an official to whom contracting authority has been delegated, may purchase only those items *necessary* to carry out the *authorized* activities of the county. Consequently, purchases of unauthorized items will not be reimbursed by the Auditor-Controller unless the purchase is ratified by formal action by the Board of Supervisors upon a finding that the purchase was necessary and appropriate.

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Before requesting or making a purchase, departments should be sure that state law, a County ordinance or resolution, applicable grant conditions, or this Manual authorize the purchase. If the purchase is not already specifically authorized, advance approval by the Board of Supervisors must be obtained; if not, the person making the purchase could be held *personally* liable for paying the vendor's charges.

Approval for purchase of the following items has been delegated to the County Executive Officer. Departments must obtain CEO approval of these items in advance of authorizing any purchase:

- Promotional items (T-shirts, hats, banners, table decorations);
- Food and drink dispensed to guests or volunteers;
- Plaques or other mementos to volunteers or other non-employees (although plaques or mementos of nominal value may be purchased for Board-appointed members of subordinate or advisory boards); and
- Plaques or other mementos to employees exceeding \$150. (See the Shasta County Personnel Rules, Section 36.8.)

The Board of Supervisors may, upon a department's request, adopt a resolution allowing for purchases of the above items without CEO approval. The resolution can be open-ended to allow for future purchases. The department proposing the resolution should specify the type of item to be purchased and the maximum to be spent. See Administrative Policy 5-205 regarding providing refreshments for County employees at County-sponsored trainings or meetings.

Note also that departments are not authorized to pay for promotional events such as department picnics, banquets, or awards ceremonies; prior approval by the Board of Supervisors is required. On the other hand, a department head may enter into a personal services agreement to take part in a health fair, parade, or public program to disseminate information or provide services to the public, if the cost will not exceed \$3,000 per County fiscal year (July 1 through June 30) and certain other conditions are met. (See Section 5.6.4.)

### **2.3 Acquisition under a County Blanket Purchase Order.**

Blanket Purchase Orders are contracts with selected vendors that supply specific goods which can be bought in quantity (such as office supplies and paper products). The goods are supplied at specified contract prices and are often substantially discounted. Using Blanket Purchase Orders reduces overall administrative costs and expedites the delivery of goods.



When a Blanket Purchase Order number has been issued by the Purchasing Division, departments may order *directly* from that vendor without going through the Purchasing Division.

In order to obtain the discounts given by Blanket Purchase Order vendors, the County usually agrees to use those vendors exclusively for the purchase of all the items covered by the Blanket Purchase Order. For this reason, *departments should not order outside a Blanket Purchase Order even if the department can buy the same items elsewhere at a lower price.* The Purchasing Division will advise departments when Blanket Purchase Order numbers have been issued and will provide updated information concerning their use. After making a purchase, the department submits an electronic Authorization for Release of Funds that contains scanned copies of original invoices and any other supporting documents that references the blanket purchase order.

Blanket Purchase Orders may not ordinarily be used to acquire a capital asset (that is, an item or group of related items having a useful life exceeding one year and costing over \$5,000). However, the Sheriff, the Fire Warden, and the Director of Support Services or Public Works may use a Blanket Purchase Order to obtain routine upgrades (such as painting or installing safety equipment or other components) to previously acquired vehicles, boats, and heavy equipment, in an amount not to exceed \$5,000 per upgrade. (See Section 2.5.1.)

#### **2.4 Acquisition by department's direct order to the vendor.**

When there is no Blanket Purchase Order covering a specific item or related groups of items, the department head can purchase the item(s) directly from the vendor without going through the Purchasing Division, so long as the total cost is less than \$2,000 (including tax, delivery, and set-up charges). "Invoice splitting," that is, dividing an order into invoices of less than \$2,000 each in order to avoid having to use a requisition, is prohibited.

In order to assist departments with tracking these types of purchases, the ~~County's financial management~~ system allows for the pre-encumbrance of purchases of less than \$2,000, at the discretion of the department, using "informal purchase orders," which are created for memo purposes only. Departments may print copies of their own informal purchase orders from ~~the County's financial management system~~. The informal purchase order is clearly identified as only being "valid on purchases for less than \$2,000." The informal purchase order may never be used as a Purchase Order (that is, a Purchase Order for items costing \$2,000 or more), because a

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formal Purchase Order must originate from the Purchasing Division, requires original signatures, and is a legal and binding contract. (See Section 2.5.)

To avoid a conflict of interest, direct purchases from County employees, their spouses, registered domestic partners, or dependents are prohibited. Department staff should make purchases from recognized, responsible vendors only and cannot have an economic interest in the transaction.

This section also applies to the rent or lease of items with total consideration of less than \$2,000. This would include the rent or lease of items such as small equipment, but excludes copiers, postage machines, or any other items covered by an existing agreement entered into by the County.

#### **2.4.1 Advance payments for purchases of goods or equipment.**

With regard to most purchases of goods, payment is made to the vendor after the department has received the goods and has processed the invoice electronically via workflow (see Section 2.3). However, some vendors (notably book publishers) will not deliver their goods unless payment is made in advance. To avoid requiring County employees to pay for goods and then seeking reimbursement after delivery, the following authority is delegated to department heads and to the Auditor-Controller. Except as allowed by this subsection 2.4.1, advance payments for the purchase of goods must be approved by the Board of Supervisors.

Upon written request of the department head, the Auditor-Controller may issue a County check for the advance payment for goods under the following conditions:

- The cost of the goods, including tax, shipping and set-up is less than \$5,000;
- The acquisition or use of the goods is normal and customary for the department; and
- The department head has not split the purchase in order to keep the total purchase price below the allowed maximum.

Otherwise, requests for advance payments of \$5,000 or more submitted by a department will be included on the weekly Claims List or presented by Board Report to the Board of Supervisors for its approval. When a Purchase Order is required, the Purchasing Division shall make note of the Board-approved advance payment on the Purchase Order before it is issued.

Within 10 days of the department's receipt of the goods costing less than \$5,000 and paid for in advance pursuant to this subsection, the department head shall forward to the Auditor-Controller written proof of receipt of the items, such as a packing slip or proof of delivery.

Advance payments for routine and customary items such as prepaid books and magazine and newspaper subscriptions, including on-line subscriptions (see Section 2.5.3), will be expensed at the time of payment and will not be treated as an advance payment.

This Section 2.4.1 does not authorize advance payments for services or for public works construction projects.

#### **2.4.2 Memberships, licenses, range fees, certifications, and permits.**

Many departments, department heads, or their delegated representatives are members of professional associations (such as the Child Support Directors' Association, the California District Attorneys Association, or the California Association of Treasurers/Tax Collectors), which have as their primary purpose the advancement of the interests of their members. Many of these associations are affiliated with or sponsored by the California State Association of Counties (CSAC). These professional associations ordinarily provide continuing education, training, and other professional services. Annual memberships in these associations may be paid by the Auditor-Controller upon the submission of a request for payment and invoice submitted electronically via workflow by the department if the total membership fees for that department are \$10,000 or less, provided that the Auditor-Controller determines the expenditure is normal and customary. If the annual membership fees for the department are more than \$10,000, or if the Auditor-Controller determines that the expenditure is not normal and customary, County Executive Officer approval is required.

Many County employees are required to have a license or certification in order to perform their work for the County. For example, attorneys must be licensed by the State Bar of California and Waste-Water Operators and Public Health Microbiologists must have a license or certification. If authorized by a Memorandum of Understanding with a labor organization, or by other action of the Board of Supervisors, the Auditor-Controller may process payments for those required licenses or certifications upon the department's submission of a request for payment form or invoice submitted electronically via workflow.

The District Attorney, Public Defender, County Counsel, and Director of the Department of Child Support Services are authorized to submit and process electronic requests for payments to the California State Bar for annual State Bar Dues for the attorneys in their respective offices.

The Sheriff, District Attorney, Public Defender, and Chief Probation Officer are authorized to submit and process electronic requests for payments for firing range fees for sworn personnel who are required to carry a weapon on duty.

Permits issued by an agency of the state or federal government, and required for a routine activity of the department, may be submitted for payment and processed electronically by the department if the fee for the permit is less than \$2,000. If the fee for the permit is between \$2,000 and \$10,000, it may be submitted and processed electronically if previously approved by the County Executive Officer.

Any other membership, license, certification, or permit fee must be presented to the Board of Supervisors for approval for payment, either by placement on the weekly Claims List, or as a specific agenda item.

#### **2.4.3 Printing or copying services.**

Department heads are authorized to order specific printing or copying jobs costing less than \$2,000 directly from the printing or copying company. The department should obtain quotes from two or more vendors before placing the order. When payment is due, the department must submit an electronic request for payment.

If the printing or copying job will cost \$2,000 or more, three quotes are required. The department must then forward the quotes, with the Requisition Form or submit the quotes and requisition electronically via workflow, to the Purchasing Department, which will place the order.

Note that the Opportunity Center provides photocopying and binding services to County departments. Departments are encouraged to use the Opportunity Center for projects of any size. Soliciting quotes from other providers is not required if a department uses the Opportunity Center for these services.

#### **2.4.4 Elections materials and polling places.**

The Registrar of Voters may directly authorize payment by an Authorization for Release of Funds form and invoice submitted electronically via workflow, rather than Purchase

Order, for postage , delivery/courier services, and printed paper goods (such as ballots, ballot inserts, and envelopes) needed for the conduct of any election. The Registrar of Voters may also directly authorize payment by an Authorization for Release of Funds form and invoice submitted electronically via workflow for the items (such as extension cords, writing supplies, posters, and flags) necessary to maintain the individual precinct supply kits. In addition, the Registrar of Voters may sign short-term licenses or agreements for space to be used as a polling place where the space is to be used for fewer than twenty days.

## **2.5 Requisition Forms and Purchase Orders.**

### **2.5.1 When to use a Requisition Form.**

A Requisition Form must be used when purchasing an item of goods or group of related items of goods costing more than \$2,000 for which a Blanket Purchase Order is not available, or when purchasing a capital asset. Requisition Forms and Purchase Orders must be issued prior to the department placing the order (See Section 2.10 regarding emergency purchases).

A capital asset is any individual item of goods or group of related items of goods having a useful life exceeding one year which costs \$5,000 or more (including tax, delivery costs, and all costs to put it in place in working condition). The Purchasing Division buys capital assets on behalf of departments pursuant to requests made on a County-approved Requisition Form by which the department asks for the purchase of supplies, materials, furnishings, or equipment.\* The only way to acquire these items is by using the Requisition Form method. There is no other method. Acquisition of these items must be accomplished by the Purchasing Division, and not the department staff, even if the items are to be leased, lease/purchased, or rented. (See, however, Section 2.3, which allows the Sheriff, Fire Warden, the Director of Support Services, and the Director of Public Works to use a Blanket Purchase Order to pay for upgrades to vehicles, boats, and large equipment; and Chapter 3.0 regarding leasing or renting equipment or other personal property.)

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\* Note that most routine non-capital-asset purchases are made by the departments themselves. See Section 2.3 of this Manual for purchases under a Blanket Purchase Order, and Section 2.4 for direct orders to vendors for items or groups of items of less than \$2,000 when no Blanket Purchase Order covers the item to be purchased.

Requisition Forms for capital assets should be submitted as early in the County fiscal year as possible (but after the adopted budget is approved by the Board of Supervisors) to ensure timely delivery, as well as to facilitate bidding of orders for groups of similar products.

When submitting a Requisition Form for a capital asset, any available trade-in item should be described fully on the Requisition Form (by County inventory number, make, model, condition, location, etc.). If the item being replaced is to be disposed of by other than trade-in, refer to Administration Policy 5-201, "Disposition of Surplus Personal Property."

"Invoice splitting" in order to avoid the need for a Requisition Form is prohibited.

#### **2.5.2 Preparing the Requisition Form.**

The Requisition Form is available electronically in the County's financial management system or from the Purchasing Division in hard copy or by e-mail. The Requisition Form provides a record of the purchase and approval of the commitment of funds.

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The department prepares the Requisition Form. One copy is sent to the Purchasing Division either by hard copy or submitted electronically via workflow and one copy is retained by the department. If the Requisition Form is submitted by e-mail, the department must follow-up by sending a hard copy of the Requisition Form to the Purchasing Division.

The description of each item of goods in the Requisition Form must be sufficient to enable the Purchasing Division to proceed without asking for more information. Items of goods should be described by their common names, supplemented by size, catalog number, or other identifying data. A catalog page or other supporting documentation should be attached to the Requisition Form.

In some instances, the Requisition Form should be accompanied by a sample. For example, a Requisition Form for special folders which must be of a certain weight or style or have fasteners in specified locations, must be accompanied by a sample or a sufficiently detailed description of the goods.

When requesting the purchase of a specialized item of goods, the department must avoid using a "closed" description or specification which describes the goods of only one manufacturer, thereby preventing competition. Specifications should not be based upon a particular brand, but rather upon a performance standard. If the department is convinced its needs can be met only by a particular supplier, written justification must accompany the Requisition Form.

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The department ~~should~~ provide a **specific** delivery date; terms such as “ASAP,” “rush,” or “urgent” are inadequate. “ASAP” to a vendor might mean two months, but 10 days to the department. It is the responsibility of the department to advise the Purchasing Division if the shipment does not arrive by the date specified. (See Section 2.6.1.)

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Both the vendor and the Purchasing Division appreciate adequate lead-time in filling an order. The department should consider such factors as the urgency of need, the quantity on hand, and the rate of anticipated use and should allow for adequate time for procurement. If there is a question concerning the length of time required to assure delivery, the Purchasing Division should be consulted. Departments should allow a few extra days for unforeseen circumstances, such as mail or shipment delays.

All capital asset purchases made for a department are encumbered to a specific line item assigned by the Auditor-Controller. The signer of the Requisition Form (the department head or designee) certifies that the goods requested are necessary for the operation of the department and that sufficient unencumbered funds are available in the designated account. The automated Purchase Order system will not approve the printing of a Purchase Order unless funds are available in the proper Budget Unit. When a funds transfer is needed, the department may not submit the Requisition Form pending the transfer; the department must wait until the Auditor-Controller has registered the funds transfer before submitting the Requisition Form to the Purchasing Division.

Whenever possible, the Purchasing Division will consolidate the Requisition Forms of a number of County departments into bulk purchases to be offered to vendors for bid. As a result, the Purchasing Division may hold a department's Requisition Form until receipt of similar Requisition Forms from other departments. The urgency of need as indicated on the Requisition Form will determine how long a Requisition Form will be held. The Purchasing Division will contact the department if a Requisition Form is being held beyond the normal processing time.

### **2.5.3 Purchases of computer hardware/software.**

A County department may not purchase computer hardware or software or enter into a database access agreement or software support/maintenance or licensing agreement without the prior approval of the Information Technology Department (IT). IT must also

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approve any subscription to an online service that requires the installation of a browser or other software onto a County computer.

All purchases, regardless of the dollar amount, of computer hardware and/or software, including switches and cabling, or photocopiers or facsimile machines which are capable of being connected to the County network or a computer, must be approved by IT either on paper or submitted electronically via workflow prior to submission to the Purchasing Division. When a hard copy Requisition Form is utilized an IT approval stamp with an authorized signature must be on the Requisition Form for the Purchasing Division to accept it. This applies to both IT supported and non-supported computer equipment.

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However, the District Attorney and Sheriff need not obtain IT approval for the purchase of computer hardware or software, or the execution of software licensing/support agreements, to be used in connection with the investigation or prosecution of specific instances of a suspected criminal offense. Nevertheless, if the suspected criminal offense involves a County computer, the District Attorney and/or Sheriff must consult with the Chief Information Officer or the County Executive Officer before installing or using the computer hardware or software or before removing any computer hardware or software from a County computer.

Prior to entering into a contract for software support or maintenance or an online service that requires installation of a browser or other software onto a County computer, the department must obtain the approval of IT. Approval must be indicated by an IT approval stamp with authorized signature or by having the Chief Information Officer, or his/her authorized designee, sign off on the agreement itself. (With respect to the signing authority for computer-related agreements, see Section 5.6.1.)

When the department is negotiating a contract for the purchase of software, the department must consult with IT as to the advisability of requiring the vendor to place the source code into escrow (and authorizing County access to the code), or allowing the County to retrieve data stored with the vendor. This “side agreement” must be approved as to form by IT and County Counsel.

#### **2.5.4 Using a Purchase Order.**

As stated in Section 2.3, a department may order items (except for capital assets) directly from a vendor under a Blanket Purchase Order. If the needed item is not available, Section 2.4 allows the department to order items for less than \$2,000 directly from another

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vendor. Except as provided in Section 2.5.5, personal services may not be obtained using a Purchase Order.

For purchases of \$2,000 or more (tax, delivery, and set-up included), the Purchasing Division must be utilized. The Purchasing Division will issue a Purchase Order after a vendor has been selected. The Purchase Order names the ordering department, provides a “ship-to” point, states payment terms and delivery charges, if any, and certifies sufficient funds have been encumbered for payment to the vendor. The Purchase Order constitutes a binding contract between the County and the vendor.

The Purchasing Division will distribute Purchase Order copies to the appropriate parties, including the department (if submitted on paper). If submitted electronically, the department can look up the Purchase Order form in the County’s financial management system.

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The Purchasing Division does not ordinarily issue Purchase Orders for purchases amounting to less than \$2,000 (tax, delivery, and set-up included). For those purchases, the department may use an “informal purchase order” when filling the order (see Section 2.4). However, if a vendor requires a formal purchase order, one may be requested using the same process as outlined in Section 2.5.1 and after attempting to utilize the informal purchase order process.

#### **2.5.5 Using a Purchase Order for incidental services.**

Sometimes, when a vendor is providing goods for \$2,000 or more, the vendor will also be providing one or more incidental services (such as fabrication, delivery, set-up, installation, testing, maintenance, support, or incidental training) with the goods. If the price of all incidental services is no more than 25 percent of the total cost, or if there is no additional charge for the incidental services, then a Purchase Order may be used to purchase the incidental services along with the goods. If the incidental services will be provided at a County worksite, the Hold Harmless Addendum (**ATTACHMENT G**) must be signed by the vendor and department head and attached to the Purchase Order. If the charge for all of the incidental services is over 25 percent of the total cost, the department must process a separate personal services agreement for the incidental services.

A department head may also execute subsequent renewals for the services described in this section, using a Purchase Order, as long as all of the following requirements are met:

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- 1) The cost of the incidental services do not increase more than 10 percent over the previous period (for example, compare the cost of one-year of services to the cost of one-year of the same services during the renewal period), or there was no additional charge on original purchase;
- 2) The vendor provides a quote or agreement that includes:
  - ♦ The beginning and end dates (renewal period not to exceed three years) for the incidental services.
  - ♦ The total cost or a “not to exceed” cost for the services.
  - ♦ A description of the services to be provided;
- 3) All applicable approvals from Information Technology, Facilities Management, Fleet Management, or Risk Management have been obtained;
- 4) If the incidental services will be provided at a County worksite, the Hold Harmless Addendum (ATTACHMENT G) must be signed by the vendor and the department head and attached to the Purchase Order.

This section does not apply to certain heavy equipment, boat, and vehicle servicing and repairs. (See Section 5.6.4).

With regard to the purchase or lease of personal property with total consideration of less than \$2,000, no Hold Harmless Addendum or personal services agreement is needed, so long as the object of the transaction is to acquire goods rather than obtain a service. (See Section 2.6.3.)

Splitting orders to avoid having to obtain a Purchase Order is prohibited.

#### **2.5.6 Canceling a Purchase Order.**

The department and a vendor may agree that a Purchase Order should be canceled. The department should promptly notify the Purchasing Division of the decision to cancel the Purchase Order.

The Purchasing Division must be notified at once by the department of any difficulty with a Purchase Order and the Purchasing Division will notify the department of any vendor problem. If it is agreed by the department and the Purchasing Division that cancellation of the Purchase Order is appropriate, the department must send a memo to the Purchasing Division, stating the reason(s) for cancellation. The Purchasing Division will cancel the

Purchase Order and notify both the vendor and the Auditor-Controller of the cancellation. The Auditor-Controller will eliminate the purchase from the schedule of encumbrances.

## **2.6 Post-acquisition activities.**

### **2.6.1 Returns, exchanges, and repairs.**

With regard to goods purchased by the Purchasing Division on behalf of a department, the Purchasing Division should be advised immediately of any problems that arise, including late shipments, wrong goods, damaged goods, defective goods, or breakdown of goods under warranty. The Purchasing Division will arrange for returns or exchanges and repairs.

Under no circumstances should a department return goods costing more than \$2,000 without first consulting the Purchasing Division. In the case of returned goods, a Return Authorization (RA) number must be obtained from the vendor by the ordering department.\*

For goods ordered directly by the department, the department is responsible for resolving all problems which may arise.

### **2.6.2 Payment of invoices of \$2,000 or more.**

When a department receives an invoice from a vendor, the department must confirm that the purchase price on the invoice is the same as the price on the Purchase Order, provided no previous arrangement has been made for a change due to an increase or decrease in the quantity ordered or for other good cause. If the price on the invoice does not correspond to the amount on the Purchase Order (or the modified amount), the invoice must be referred back to the Purchasing Division for correction or approval before payment is made. However, a referral back to the Purchasing Division is not required in the case of invoices for printing or copying, when there is a variance of 10 percent or less in the quantity of documents supplied.

The department must also verify the amount of sales tax on all invoices. Goods picked up in other counties are assessed the sales tax that is in effect in that county. Goods purchased at a price for delivery in Shasta County are assessed the Shasta County sales tax rate. Sometimes when out-of-state vendors are used, sales tax is not charged. However, California requires the County to pay a use tax on such purchases. For untaxed purchases, two additional lines must be added to the electronic request for payment. The first additional line, for sales tax,

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\* The department should note that a "restocking" fee may be incurred for returned goods.

must debit the same Cost Center and expenditure account used to pay the invoice. The second additional line will be a credit (bracketed) to 00961-007400, Use Tax Payable. Both lines, when added together, will equal zero and the description will be County Use Tax.

Contact the Auditor-Controller for current sales or use tax rates.

Delivery charges are customarily added to the invoice. However, if the Purchase Order indicates “FOB Destination,” no delivery charges should be added.

Departments should process invoices on a timely basis, particularly when a discount is offered for prompt payment. “Net 30” offers no discount, but “5%/20” means the department may deduct five percent of the invoice (excluding any freight charges) if the vendor receives payment within 20 days of the invoice date or 20 days after acceptance of delivery, whichever is later. If the vendor offers a discount of “2%-10th prox,” two percent may be deducted if the invoice is paid by the 10th of the following month.

#### **2.6.3 Payment of invoices less than \$2,000.**

When the department receives an invoice of less than \$2,000, the department must submit an electronic request for payment form to the Auditor-Controller for payment. Any invoice for purchase of computer hardware or software, or subscription to an on-line service that requires the installation of a browser or other service onto a County computer, must be pre-approved by IT (see Section 2.5.3).

#### **2.7 Competitive procurement for the purchase of goods.**

Ordinarily, the best price for any goods can be obtained by using competitive procurement practices (including, but not limited to, bids or quotations). In fact, most County purchases are made by way of such competitive procurement practices. For example, the Purchasing Division solicits bids, or formal or informal quotes, when buying goods. Blanket Purchase Orders are ordinarily put into place only after a competitive procurement process (usually formal bidding) has been completed, so departments need not be concerned about competitive procurement when making orders under a Blanket Purchase Order.

When a department intends to make a purchase directly from a vendor, the department should check prices with two or more potential vendors, depending on the likely cost of the goods. The amount of effort devoted to competitive procurement efforts should be proportionate to the potential savings to be realized. The competitive procurement process utilized should be noted in the Board Report when the Board of Supervisors’ approval for the purchase is required.

Chapter 3.04 of the Shasta County Code governs the County's competitive procurement practices for the purchase of personal property. That Chapter should be referred to for specific information. However, in general terms, the provisions of Chapter 3.04 of the Shasta County Code can be summarized as follows:

- The general rule is that all purchases should be based on competitive procurement practices, including formal or informal bids and quotes.
- Purchases of \$25,000 or less may be made on the open market without using formal bids or quotes. However, whenever possible, the Purchasing Division will solicit informal quotes or proposals for all major purchases of \$25,000 or less. An informal solicitation may be made in writing or by telephone.
- The Purchasing Division may waive competitive procurement practices if there are limitations on the source of supply or restrictions on specifications, when there is an urgency to prevent loss of life or damage to property, or when another substantial reason for waiving the practices exists. However, if the cost of the purchase would or could exceed \$50,000, only the Board of Supervisors may waive competitive procurement practices.
- As specified in Shasta County Code Chapter 3.04, formal bidding procedures must be used if the cost of a purchase of related items of goods commonly sold by a class of vendors would or could exceed \$25,000.
- The award of any bid for over \$50,000 requires advance approval of the Board of Supervisors.

## **2.8 Local preference.**

The Shasta County Code grants a five percent preference, not to exceed \$10,000, to local vendors who submit bids when formal, sealed bids are solicited by the Purchasing Division (Shasta County Code, Section 3.04.045). In other words, in determining the lowest bid, a local bidder's bid will be deemed to be five percent lower than it is. Note that the local preference applies to the purchase of goods only, and not to public works contracts, leases, or personal service agreements. The local preference also does not apply when determining the lowest bid for items purchased with federal or state grant funds unless applicable federal statutes mandate or encourage a geographic preference. (45 C.F.R. §92.36)

## **2.9 Preference for environmentally sensitive products.**

It is the policy of Shasta County that departments purchase and use recycled/renewable products whenever the fitness, quality, and price of the product is otherwise equal to or better than the non-recycled or non-renewable alternative. Special emphasis should be placed on the purchase of products manufactured with post-consumer recycled materials. Departments must require their vendors, contractors, and consultants to use and specify recycled and other environmentally preferable products in fulfilling contractual obligations whenever practicable.

Factors that should be considered when determining if goods are an environmentally preferable product include, but are not limited to:

- Minimization of virgin material use in product life cycle
- Maximization of recycled products used in product life cycle
- Environmental cost of entire product life cycle
- Reuse of existing products or materials in product life cycle
- Recyclability of product
- Minimization of packaging
- Reduction of energy/water consumption
- Toxicity reduction or elimination
- Elimination of uncertified hardwoods in product life cycle
- Durability and maintenance requirements
- Ultimate disposal of the product

As required by section 10409 of the Public Contract Code, departments must purchase lubricating oil and industrial oil from the vendor whose oil product contains the greater percentage of recycled oil, if the availability, fitness, quality, and price of the recycled oil product is otherwise equal to, or better than, virgin oil products. However, section 10409 does not prohibit the purchase of virgin oil products for exclusive use in vehicles whose warranties expressly prohibit the use of products containing recycled oil.

The Purchasing Division is required to coordinate the implementation of section 10409. Vendors, both private and public, are to be encouraged to make recyclable products and unbleached paper products available for purchase. The Purchasing Division is required to establish and maintain a list of those recycled products that should be purchased by all departments whenever practicable. New products containing recycled material must be added to

the recycled products list as they become available. The Purchasing Division is required to make available to all departments the specifications of products on the recycled products list and their suggested uses. The Purchasing Division is also required to work with departments to establish minimum recycled content standards for designated recycled products to maximize recycled product availability, recycled content, and competition.

It is also the County's policy to integrate the concept of resource conservation into its environmental programs by making resource conservation an integral part of its waste reduction and recycling programs, by decreasing the amount of waste of consumable materials by reducing the consumption of consumable materials wherever possible, by fully utilizing all materials prior to disposal, and by minimizing the use of non-biodegradable products wherever possible.

Departments shall cooperate with, and participate in, recycling efforts being made by any city within the County. As systems for recovering waste and recycling develop, departments shall participate by appropriately separating and allowing recovery of recyclable waste products.

Representatives of the County shall actively advocate, where appropriate, for resource conservation practices to be adopted at the local, regional, and national levels. The County will promote the use of recycled products by publicizing this procurement policy whenever practicable.

The Director of Support Services will be responsible for the annual review of this section of the Manual.

#### **2.10 Emergency purchases.**

An emergency exists when an item must be purchased in order to ensure the continued operation of the office or department, or when necessary for the preservation of life or property. (See Shasta County Code, Section 3.04.120.)

During regular working hours, any purchase of \$2,000 or more required to alleviate an emergency must be made by advising the Purchasing Division of the circumstances constituting the emergency and requesting a Reserved Purchase Order Number. Such requests may be made by telephone, but must be immediately followed by a Requisition Form referencing the Reserved Purchase Order Number that has been assigned. A Purchase Order will be prepared by the Purchasing Division upon receipt of the department's Requisition Form. Emergency purchases of \$2,000 or more may be made directly from a vendor if the Purchasing Division is not open. Such purchases and the facts constituting the emergency must accompany the department's

Requisition Form, which must be forwarded to the Purchasing Division the next working day at which time a Purchase Order will be prepared.

A department head is authorized to make emergency purchases of less than \$2,000 without going through the Purchasing Division.

Note: In order for the Auditor-Controller to pay for capital asset items (items or related items costing \$5,000 or more and having a useful life exceeding one year) purchased on an emergency basis, the department must retroactively obtain the approval of the County Executive Officer (for capital assets costing \$20,000 or less) or the Board of Supervisors (for capital assets costing more than \$20,000).

#### **2.11 Purchase of goods through state or multi-agency purchase programs.**

The Purchasing Division is authorized to purchase supplies and equipment as needed for and on behalf of the County from the State of California Department of General Services, Office of Procurement, or other governmental or multi-agency programs which have competitively bid for those supplies or equipment. This includes purchases from the “Cooperative Purchasing” program, surplus property program, and other similar programs administered by the State of California Department of General Services, as well as programs of the Western States Contracting Alliance, the California Multiple Award Schedule, and California State Association of Counties (“CSAC”).

When purchases are made through one of these programs, formal and informal bid procedures need not be followed as the sponsoring governmental entity, as part of the program, has complied with bidding and purchasing procedures required by law.

#### **2.12 Payment of routine utility and vehicle fuel bills.**

Payments for periodic and routine utility and vehicle fuel charges may be authorized by department heads and reimbursed by way of electronically submitting a request for payment, provided that purchases are within the limits of the appropriated budget item. Gasoline or diesel for County vehicles should, when possible, be purchased with a County credit card. When such purchases are made with an employee's cash or credit card an electronic request for payment may be submitted to the Auditor-Controller's office for payment.

Except in emergencies, vehicle repair costs and purchases of items for County vehicles must be approved in advance by Fleet Management Division of Public Works. (See Administrative Policy 8-103, Fleet Management Program.)



### **2.13 Purchases from petty cash accounts.**

The Auditor-Controller is authorized to establish petty cash (revolving fund) accounts for individual departments. These accounts, usually ranging from \$25 to \$500, may be used for authorized purchases of small items or services (e.g., stamps or shipping), or for reimbursement of such expenditures, only when the department has an urgent need that prevents the department from utilizing the regular claim process. Petty cash funds may not be used to make change or to pay for employee travel-related expenses.

The Auditor-Controller has developed a standard reconciliation form, called a Petty Cash or Revolving Fund Reconciliation Form, which departments must use to document expenditures from, and to replenish the money in, the department's petty cash account. The form must be accompanied by original receipts.

The petty cash account system does not give a department or department head any additional purchasing or contracting authority. The Auditor-Controller will deny any request for payment or invoice submitted electronically via e-mail for the purchase of goods or services, using a petty cash or revolving fund account, which is not in conformance with County policy. It is a violation of state law and this policy to use petty cash funds to cash personal checks or to give “loans” to employees.

## **Chapter 3.0 LEASES AND RENTALS OF PERSONAL PROPERTY.**

### **Section 3.1 Types of personal property leases and rentals.**

Sometimes it may not be practical or cost-effective for the County to purchase personal property outright. On those occasions, the County may lease or rent needed items of personal property. (“Personal property” is any property that is *not* land, buildings, or fixtures -- such as equipment, tools, copying machines, and furniture.)

With respect to personal property lease agreements, generally, there are two types: (1) a “straight” lease and (2) a lease that is part of a financing arrangement. Under a straight lease, the “user/lessee” uses the personal property for a specified time and pays a predetermined amount. Unless the lease is renewed, the parties expect that the leased personal property will be returned to the “owner/lessor” when the lease expires.

A lease may also be used in certain types of financing transactions in which the parties do not intend that the user/lessee will return the personal property to the owner/lessor. These transactions usually make the leased personal property subject to a security interest of the owner/lessor. Upon expiration of the lease, the user/lessee becomes the owner of the personal property. The so-called “lease-option” and “sale-and-leaseback” transactions are examples.

Any department having a question about the terms of a particular personal property lease or rental agreement should contact County Counsel.

All personal property leases and rental agreements extending beyond the current County Fiscal Year (from July 1 through June 30 of the next calendar year) must contain a fiscal “funding-out” clause which allows the County to terminate the lease/rental agreement should funding cease or be materially decreased.

### **3.2 Who may enter into a “straight” personal property lease or rental agreement.**

The Purchasing Division has the authority to lease or rent personal property on behalf of the County after receiving a proper Requisition Form. (See Government Code, section 25501 and Shasta County Code, Section 3.04.010.)

The process is initiated by the department forwarding a Requisition Form for the lease or rental of personal property to the Purchasing Division. However, if the lease or rental is for computer hardware or software, or for a photocopier or facsimile machine that is capable of

being connected to the County network or County computer, the Requisition Form must be approved by IT before it is sent to the Purchasing Division.

The County may also enter into Aggregate Rental Agreements for rentals of tools and equipment. Aggregate Rental Agreements are useful if a department frequently needs to rent tools or equipment. For example, Public Works may need to rent various types of construction tools several times a year and it is more cost effective to rent than to purchase those tools. Another department may need to rent tables and chairs on a number of occasions. An Aggregate Rental Agreement allows a department to rent personal property without writing a separate rental agreement each time. Aggregate Rental Agreements must be signed by the County Executive Officer if \$50,000 or less, or be signed by the Board of Supervisors if more than \$50,000.

Note that more than one department might enter into an Aggregate Rental Agreement with the same individual or company. If the second Aggregate Rental Agreement brings the total that may be payable to more than \$50,000, the second, and all subsequent Aggregate Rental Agreements with that individual or company, must be signed by the Board of Supervisors. Departments must check with the Auditor-Controller's Office to see if other Aggregate Rental Agreements exist before submitting an Aggregate Rental Agreement to the County Executive Officer.

### **3.3 Procedures for "straight" leases and rentals of personal property.**

After receiving a department's Requisition Form for the lease or rental of personal property, the Purchasing Division will negotiate and, in most circumstances, sign the lease or rental agreement. However, the Board of Supervisors must sign any lease or rental agreement for personal property when the total rent payment is more than \$50,000 over the entire term of the lease or rental agreement.

For personal property leases and rental agreements with total payments over the entire term of the agreement of less than \$25,000, the Purchasing Division has the discretion to lease or rent the personal property without obtaining competitive bids or quotes. For personal property leases and rental agreements of related items commonly sold by a class of vendors totaling \$25,000 or more over the entire term of the lease or rental agreement, the Purchasing Division must mail a request for formal sealed bids (Request for Bids or RFB) to persons or businesses known to rent or lease the type of item needed. Or, instead of mailing the RFB, the Purchasing Division may post a notice of the RFB in its office, or on a public bulletin board, or publish the

notice in a local newspaper. (See Shasta County Code, Sections 3.04.010, 3.04.020, and 3.04.030.)

The RFB issued by the Purchasing Division should state any specifications required as to the personal property to be leased or rented or indicate where a copy of the specifications may be obtained. The RFB must also indicate where and when the bids will be opened. In addition, Section 3.04.030 of the Shasta County Code requires that the RFB include the following statement:

“A bidder who attempts to influence the bid process by interfering or colluding with other bidders, or with any County officer, employee or agent, or who deviates from the bid process as set forth in this invitation may be disqualified at any time from further participation in this bid.”

#### **3.4 Procedures for sale and leaseback of personal property.**

Subject to the approval of the Board of Supervisors, the Purchasing Division may enter into a sale-and-leaseback agreement to provide the County with any type of personal property. Notice must first be published in a local newspaper and the Board of Supervisors must approve the sale-and-leaseback transaction by resolution. (See Government Code, section 25504.5; and Shasta County Code, Section 3.40.010.) Otherwise, the procedures are the same as the procedures for traditional personal property leases or rental agreements.

## **Chapter 4.0 LEASES OF REAL PROPERTY.**

### **Section 4.1 Definition of “real property.”**

“Real property” includes land, buildings, space within buildings, and other structures (such as mini-storage units).

However, for the purposes of this chapter, those “space leases,” which a department head is authorized to sign, are not considered leases of real property. (See Section 5.6.4.)

Any questions regarding whether a particular lease agreement is for real or personal property, or whether a “space lease” is subject to the provisions of this chapter, should be addressed to County Counsel. County Counsel should also be consulted when the property in question is a mobile home or similar portable structure.

### **4.2 Procedures when the County is the tenant.**

Pursuant to section 25350.51 of the Government Code, the Board of Supervisors hereby delegates to the County Executive Officer and to his/her designee the power to sign leases, permits, and licenses for land, buildings, office space, parking lots or parking lot spaces, mini-storage units, easements, or other real property for use by the County as tenant, permittee, or licensee, under the following conditions:

- The total term of the lease, permit, or license, including any extensions or options to renew, will not exceed five years;
- The rental amount does not exceed \$7,500 per month;
- A notice of intention to consummate the lease, permit, or license is posted in a public place for five working days prior to consummation of the lease, permit, or license, which notice shall describe the property proposed to be leased, permitted, or licensed; the terms of the lease, permit, or license; and that the County Executive Officer and his/her designee is the County officer authorized to execute the lease, permit, or license; and
- The lease, permit, or license is approved and signed as to form by the County Counsel and Risk Manager.

In addition, the Board of Supervisors hereby delegates to the County Executive Officer and to his/her designee the power to sign amendments to an existing lease, permit, and license for land, buildings, office space, parking lots or parking lot spaces, mini-storage units,

easements, or other real property for use by the County as tenant, permittee, or licensee, one time, under the following conditions:

- The amendment may increase the rent over the remaining term, provided that the amendment does not result in a rental amount in excess of \$7,500 per month;
- The amendment is for the purpose of making improvements or alterations to the premises;
- The amendment does not extend the existing term of the lease, permit, or license beyond five years; and
- The amendment is approved and signed as to form by the County Counsel and Risk Manager.

Any lease, permit, or license of real property, or amendment to a lease, permit, or license for land, buildings, office space, parking lots or parking lot spaces, mini-storage units, easements, or other real property, which does not meet the conditions listed above must be signed by the Board of Supervisors. If the County is holding over on a lease pursuant to the hold-over provision in the lease and the total term of the lease including any options and the hold-over period, exceeds five years, the lease must be presented to the Board of Supervisors for ratification. Holding over should not be used as way to extend the lease term. Holding over should be an exceptional circumstance. The holding over language is included in leases merely to provide some protection to the County in the event a new lease is not executed prior to the termination or the County does not vacate the premises.

Furthermore, the Board of Supervisors hereby delegates to the Director of Public Works, and to his/her designee, the authority to execute, on behalf of the County, licenses (including easements and permits) for the use of real property in connection with a public works construction project or on-going maintenance of roads and other County facilities, under the following conditions:

- The license, including any extensions, is for a term not to exceed two years;
- The rental amount does not exceed \$500 per month; and
- The license is approved as to form by the County Counsel and Risk Manager.

The Board of Supervisors also hereby delegates to the Director of Public Works, and to his/her designee, the power to amend an existing license (including an easement and permit) for

the use of real property in connection with a public works construction project or on-going maintenance of roads and other County facilities, one time, under the following conditions:

- The amendment does not result in a rental amount in excess of \$500 per month;
- The amendment is for the purpose of making improvements or alterations to the real property;
- The amendment does not extend the existing term of the license beyond two years; and
- The amendment is approved as to form by the County Counsel and Risk Manager.

When a department head needs to lease office space, he or she should contact their County Administrative Office Analyst who handles leases regarding the department's needs pertaining to square footage, preferred location, cost, parking, network and phone needs, other special requirements, etc. The County Administrative Office Analyst and department head will initially determine if there is space available in any building currently owned or leased by the County. If not, the County Administrative Office Analyst will, working in conjunction with the department's staff, locate one or more suitable properties for the department head's inspection and approval. The department head must have the Facilities Management Division of the Department of Public Works inspect the premises, before the lease is negotiated, to determine if there are mold or asbestos problems and to ascertain compliance with the Americans with Disabilities Act ("ADA") and Title 24 of the California Code of Regulations (the "California Building Code"). Using the standard format Real Property Lease Agreement (**ATTACHMENT A**), the County Administrative Office Analyst will negotiate the provisions of the lease. Prior to finalization, County Administrative Office staff will submit the lease and Facilities Management Division's report to County Counsel, the Risk Manager, and the department head for review.

The lease must require the landlord to remove any asbestos, mold, or other contaminants from the premises prior to the date that County occupancy begins, or in accordance with a schedule approved by the CEO. The Board of Supervisors authorizes the CEO to waive these provisions under certain circumstances including, but not limited to, storage leases, land leases, and communications equipment shelter leases.

The lease must also require the landlord to comply with laws and regulations requiring access for persons with disabilities. If the premises need to be modified in order to be accessible

to persons with disabilities, the lease must require the modifications to be completed before County occupancy, unless the County's ADA Coordinator and the County Executive Officer give prior approval to include language in the lease to allow the landlord to make the modifications in accordance with a specific schedule of improvements. The Board of Supervisors authorizes the County Executive Officer and County's ADA Coordinator to waive these provisions under certain circumstances including, but not limited to, storage leases, land leases, and communications equipment shelter leases.

If the lease requires the landlord to clean, repair, or remodel the premises before County occupancy, it is the obligation of the department to follow the progress of the work, inspect the work when it is completed, and approve the work before County occupancy. If a dispute arises as to the scope or quality of the work, the department should contact the County Administrative Office and County Counsel.

If the premises to be leased are within the incorporated territory of a city, the Board of Supervisors or the County Administrative Office, if the intended lease is within the County Executive Officer's authority to execute, must give 60 days written notice to the city clerk of the city wherein the premises are located of the County's intent to lease (Government Code, section 25351).

An option to renew a lease, permit, or license that was signed by the County Executive Officer (or a license signed by the Director of Public Works) may be exercised by the County Executive Officer or his/her designee (or in the case of a license signed by the Director of Public Works, by the Director of Public Works or his/her designee) unless the renewal would extend the lease or license past the maximum term permitted under the power delegated to the County Executive Officer or the Director of Public Works pursuant to this Chapter. Notwithstanding the previous, the County Executive Officer, at his/her discretion, may exercise options to extend lease terms when the County of Shasta is the tenant and the lease has been approved by the Board of Supervisors.

"Contract splitting" in order to avoid the need for approval by the County Executive Officer or the Board of Supervisors, as appropriate, violates this policy and is prohibited.

Those leases and licenses which are to be approved by the Board of Supervisors must be accompanied by a Board Report prepared by the department proposing execution of the lease or license.



The provisions of this section apply even if there is no monetary compensation for use of the real property. A lease, permit, or license must still be executed. Any question about whether a lease, permit, or license is required for the use of real property should be directed to County Counsel.

In the case of the rental or lease of real property, the department head may sign the claim for payment of rent on behalf of the non-County party of the lease, permit, or license in order to certify that the department will occupy the premises during the rental period being paid for and the non-County party of the lease, permit, or license is justly due the rent payment. In the case of multi-departmental tenancy, the department head of the department managing the monthly claims may sign the claim for payment as the other participating department heads will approve the subsequent journal entry in the County's financial management system.

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#### **4.3 Procedures when the County is the landlord.**

Only the Board of Supervisors may lease the County's real property to a third party (Government Code, section 25521). Under most circumstances, before leasing the County's real property, the Board of Supervisors must adopt a resolution, by a 2/3 vote, that states the Board of Supervisors' intention to lease the real property. The resolution must describe the property, the minimum rent, and the terms of the lease. The resolution must also designate a date for a future meeting of the Board of Supervisors, to be held at least three weeks later, at which sealed proposals to lease the property from the County will be received and considered. Notice of the resolution and meeting must be posted in at least three public places at least 15 days before the date of the meeting at which bids will be received. The notice must also be published in a local newspaper once a week for three weeks. The Board of Supervisors may also advertise the request for bids in any other newspapers or magazines. (Government Code sections 25526 and 25528.)

At the noticed meeting, the Board of Supervisors must call for any oral bids before opening the sealed bids. If one or more oral bids are at least five percent higher than the highest sealed bid, the highest oral bid shall be accepted over the sealed bids (Government Code, section 25531). The Board of Supervisors may, if it deems such action to be for the best public interest, reject any and all bids, and withdraw the offer to lease the real property (Government Code, section 25534).

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Section 26227 of the Government Code relieves the County of some of the foregoing procedural requirements when the Board of Supervisors leases County property to another public agency or to a non-profit corporation or association, if the lease is for the purpose of meeting the “social needs” of the County, as that term is defined. Section 26227 allows for these leases “upon terms and conditions determined by the board to be in the best interest of the county,” which presumably means that the rent can be less than market value, even if another person or entity would lease the property, for other purposes, at a higher rent.

Section 26227 also permits the Board of Supervisors to finance or assist in the financing of the acquisition or improvement of real property and furnishings for these “social needs,” through a lease, installment sale, or other transaction, without complying with any other provision of the Government Code relating to acquiring, improving, leasing, or granting the use of, or otherwise disposing of, County property.

In all cases, the person or entity leasing the County’s real property must carry insurance and provide appropriate proof of coverage. (See Sections 7.1 and 7.3.5.)

For each lease of County real property, the Board of Supervisors will designate which department will administer the lease and collect the rent.

#### **4.3.1 Emergency conveyance of an easement, license, or permit for use of County real property.**

Pursuant to section 25526.6 of the Government Code, the Board of Supervisors hereby delegates to the County Executive Officer, and to his/her designee, authority to execute the conveyance of an easement, license, or permit for the use of County real property to the state; any county, city, district, or public agency or corporation; and any public utility corporation; upon a determination by the County Executive Officer, or his/her designee, that an emergency exists, that the conveyance is in the public interest, and that the interest conveyed will not substantially conflict or interfere with the use of the property by the County.

For the purposes of this Section 4.3.1, an emergency exists whenever the conveyance is necessary to ensure the continued operation of a County office or department, or when necessary for the preservation of life or property and includes, but is not limited to, conveyances to federal and state fire suppression agencies.

A conveyance executed by the County Executive Officer or his/her designee pursuant to this provision shall be presented to the Board of Supervisors at its next scheduled meeting

(whether a regular, special, or emergency meeting) for ratification. Should the conveyance not be ratified, the conveyance executed by the County Executive Officer or his/her designee pursuant to this provision shall nevertheless be deemed a legally binding conveyance until the Board of Supervisors fails to ratify the conveyance.

#### **4.4 Retroactive leases.**

A department that submits to the Board of Supervisors for approval a lease, the term of which has already commenced (i.e., a “retroactive” lease), must explain in the Board Report why the lease could not have been presented to the Board of Supervisors before its effective date.

## **Chapter 5.0 AGREEMENTS FOR SERVICES.**

### **Section 5.1 Definitions; general principles and policies.**

At times, the need arises for special services which are not provided by the County's regular work force. In addition, sometimes a source of funding (such as a grant agreement with the state or federal government) requires that the funded program be contracted out. For these and other reasons, the Board of Supervisors has been given the statutory authority to enter into agreements for the provision of specified types of personal services on behalf of the County.

However, state law limits the Board of Supervisors' power to enter into personal services agreements to those for specific special services and then only with persons/entities specially trained, experienced, and competent to perform such services (Government Code, section 31000). Whether services are "special" requires a consideration of factors such as the nature of the services, the qualifications of the person/entity furnishing them, and the availability of the services from public sources. Services may be special because of the specialized skill or expertise of the person/entity furnishing them.

There are many types of services for which the County may enter into personal service agreements, including, but not limited to: financial, economic, accounting, engineering, environmental, land surveying, construction project management, legal, medical, therapeutic, administrative, architectural, landscape architectural, training, airport or building security, and laundry or linen services (Government Code, sections 4526 and 31000).

However, the Board of Supervisors may enter into agreements for site maintenance or custodial services only if the site is remote from County employee resources and it would be more cost effective for the work to be done by an outside person or entity (Government Code, section 31000).

The Board of Supervisors also may enter into agreements with temporary help firms for temporary workers during any peak load, temporary absence, or emergency other than a labor dispute for a period of 90 days or less if the Board of Supervisors determines that it is in the economic interest of the County to provide such temporary help through a personal services agreement, rather than hiring or employing persons for such purposes (Government Code, section 31000.4).

For the purposes of this Manual, a “personal services agreement” is an agreement (or “contract”) which engages the time and effort of a “consultant” or “contractor” for the primary purpose of performing specific functions or tasks rather than furnishing a tangible end product.

For example, a contract to construct a building is not a “personal services agreement” since there is a specific and tangible end product, i.e., a new building. On the other hand, an agreement with a trainer is a “personal services agreement,” even if the trainer prepares a training manual, because the focus is on the trainer’s time and talents.

An agreement with a professional such as an architect or engineer for services related to undertaking a public works project would be considered a “personal services agreement” and would be governed by this chapter of the Manual, as would a contract for the maintenance of County buildings or grounds.

On the other hand, a construction contract to repair a County building is a “public works contract,” not a “personal services agreement.”

The distinction between a personal services agreement and a public works contract is sometimes difficult to make, particularly when the distinction is between the maintenance and the repair of buildings. (See Chapter 6.0 regarding public works contracts.)

The correct contract format, whether a personal services agreement or a public works contract, must be used because each type of contract includes unique and particular provisions which protect the County, its employees, and the public against the different types of risks inherent in the work undertaken under the contract. If there is any question about whether a contract is for personal services or a public works project, County Counsel should be consulted.\*

## **5.2 Retroactive agreements.**

The County *cannot* compensate a consultant or contractor: (1) for services rendered if there is no written personal services agreement signed on behalf of the County by the Board of Supervisors or by a County agent or officer delegated authority in writing by the Board of Supervisors; (2) if the agreement does not specifically delineate and define the services to be

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\* Purchase Order forms do not include certain provisions, such as indemnity, insurance, or termination clauses, which protect the County. For this reason, Purchase Orders are only to be used to buy goods (although incidental services may be included), and may not be used to procure personal services. See Section 2.5.4. of this Manual.

rendered; or (3) if some or all of the services have been rendered prior to the effective date of the agreement. If any of these defects exist, a personal services agreement must be drafted or an existing agreement must be amended and the agreement (or amendment) must be ratified by the Board of Supervisors, or, in appropriate circumstances, the County Executive Officer. However, no personal services agreement (whether retroactive or not) can be ratified if beyond the powers of the Board of Supervisors, or when the parties have not reached agreement as to the terms and conditions of the services which were provided.

However, if a retroactive agreement or amendment is an agreement or amendment whereby: (1) the County is to be paid for rendering services, or (2) there is no monetary compensation, or (3) there is only an exchange of in-kind services or goods of equal value as consideration and the maximum value of the County's services or goods does not exceed \$50,000 for the entire term of the agreement, it may be signed by the County Executive Officer, so long as the agreement or amendment is otherwise within the signing authority of the County Executive Officer. The County Executive Officer may also sign retroactive agreements or retroactive amendments for agreements that are limited to one or more of the following services: teleconferencing or videoconferencing services, computer and related equipment software licenses, support and maintenance agreements, computer and related equipment hardware support and/or maintenance services, electronic filing services or database access and confidentiality agreements. (See Section 5.6.1)

Except in the case of agreements with the state or federal governments (which are frequently tardy in processing agreements), a department that submits a retroactive agreement or amendment to the Board of Supervisors for ratification must briefly explain in the Board Report why the agreement or amendment could not have been presented before its effective date.

### **5.3 Preference for competitive procurement.**

While state law generally does not require bidding or other competitive procurement practices when the County is negotiating personal services agreements, departments are *strongly encouraged* to use competitive procurement practices when choosing the consultant or contractor who will provide the services, and should always use competitive procurement if the agreement is for a controversial or unique project, or for a project that is of particular interest to the Board of Supervisors or to the public. The Board Report, with respect to any personal services

agreement, should describe the department's competitive procurement efforts (and if the agreement was "sole sourced," it must contain a brief justification for doing so).

Sometimes, simply telephoning prospective consultants/contractors will be sufficient to ensure that the department has found the best service provider at the best price. In other circumstances, the department should use an RFQ (request for quotes) or an RFP (request for proposals) for personal services agreements. "Testing the market" by issuing an RFQ or an RFP can help achieve two goals: getting the right kind of services and getting those services for the best price. In addition, competitive procurement assures the public that all prospective consultants/contractors have had an equal and fair opportunity to be considered.

An RFP is a request by the County for a proposal, including the price thereof, to perform a service which will meet *certain generally delineated specifications, requirements, and/or outcomes*. The focus of an RFP is upon how the person or entity submitting a proposal ("the Responder") proposes to provide the service desired by the County. An RFP is particularly useful where the County knows the objectives it wants to achieve but wants to allow the Responder the flexibility to describe how it will achieve the outcomes (possibly at a lower cost). The County is not required to accept the lowest priced proposal.

An RFQ is an invitation by the County for a quote to provide a particular service(s), *meeting specific criteria*. The primary focus of an RFQ is upon the price a person or entity submitting a quote (the "Responder") proposes to charge for the particular service the County desires. While the price is a primary factor with an RFQ, it is not the only factor. The County may also consider the Responder's qualifications, response timeline, and other relevant matters and is not required to enter into an agreement with the Responder who submits the lowest quote.

Essentially, the RFP format would be used primarily for obtaining services where the goals and requirements are more general in nature. In contrast, an RFQ would ordinarily be used to obtain services where we have certain specific criteria in mind and would be ***primarily price driven***. In other words, an RFQ is used when a department knows exactly what services it wants to procure and intends to choose the consultant by price and qualifications. An RFP is used if a department intends to negotiate the scope of work based on the proposals submitted. The RFP process requires the responder to devise certain aspects of the program or services to be provided.

Note: An RFB (request for bids) should not ordinarily be used for personal services agreements because under the RFB process, the agreement is awarded based solely on price and not on the qualifications and/or how services will be rendered or a particular project undertaken (see Shasta County Code Chapter 3.04).

The decision to engage in competitive procurement by issuing an RFQ or an RFP (rather than more informal efforts) often depends on whether doing so is likely to be cost effective. There are a number of questions to consider. Does the funding agency require competitive procurement? (For example, state regulations require that specific procurement procedures be used by the Departments of Public Works and Health and Human Services Agency, Social Services Branch). Is it possible that the County will get a better service or program (because the RFP process encourages creativity and innovation)? Will the County get the service or program at a lower cost? Are there two or more potential consultants/contractors who are qualified and willing to provide the service? What is the time frame? Is the proposed service complex or simple? Are there any substantial justifications for not engaging in competitive procurement?

If a department decides not to issue an RFQ or an RFP, at least informal telephone inquiries should be made. If competitive procurement measures are not used, the department must explain to the County Administrative Office upon request or to the Board of Supervisors (in the Board Report) why the decision to “sole source” was appropriate.

If an RFQ or an RFP is used, a sufficient number should be distributed to elicit adequate competition and responses. Furthermore the RFQ or RFP should be published on the County’s and/or the department’s Internet website and a brief notice should be published in the local newspaper.

### **5.3.1 RFQ and RFP contents.**

The amount of detail to be included in the RFQ or RFP depends on the type of service needed. Less information is needed if the service is of a type which is routinely provided. Department staff can obtain RFP and RFQ templates, and process/timeline checklists, from the Purchasing Division of the Support Services Department. The templates can also be downloaded from the County’s Intranet website from the Support Services Department, Purchasing Division webpage.

The following elements may be included in a Request for Quotes:

- Department's name and address.



- Date of issuance of the RFQ.
- Date, hour, and location the quotes are due.
- A description of the services to be furnished in sufficient detail to permit full and free competition.
- Any requirements as to when the services must be delivered.
- A description of any reporting requirements and any performance or outcome measures.
- The County's standard indemnity and insurance language (a copy of the standard Personal Services Agreement ~~(ATTACHMENT B)~~ may be attached to the RFQ).
- Instructions concerning preparation and submission of the quote; e.g., required format and contents, etc.
- A requirement that the Responder provide a description of the Responder's qualifications to provide the services, including prior similar work, public entity references, information about related litigation or debarment, and proof of any required licensure.
- A requirement that the Responder describe the personnel to be used to provide each of the services, the Responder's timetable for implementation of each element of the services, and a certification that all statements in the response to the RFQ are true and that if any statements are false, the County may terminate the personal services agreement made as a result of the quote.
- A statement that if only one Responder submits a letter of intent or a quote, the County may, at its sole discretion, enter into negotiations with that Responder or reject that quote.
- A statement that the County may reject any and all responses to the RFQ and may waive any irregularities in any response to the RFQ, in its sole discretion.

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- Unless the department is awarding the contract based solely on lowest price, a statement that the County is not required to award a contract to the Responder with the lowest price.
- A statement that the County may cancel the RFQ process at any time.
- A statement that responses will become the sole property of the County and that after the RFQ process is completed, the responses will be public records except as to identified trade secrets.
- A statement that the County reserves the right to use any ideas in a response regardless of whether the individual or firm submitting the response is selected to provide the service.
- A statement that the County will not be liable for the costs of work performed in the preparation and production of a response to the RFQ.
- A process for considering/handling protests or appeals.

A Request for Proposals may contain *all of the foregoing elements*, plus:

- Evaluation criteria other than price.
- An explanation of the evaluation/selection process.
- A statement of the department's goals and objectives for the program or services to be provided and its proposed performance measures.

The foregoing elements are not exhaustive or universally applicable. Moreover, each department may have specific procurement requirements (as is the case with the County's Health and Human Services Agency, Social Services Branch contracts pursuant to the State of California Department of Social Services Manual of Policies and Procedures).

The content of an RFQ or an RFP is also a function of the type of solicitation, the expected price or compensation, and the type of service to be provided. The Purchasing Division may be consulted for assistance in drafting the RFP or RFQ. The Purchasing Division can also assist with the award process, including the opening of responses and negotiation of the agreement. Advance review of RFP's and RFQ's by County Counsel is not required; however, County Counsel should be consulted whenever a legal issue arises.

### 5.3.2 Competitive procurement for certain federal- or state-funded agreements.

Agreements funded in whole or part by federal grants, inter-governmental cooperative agreements, or sub-awards to or by state or local governments may be subject to the procurement rules contained in Part 18, *Uniform Administrative Requirements for Grants and Cooperative Agreements to State and Local Governments*, of Subtitle A of Title 49 of the Code of Federal Regulations (“Part 18”). Those rules take precedence over the provisions of this Manual. Each department is responsible for determining from the grantor whether Part 18 applies to an agreement.

In addition, a grant may require the County to include specific provisions in an agreement funded by the grant. State or federal law may also require the County to include specific provisions in an agreement. It is the responsibility of the applicable department to make sure that those specific provisions are included in the agreement. If specific provisions are required, and are added to the approved standard format Personal Services Agreement (ATTACHMENT B), that agreement is still considered to be a “standard format” for purposes of determining whether the department head or the County Executive Officer may sign the agreement.

### 5.4 Drafting a personal services agreement.

The process of entering into a personal services agreement is initiated by the department seeking the services. Most personal services agreements, no matter the amount of compensation, will follow the Personal Services Agreement (ATTACHMENT B) standard format. For a select list of services totaling \$5,000 or less, a simplified purchase order for services form may be used (See Administrative Manual Policy 2-201). As noted in Section 5.6 of this Manual, many agreements require review by County Counsel and the County Risk Manager. To avoid delays inherent in the review process, it is strongly recommended the department use the approved standard format whenever possible. Further, the Request for Personal Services Agreement Review/Approval (ATTACHMENT H) document shall be used to speed the review, approval, and County signature process.

The department head or the department's contract administrator will ordinarily negotiate the agreement on behalf of the County.

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The first step in that process is to determine the legal status/name of the consultant who will be providing the service. Is the potential consultant an individual person, a person doing business under a “fictitious name,” a corporation, a limited liability company (“LLC”), a partnership, or some other legal entity? (If the potential consultant is a corporation or an LLC, check the status of the company on the California Secretary of State’s online business website to confirm that the corporation is qualified to do business in the State of California. The department must then determine if the person with whom it is negotiating has the legal authority to sign the agreement (in the case of an individual, or an individual doing business under a fictitious business name, that is easy). In that regard, see Section 5.17, item <21>.

Negotiations should then proceed using the Personal Services Agreement (ATTACHMENT B).

The approved standard format agreement contains several blanks that must be filled in.

One of the most important blanks to fill in is Section 1, the responsibilities provision, which is that part of the agreement, usually prepared by the department during negotiations, which describes what the department wants the potential consultant to accomplish. The description of the services to be provided may either be included as part of Section 1 itself, or can be included in a separate document (perhaps the proposal or “scope of work” submitted or prepared by the consultant), which may be referred to in Section 1 and attached. If the description of the services to be provided (or any other document referred to in the body of the agreement) is contained in an electronic document on a website, a hardcopy must be printed and attached to the agreement to memorialize its terms.

The department head or the department’s contract administrator may find it useful to request input from staff, other departments, government agencies, or the Purchasing Division in drafting the responsibilities provision. There is no need to “reinvent the wheel” if the department will be contracting for services similar to those services the County has contracted for in the past; prior agreements may be used as models.

The importance of the language used in the responsibilities provision cannot be overemphasized. If a dispute arises, any ambiguity caused by an ill-chosen word or phrase (or even a mistake in punctuation) may be interpreted against the County. Ambiguous and inaccurate language and punctuation or unaddressed issues can require more administrative attention and result in higher costs. The contract drafter should strive to have each sentence be

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direct, concise, and lucid. Avoid jargon, redundancy, and vagueness. Use terms consistently. Define acronyms. Read the responsibilities provision critically, looking for any loopholes.

Whether the language used in the responsibilities provision should be broad and general or more task-specific and tightly worded will largely depend on the objective of the agreement. For example, a statement of services to be provided for an agreement to create software for a particular purpose will be more specific than a statement of services to be provided for an agreement to recommend ways to improve departmental efficiency.

The next step should be to decide whether the consultant will be responsible for results or for methods, or both. It is usually preferable to require specific *outcomes* (for example, requiring the consultant to show how many people taking a class will achieve a particular goal) rather than *outputs* (requiring the consultant to teach a class to a certain number of people). Achieving outcomes can be encouraged by linking achievement to compensation (i.e., the better the result, the higher the pay).

In order to determine if the consultant has achieved a goal (in other words, to assess outcome), the language of the agreement should include a mechanism to monitor performance outcomes. Sometimes, the monitoring method is specified by the federal or state agency that is funding the service to be provided under the agreement; otherwise, it is up to the department to devise a method for monitoring performance. Depending on the type of service, and the outcome desired, the monitoring mechanism could consist of observation records, field diaries, audits, user surveys, or data from other governmental agencies (crime or enrollment statistics, for example). The consultant can often help the department develop the monitoring mechanism to be used.

The measurement of outcomes should assess some aspect of the effect, result, or quality of the service to be provided (rather than efforts expended or resources consumed). For example, the measurement of outcomes could be based upon reliable information regarding the number or percentage of people who were helped to a significant extent; the number or percentage of people who report satisfaction with the consultant's/contractor's services; the response time or length of wait for services; or the number of complaints about the program.

Regardless of the methodology, performance measures should be quantifiable, time specific, and verifiable. They should provide information about cost, productivity, quality, user satisfaction, effectiveness, and efficiency. Thus, when writing performance measures language,

avoid imprecise terms such as “maximize” or “appropriate.” Use action verbs such as “respond,” “obtain,” “issue,” “furnish,” and “provide.” Use specific quantities or other measurements if possible. Also, establish beginning and ending dates/timeframes.

In developing performance measurements, cost efficiency should also be kept in mind. The more costly the agreement, the more emphasis should be put on requiring the consultant to demonstrate that services have been effective.

When writing the responsibilities provision, keep in mind that its length and complexity will depend in large part on the nature of the services to be provided and the purpose of the agreement.

Here is a suggested format for more complex agreements:

- Scope -- describes the purpose or end product of the work or services;
- Requirements -- includes tasks, response times, deliverables, and/or end results required and any schedules or due dates;
- A listing of any documents which describe the work or services;
- Staffing/personnel levels, staff qualifications, and coordination;
- Evaluation, verification, and acceptance procedures; and
- Performance/Outcome Measurements -- defines the consultant’s/contractor’s reporting obligations and performance requirements.

Remember: *The consultant is only obligated to do what is specifically called for in the agreement.* The department should never assume that a consultant will perform additional tasks beyond those strictly required by the agreement, even if they are logically related to the work or services to be performed/undertaken. If the task or duty is desired at all, it should be spelled out in writing. The department cannot rely on any oral promises or representations of the consultant. All promises and representations must be put in writing. Remember that if a dispute arises, it is likely that the consultant will point to the language in the agreement as being the limits of the consultant’s/contractor’s responsibilities. Look for loopholes. Consider what the department would do if the work or services were not provided in the manner or within the time expected. The agreement should be written to avoid problems which are foreseeable and to provide a method to solve problems when they arise.

If the task of writing specific language becomes too cumbersome, consider having the consultant draft proposed language to describe exactly what work or services the consultant will provide and the desired performance outcome goals and performance/outcome measurements.

The department must include any provisions in the agreement which may be required by the terms of a state or federal grant which is funding the agreement. Failure to do so could result in a breach by the County of the grant agreement.

Finally, keep in mind that the agreement represents the County of Shasta. Carefully proofread it for both content and style. Make sure it is logical and clear. Conform your language throughout (for example, do not call the contractor a “consultant” in one place and the “provider” elsewhere). Make sure the agreement is formatted properly. A professionally prepared document sets the right tone in dealings with the consultant.

#### **5.5 Tax treatment of consultants.**

In any agreement for services under federal and state employment tax law, the County must resolve the basic question of whether to treat the consultant as an employee or as an independent contractor *for tax purposes*.

The general rule is that a consultant who/that performs services for the County will be treated as an employee for tax purposes if it clearly is established that the County controls the manner and means by which the consultant accomplishes the work. Where it is not clearly established that the County controls the manner and means by which the consultant accomplishes the work, a consultant may still be treated as an employee for tax purposes. Therefore, a consultant that, in fact, is a true “independent contractor” may nonetheless still be treated as an employee strictly for tax purposes. In no event should a decision to treat a consultant as an employee for tax purposes be considered a decision that the consultant is an employee for any other purpose and is not a true independent contractor.

The consultant’s tax status (employee or independent contractor) determines how the County will *report* to other government agencies about the payments made to the consultant. These government agencies include the Internal Revenue Service (“IRS”), the State of California Franchise Tax Board (“FTB”), and the State of California Employment Development Department (“EDD”).

The status of the consultant also determines whether the County must *withhold* compensation under the agreement from the consultant for direct payment to the IRS and FTB

and whether the County must pay additional employment taxes pursuant to the Federal Insurance Contributions Act (“FICA”) and Medicare. If a consultant’s/contractor’s status for tax purposes is that of employee, rather than independent contractor, the County must withhold federal income tax, Social Security and Medicare taxes; pay federal unemployment tax; issue an annual W-2; and report wages to the IRS.

In addition, if taxes must be withheld, the department must pay the “employer’s share” of Social Security and Medicare, equal to 7.65 percent of total wage compensation. For example, for an agreement for training with wage compensation of \$1,000, and reimbursement for costs up to \$250, the department must pay \$76.50 on top of the compensation.

If the County will be withholding taxes, the department must verify the consultant’s/contractor’s identity so that a Form W-2 can be issued. The department should make a photocopy of the consultant’s/contractor’s Social Security card (or Individual Taxpayer Identification Number [“ITIN”] or Employer Identification Number [“EIN”]) and picture identification (such as a driver’s license or passport). The department must also obtain a completed Form W-4 (Employee’s Withholding Allowance form) and submit it to the Auditor-Controller, with the executed agreement, proof of identity, a direct deposit form, and a check marked “void” from the consultant’s/contractor’s bank account, with the first claim for payment. The consultant will be paid by direct deposit into the consultant’s/contractor’s bank account, through the County’s payroll system.

The tax status of the consultant must be indicated on the top right corner of the first page of the agreement. If the consultant is not to be treated as an employee for tax purposes, write or stamp “No Withholding” on the agreement. If the consultant is to be treated as an employee for tax purposes, write or stamp “Withholding.” This will inform the Auditor-Controller as to how to process payments. If a withholding waiver has been issued by County Counsel (see Section 5.5.1), a copy must be attached to the agreement.

The failure to withhold when required can result in the imposition of significant penalties on the County. (Revenue and Taxation Code, sections 6720-6724.)

These are the criteria for determining whether to withhold:

- The Five-or-More Employees Rule. If the consultant has five or more full-time employees, the consultant is treated for tax purposes as an independent contractor. In other words, taxes will *not* be withheld from the consultant’s/contractor’s



compensation. The first paragraph under *Employment Status of Consultant* in the Personal Services Agreement (ATTACHMENT B) should be used. Special rules apply to a non-resident consultant (including out-of-state corporations and other such business entities). If the consultant is not a resident of California, see Section 5.5.4.

- Small Consultants/Contractors. If the consultant has fewer than five employees, then the consultant must be treated as an employee for tax purposes (that is, taxes *will* be withheld) *unless* the department requests and obtains a withholding waiver from County Counsel. (See Section 5.5.1.) If no request is made, or if County Counsel determines that a waiver of withholding is not appropriate, use the alternate language in the paragraph *Employment Status of Consultant* of the Personal Services Agreement (ATTACHMENT B) when describing the service provider's status. Note that the standard format agreement still refers to the consultant as an independent contractor (as explained in Section 5.5 above), but also provides that the County will withhold taxes. (When dealing with a sole proprietor, make sure to also comply with the EDD reporting requirements described in Section 5.13.)
- Waivers. If County Counsel has given a waiver, a consultant with fewer than five employees shall be treated as an independent contractor and taxes will not be withheld from the consultant's/contractor's compensation. Use the first paragraph in Section 9, under *Employment Status of Consultant* of the Personal Services Agreement (ATTACHMENT B). (When dealing with a sole proprietor, make sure to also comply with the EDD reporting requirements described in Section 5.13.)

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### 5.5.1 Waiver requests.

When a consultant with fewer than five employees appears to meet the criteria for treatment as an independent contractor and wants to avoid withholding, the department should submit a Withholding Waiver Request Form (ATTACHMENT C) to County Counsel. (If the consultant has more than five employees, it is not necessary to submit a Withholding Waiver Request Form to County Counsel because the consultant is presumed to be an independent contractor.) The Withholding Waiver Request Form will be evaluated by County Counsel using the criteria listed in Section 5.5.2. County Counsel will approve the waiver based upon the review of the agreement and any other relevant documentation the department may provide.

If independent contractor status is desired, particular attention should be paid to defining the scope of the work or services clearly, completely, and accurately. The more the agreement allows the County to exercise control over the day-to-day activities of the consultant, the more likely the consultant will be treated like an employee for tax purposes. On the other hand, the agreement should reflect the true intentions of the parties, and no language should be changed or reworded in order to achieve a particular tax status if the revision is inconsistent with the parties' intent or the true working relationship of the parties. Such conduct would raise the question of tax evasion, for which there are severe civil and criminal penalties.

If County Counsel does not approve the waiver, the agreement must provide for the withholding of taxes.

The determination as to whether a consultant is an employee for the purposes of withholding applies not just to agreements with individuals, but also to agreements with business entities (such as corporations, limited liability companies ["LLC's"], and partnerships).

### 5.5.2 Determining tax status.

The basic rule in determining employment status for tax withholding purposes, is that the consultant should be treated as an employee (and taxes withheld) if the County has the *right* to direct and control the manner and means by which the work or service is performed. This is true even though the County does not actually exercise that "right of control" during the performance of the agreement. This is the "common law" test for employment, and it applies to the determination of employment status generally, not just for tax withholding purposes.

The Internal Revenue Service ("IRS") has published a list of factors to consider in ascertaining whether the principal to an agreement exercises sufficient control to warrant finding

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that the consultant should be treated as an employee for tax withholding purposes. No one factor is necessarily conclusive. Rather, the factors probe the nature of the relationship between the “principal” (i.e., the County) and the consultant in order to determine whether the principal could or does control the means and methods of performing the work.

The written terms and conditions of the agreement between the County and the consultant are evidence of the provider’s tax status. However, when the written terms of the agreement are at odds with the actual facts and practices, the real relationship between the County and the consultant is what counts. For example, the agreement may say explicitly that the consultant is an “independent contractor” and receives no direction concerning the manner or means whereby the work is accomplished or the services are provided. Yet, if the County actually does provide such direction, or, if it is understood that the County *could* provide such direction, the consultant should be treated as an employee for tax purposes regardless of language in the agreement to the contrary. These types of contractual relationships should be avoided.

#### **5.5.3 The IRS factors.**

In determining whether a consultant should be treated as an independent contractor for purposes of withholding, the IRS focuses upon the issue of control versus independence (if the factors weigh on the side of control, then the consultant is an employee and not an independent contractor; if the factors weigh on the side of independence, then the consultant may be considered an independent contractor and not an employee).

The facts that provide evidence on the issue of control vs. independence fall into three categories -- Behavioral Control, Financial Control, and the Type of Relationship itself.

*Behavioral Control* covers facts that show whether the County has a right to direct or control how the work is done or the services provided through instructions, training, or other means.

*Financial Control* covers facts that show whether the County has a right to direct or control the financial and business aspects of the consultant’s/contractor’s job. This includes:

- The extent to which the consultant has unreimbursed business expenses;
- The extent of the consultant's/contractor's investment in the facilities used in performing services;
- The extent to which the consultant's/contractor's services are made available to the relevant market,
- How the County pays the consultant (e.g., by the hour vs. a lump sum for completing the work/services) and
- The extent to which the consultant can realize a profit or incur a loss.

*Type of Relationship* covers facts that show how the parties perceive their relationship. This includes:

- Provisions in the agreement describing the relationship the parties intend to create;
- The extent to which the consultant is available to perform services for other businesses or entities;
- Whether the County provides the consultant with employee-type benefits, such as insurance, a pension plan, vacation pay, or sick pay;
- The permanency of the relationship; and
- The extent to which the work or services performed by the consultant are a key aspect of the regular business of the County.

Many of the foregoing IRS factors are self-explanatory. The following constitutes an explanation of those which are the most important and perhaps most difficult to understand:

**Behavioral control** - The principal confusion arising with this factor concerns the right to give instructions vs. actually giving the instructions. In many instances, the County might not give any instructions at all to a consultant. While that fact may be indicative of independent contractor status, it is not determinative. The real question is whether, under the terms of the agreement, the County *could* instruct the consultant as to where, when, or how to do the work or provide the services.

**A “key aspect” of the regular business of the County** - This factor asks whether the work being performed is part of the regular business activities of the County. Are the services routinely conducted in order for the County to carry out its mission? If so, then the work or

services would normally be considered an integral part of the County's business. This is indicative of status as an employee.

**The permanency of the relationship** - This factor looks at whether the consultant has established an ongoing relationship with the County. What is the historical record of the relationship? How many times has the consultant entered into agreements with the County? How frequently? Even intermittent contracting may form grounds for finding a continuing employee/employer relationship.

**Making a profit or a loss** - If the agreement poses no risk of financial loss to the consultant, this factor will weigh in favor of finding an employment relationship. For example, if the County provides the facilities where the work is to be performed or the services provided; pays for all of the materials, expenses, and costs of the consultant to attend to and perform the work or services; and pays the consultant an hourly rate for the work or services, the risk of loss to the consultant is small or non-existent and is indicative of an employment relationship. On the other hand, for example, if the County hired a trainer who was paid a per pupil rate or a lump sum, who had to cover all expenses and costs, and who had to provide the training facilities, then there would clearly be a much greater risk of a loss or potential for making a profit, which is indicative of independent contractor status.

Remember, no one factor is determinative. However, unless a review of these factors indicates that a consultant is an independent contractor, the agreement must treat the consultant as an employee for tax withholding purposes.

#### **5.5.4 Special tax rule for out-of-state consultants/contractors.**

State law requires the County to withhold seven percent (7%) of all income paid to certain consultants/contractors (including corporations and other business entities) who do not "reside" in California (Revenue and Taxation Code, section 18662; California Code of Regulations, title 18, sections 18662-1 to 18662-14). Those provisions, however, do not apply if the total amount paid for work or services in a given year is less than \$1,500. The provisions also do not apply if the consultant is: a corporation with a principal place of business in California; a partnership with a permanent place of business in California; or a corporation qualified through the Secretary of State to do business in California.

The nonresident consultant can apply to the State of California Franchise Tax Board ("FTB") for a waiver of this withholding requirement. An FTB withholding waiver will

generally be granted when the nonresident consultant has a current history of filing State of California tax returns and/or is currently making estimated tax payments to the FTB. An FTB waiver request is made on FTB Form 588, which the consultant can fax to the FTB at (916) 845-4831. Be sure to use the correct language for out-of-state contractors in the paragraph of Section 9, entitled *Employment Status of Consultant* of the Personal Services Agreement (~~ATTACHMENT B~~).

The department negotiating the agreement is responsible for determining whether this rule applies to a consultant. In addition, the department should not shorten the standard time period of 30 days for paying an out-of-state consultant after receiving the consultant's/contractor's invoice without prior approval of the Auditor-Controller.

#### **5.6 Who has authority to execute (sign) personal services agreements on behalf of the County.**

The Board of Supervisors has delegated limited authority to the County Executive Officer, as Purchasing Agent, and department heads to execute (sign) personal services agreements. There are a number of conditions that must be met before this delegated authority can be exercised. It is important that the department correctly identify who will sign the agreement on behalf of the County; an agreement signed by a person lacking authority to sign will be void or voidable. For the purposes of this Manual, to "execute" or "sign" an agreement also means to take other steps necessary to bring the agreement into effect (such as, for example, by pressing a key on a computer to "accept" the terms and conditions of a software licensing agreement or to access a web based service [in such cases, always make a "hard copy" of the agreement and before clicking "accept" or "I agree" obtain written approval of County Counsel, the Risk Manager, and IT as may be required]).

##### **5.6.1 Authority of the County Executive Officer.**

Subject to Section 5.6.2, the County Executive Officer, as the County's Purchasing Agent, and his/her designee(s), are authorized to sign, on behalf of the County, personal services agreements prepared by County departments *without prior approval of the County Counsel and Risk Manager* as long as all of the following criteria are met:

- The agreement is primarily for personal services rather than the purchase of goods (although the agreement can provide for incidental purchases, such as the purchase of training materials).

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- The agreement is for a term of no more than a total of three years (for example, a one-year initial term and a maximum of two one-year extensions/renewals of the initial term exercisable by the County or automatic). However, and notwithstanding anything in this Section 5.6 to the contrary, upon approval by IT as required, the County Executive Officer may sign or electronically “sign,” or authorize a department head to sign or electronically “sign” agreements that are limited to one or more of the following services:

- (1) Teleconferencing or Videoconferencing services,
- (2) Computer and related equipment software licenses, support and/or maintenance services,
- (3) Computer and related equipment hardware support and/or maintenance services,
- (4) Electronic filing services,
- (5) Database Access and Confidentiality agreements.

If the above-referenced agreement or license contains any other minor IT-related services, upon concurrence of the County Information Officer and the County Executive Officer, the signing authority exemption may also be applied to the agreement or license.

If the above-referenced agreement or license is retroactive the term (duration) of the agreement or license cannot exceed three years and the total compensation for the agreement or license cannot exceed \$50,000.

If the above-referenced agreement or license term (duration) of the agreement or license exceeds three years, the annual (each consecutive twelve-month period) compensation cannot exceed \$5,000 and the agreement or license cannot be retroactive.

- Total compensation, including reimbursable costs, over the entire term of the agreement, **will not exceed** \$50,000. This compensation limit applies both when the County is paid for providing work or a service, as well as when the County pays for work or a service. (See also Section 5.6.4

pertaining to the authority of department heads to sign certain agreements.)

- Current year compensation is already budgeted for in the department's current budget or the preliminary budget.
- To the knowledge of the County Executive Officer, the consultant is not a current County employee; not the spouse, registered domestic partner, or dependent of a current County employee; and the consultant is not related to any person employed in the department for which the work or services will be performed, or after consultation with County Counsel, it is determined that the relationship is so remote as to not affect the validity of the agreement.
- The format and language of the agreement conform exactly to the format attached to this Manual as the Personal Services Agreement (ATTACHMENT B). If the format and language of the agreement do not conform exactly to the language and format of the Personal Services Agreement (ATTACHMENT B), and/or any references to Health Insurance Portability and Accountability Act (HIPAA) or Health Information Technology for Economic and Clinical Health Act (HITECH) are included in the agreement, the County Executive Officer may nevertheless sign the agreement so long as it has the prior approval of the County Counsel and Risk Manager and otherwise meets the criteria of this Section 5.6. If only the insurance clause in the agreement varies from the insurance clause language in the Personal Services Agreement (ATTACHMENT B), the County Executive Officer may sign the agreement if the Risk Manager also approves it and the rest of the agreement conforms exactly to the Personal Services Agreement (ATTACHMENT B); approval of County Counsel is not required. If the indemnification clause varies from the language in the Personal Services Agreement (ATTACHMENT B), the County Executive Officer may sign it, but both the Risk Manager and County Counsel must also approve the agreement. Under the foregoing circumstances, the department should



insert an “approved as to form” signature block for County Counsel and/or an “approved” signature block for the Risk Manager (as appropriate), as well as a signature line for the County Executive Officer.

Notwithstanding the foregoing delegation of authority, the County Executive Officer may decline to execute any agreement that the County Executive Officer believes should be presented to the Board of Supervisors.

Furthermore, and notwithstanding any other provision of this Section 5.6, the County Executive Officer may also approve a claim for services of \$5,000 or less without a formal agreement (Administrative Policy 2-201).

#### **5.6.2 Agreements requiring special handling.**

Certain agreements require special handling:

- Agreements for legal services. Agreements for legal services can only be signed by the Board of Supervisors, no matter how minimal the compensation.
- Agreements for the construction or remodeling of, or modifications to, County-owned or County-leased buildings. A “public works contract” must be used to obtain these types of services. (See Chapter 6.0 for delegated authority in connection with public works contracts.)
- Agreements for the installation or maintenance of security or alarm systems or the maintenance, cleaning, or repair of County-owned or County-leased buildings. These agreements must be processed by Facilities Management (not by individual department heads). They are signed by the Director of Public Works, the County Executive Officer, or the Board of Supervisors, as appropriate.
- Agreements for weed and pest control spraying or eradication must be reviewed by the Agricultural Commissioner. The Agricultural Commissioner (but not other department heads) may sign certain standard eradication agreements with compensation of less than \$10,000. (See Section 5.6.4.)
- Agreements for the rental of vehicles. Individual vehicle rental agreements with a County authorized vehicle rental agency may be signed

by authorized personnel traveling on County related business. Invoices are received in and approved by the Department of Support Services, Purchasing Unit and then forwarded onto the appropriate department for payment. No individual vehicle rental may exceed \$5,000 without the approval of the Purchasing Unit. Any vehicle rentals that qualify as Aggregate Rental Agreements shall be subject to Section 3.2 of the Contracts Manual. (See also the Shasta County Personnel Rules, Chapters 20, 33 and Administrative Policy 8-103, Section B.14 regarding vehicle rentals.)

- Leases of buildings or real property are ordinarily processed by the County Administrative Office and are signed by the Board of Supervisors. However, the County Executive Officer (not department heads) may sign leases, where the County is the tenant, if the monthly rent does not exceed \$7,500 and other conditions are met. (See Section 4.2.)
- Agreements for the purchase of goods, including capital assets. (See Chapter 2.0.)
- Agreements for computer-related services or products must be approved in advance by IT. They are then signed by the department head or County Executive Officer, or are approved by the Board of Supervisors, as appropriate. The County Executive Officer may authorize the department head of a department purchasing computer software to accept the licensing provisions. (See Section 2.5.3.)
- Agreements for services or goods, or short-term rentals, related specifically and solely to the investigation, prosecution, or defense of a specific crime or crimes, may be drafted and executed by the Sheriff, District Attorney, or Public Defender, in accordance with Resolution No. 2005-148. With the prior authorization of the County Executive Officer or his/her designee(s), such agreements may also be drafted and executed by the attorney or law firm providing conflict indigent criminal defense services.

- The Health and Human Services Agency may draft personal services agreements that do not state a compensation maximum, for certain services. Those agreements must be signed by the Board of Supervisors. (See item <8> of Section 5.17)
- Retroactive agreements. (See Sections 5.2 and 5.6.1)
- Agreements with a term in excess of three years. (See Section 5.6.1)

### **5.6.3 Authority of department heads to sign personal services agreements.**

County department heads, as the designees of the County Executive Officer/Purchasing Agent, are authorized to draft and sign personal services agreements without prior approval of the County Executive Officer, County Counsel, and Risk Manager as long as *all* of the criteria in Sections 5.6.1 and 5.6.2 are met, except that total compensation (whether paid by the County or to the County), including reimbursable costs, **may not exceed \$10,000**. However, if the agreement references HIPAA or HITECH, County Counsel approval as to form is required.

*If any one of the criteria provided for in Sections 5.6.1 and 5.6.2 is not met, then the County Executive Officer or the Board of Supervisors must sign the agreement, as appropriate.* However, if the only deviation from the standard language involves the insurance clause, the department head may still sign the agreement if the Risk Manager approves the agreement as modified; County Counsel and County Executive Officer approval are not required. If the only deviation from the standard language involves the indemnification clause, the department head may still sign the agreement if both the Risk Manager and County Counsel approve the agreement; approval by the County Executive Officer is not required.

Agreements that deviate from the standard format may be signed by department heads if the total compensation does not exceed \$10,000, the total term of the agreement does not exceed three years, and if County Counsel approves the agreement as to form and, if the deviation is from the standard insurance and indemnification provisions, Risk Management approves the agreement.

Department heads also have the authority to enter into and sign or electronically “sign”, without County Counsel or Risk Management review and approval, standard extended warranties, extended service agreements, or extended maintenance agreements that are normally offered by a vendor when a product is purchased. For the purposes of this section, an extended

warranty, extended service agreement, or extended maintenance agreement, is a prolonged warranty offered on items at the time of purchase. Extended warranties may be offered by the original retailer, the manufacturer, or third party. Section 2.5.5 grants department heads the authority to sign and renew these types of agreements if the department makes the initial purchase using a purchase order, whereas this policy will allow departments to purchase these same types of agreements outside of the original purchase process. In order to qualify under this section; total compensation over the entire term of the agreement cannot exceed \$10,000; the agreement term may not be in excess of three years; and the agreement cannot be retroactive (see Agreements requiring special handling Section 5.6.2).

Departments are prohibited from splitting or separating work or services into smaller units to evade the monetary or maximum term limitations.

Department heads are not authorized to sign aggregate personal services agreements (see Section 5.9). See Section 5.11 regarding the procedures to be used when obtaining advertising spots or production services.

When drafting a personal services agreement, the department head or the department's contract administrator should follow the instructions at Section 5.16. Those instructions are for the use of the Personal Services Agreement (ATTACHMENT B).

#### **5.6.4 Authority of County Executive Officer and department heads to sign other agreements.**

Notwithstanding the limitations set forth in Sections 5.6.1. and 5.6.3, the County Executive Officer and department heads also have the authority to sign, without Risk Manager or County Counsel approval, those *routine* renewal agreements (which may be called a "memorandum of understanding," a "protocol," an "order for services," or a "letter agreement"), which are drafted by the State of California or the federal government, for *on-going payments to the County* to provide continuous (not intermittent) state or federal services or programs, so long as: (1) the agreement is for payment to the County for on-going services and the Board of Supervisors has, in a previous year, approved the program; (2) compensation over the entire term of the renewal agreement (the base term plus any option terms) does not exceed a total of \$100,000; (3) the term of the renewal agreement, including all authorized extensions or options, will not exceed three years; (4) the anticipated revenue is budgeted; and (5) the compensation has not increased or decreased more than 25 percent as compared to the previous agreement.

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Because these state or federal services renewal agreements use the state's or federal government's contract formats, the department head should carefully review the agreement provisions to be sure they are not detrimental to the County. The advice of County Counsel should be sought if the department head has any question about the agreement language.

Notwithstanding the limitations set forth in Section 5.6.3., department heads also have the authority to sign, with Risk Manager and County Counsel review/approval as to form, routine renewal contracts, for on-going payments to the County to provide continuous (not intermittent) services or programs, so long as: (1) the contract is for payment to the County for on-going services; (2) compensation over the entire term of the renewal contract (the base term plus any option terms) does not exceed a total of \$100,000 per year; (3) the term of the renewal agreement, including all authorized extensions or options, will not exceed three years; (4) the anticipated revenue is budgeted; (5) the compensation has not increased or decreased more than 25 percent as compared to the previous contract; and (6) the contract is not for services rendered by the Opportunity Center.

Department heads are also authorized to sign, without County Counsel approval as to form, non-standard agreements (which may be called a "memorandum of understanding," a "protocol," a "letter agreement," a "space lease," an "entrance fee agreement," or a "license") by which the department undertakes promotional or educational activities (such as providing immunization or blood pressure clinics, or participating in a health fair, symposium, parade, or public program) in order to disseminate information or provide services directly to the general public at a location other than on County property. The department head may sign such an agreement without County Counsel review, if: (1) the activity is connected with a routine department activity, function, or service; (2) the total amount payable by the County during the entire term of the agreement does not exceed \$3,000 and the department is not obligated to provide anything else of value as consideration; (3) the term of the agreement does not exceed three years (or in the case of a "space lease" does not exceed one month); and (4) the Risk Manager approves the insurance and indemnification provisions or authorizes the waiver or absence of those provisions. Because the County's standard format is not used in these circumstances, the department head should carefully review the agreement to be sure its provisions are not detrimental to the County. If all the criteria in this paragraph are not met, the agreement should be processed like any other agreement. Note that department heads are not

authorized to sign agreements for the purchase and/or distribution of promotional items such as tee shirts and coffee mugs. Those agreements require Board of Supervisors' approval or a specific delegation of authority by the Board of Supervisors as authorized by law. (See Section 2.2.)

Department heads also have the authority to sign renewal agreements not originally negotiated on a purchase order (see Section 2.5.5) for routine and ongoing maintenance and/or support for equipment submitted in non-standard format if: (1) the non-standard agreement was previously approved by County Counsel and Risk Management; (2) language has not deviated from original agreement other than term dates and compensation; (3) compensation has not increased by more than 10% of the previous agreement's maximum compensation; (4) agreement term does not exceed three years; and (5) agreement does not exceed \$10,000 maximum compensation.

The Director of Public Works may sign state agreements to use California Department of Forestry and Fire Protection ("Cal Fire") inmates to perform brush clearing, litter removal, and other tasks. The Director of Public Works is also authorized to sign agreements with property owners for road or drainage work to be performed within County easements, and under which the owners would pay some or all of the cost of materials for the job, so long as the cost of the job does not exceed \$10,000, the term (duration) of the agreement does not exceed three years, and the Director of Public Works uses a standard agreement format pre-approved each year by County Counsel and the Risk Manager. The Agricultural Commissioner is authorized to enter into similar agreements (i.e., less than \$10,000 and for a term of less than three years), using a standard agreement format pre-approved by County Counsel and the Risk Manager, under which the property owners would pay for some or all of the project cost to eradicate noxious weeds or pests on public or private property.

Department heads also have the authority to obtain minor, one-time repair services for tools, office equipment, and other items of personal property, at a cost not to exceed \$2,000. No formal agreement is required, even though personal services are being provided. After the work is complete, the department must submit a claim to the Auditor-Controller for payment.

Department heads also have the authority to sign, without County Counsel or Risk Management approval, a simplified purchase order for services agreement for items specified in

Administrative Policy 2-201. The purchase order for services form as well as the criteria for use is covered in the Administrative Policy 2-201.

The Fire Warden, Sheriff, and the Directors of Support Services, Public Health, and Public Works are authorized to obtain routine vehicle, boat, laboratory equipment, and heavy equipment repairs, upgrades, and servicing, including parts and labor, not to exceed \$5,000 per transaction, using a claim form. (See Section 2.3 regarding authority to pay for upgrades for previously acquired vehicles, boats, and heavy equipment using a Blanket Purchase Order.)

The County is required by law to provide comprehensive health care, dental care, and mental health services, hereinafter referred to as “medical care” to individuals detained in the custody of the Shasta County detention facilities. When catastrophic medical care costs exceed the limit in place on the contract with the contracted medical provider, the Auditor-Controller is authorized to pay invoices submitted for payment.

If a personal services agreement affects the County network or a County computer or is for a subscription to an online service, and if the subscription requires the installation of a browser or other software onto a County computer, IT must also approve the agreement. If the insurance clauses are modified, the Risk Manager must approve. If the indemnity clause is modified, both County Counsel and the Risk Manager must approve.

The Chief Information Officer is authorized to sign or electronically “sign” or to delegate to County personnel the authority to sign or electronically “sign” end-user software license agreements without County Counsel or Risk Management review and approval.

Notwithstanding anything in this Section 5.6 to the contrary, the Chief Information Officer is also authorized to sign non-standard agreements for annual Maintenance and/or Support (also known as Maintenance/Support Agreements) without County Counsel and Risk Management review and approval if: (1) the annual Maintenance/Support Agreement renews or continues support or maintenance for existing County infrastructure software or hardware to ensure that such software or hardware remains operational and in compliance; (2) the cost of such annual maintenance or support agreement does not exceed \$50,000 and is budgeted within an IT Cost Center; and (3) the term of the agreement, including all authorized extensions or options, will not exceed three years. With respect to the term “Maintenance/Support Agreement” and for purposes of this section, (a) the terms maintenance and support, as those terms are defined within the IT industry, are used interchangeably; (b) the

terms “Support” and “Maintenance” generally mean and include technical Information Technology assistance and services rendered to the County by a vendor or third party with respect to a specific information technology product, hardware, or software. Such support or maintenance may be performed on-site or remotely; may include advanced replacement of hardware; may include preventative measures and practices to prevent product or services failures; and may include other similar services and measures intended to extend the useful life and benefit of equipment and IT products or services.

The Health and Human Services Agency Director may execute County standard revenue agreements and non-standard revenue agreements, including retroactive (a maximum of 45 days), for personal services rendered by the Opportunity Center to private businesses and governmental entities, provided the contract will not exceed \$10,000 annually. Notwithstanding Section 5.6.1, those contracts, including those retroactive beyond 45 days, that will not exceed \$50,000 annually may be signed by the County Executive Officer; the Board of Supervisors must approve and execute any such contracts with higher compensation. Those contracts for services which are based on a “per piece” or “per unit” basis, where the annual aggregate total cannot be ascertained in advance, shall be executed by either the Health and Human Services Agency Director, or by the County Executive Officer at the Health and Human Services Agency Director’s discretion. The County Executive Officer shall be advised in writing of any “per piece” or “per unit” contract executed by the County Executive Officer which ultimately exceeds \$10,000 annually. The Board of Supervisors shall be advised in writing of any “per piece” or “per unit” contract which ultimately exceeds \$50,000 annually. All forms used for Opportunity Center employment contracts shall be reviewed and approved by County Counsel as to form prior to their use and shall contain a clause allowing the County to cancel the contract by giving 30 days’ written notice.

The Chief Probation Officer is authorized to sign agreements with other counties to place youth at facilities located in California, using an agreement format approved by County Counsel.

The Health and Human Services Agency Director or his/her designee may execute prospective and retroactive (a maximum of 45 days) County standard agreements and non-standard agreements, with County Counsel and Risk Management approval, to provide specialty mental health services for Shasta County foster care youth, adoptive youth, or Kin-



GAP (Kinship Guardianship Assistance Payment Program) youth who reside outside of Shasta County, provided the contract will not exceed \$50,000 and provided it does not exceed one year in duration.

The Health and Human Services Agency Director, or his/her designee may sign work experience/community services agreements for CalWORKs participants that use a format approved by County Counsel.

The Public Health Director is authorized to obtain, and pay for by claim, laboratory testing for specimens for the purpose of providing treatment to an individual patient or to investigate an outbreak of disease.

The County Counsel is authorized to sign agreements, without the Risk Manager's approval, by which County Counsel provides legal services to special districts within Shasta County or to joint powers agencies of which the County is a member. The County Counsel is also authorized to sign agreements or submit requests for payment, without the Risk Manager's approval, for expenditures related to civil or administrative proceedings, provided total compensation for each agreement or claim does not exceed \$10,000 and the agreement is for a term of no more than a total of three years. Such expenditures may include, but are not limited to, service of process fees, expert witness fees and expenses, investigator or interpreter fees and expenses, laboratory fees, transcription and copying fees, and the costs for any other litigation-related service or item.

Regardless of who is authorized to sign an agreement, the department head retains the principal responsibility for negotiating and drafting the agreement, and monitoring the consultant's/contractor's performance. While not *required*, use of the standardized Personal Services Agreement **(ATTACHMENT B)** format *is highly recommended*. This will greatly simplify the review process.

If the Board of Supervisors has delegated authority to a department head to execute an agreement or amendment to an agreement, the department head shall forward a copy of the agreement or amendment to the Clerk of the Board within 10 days of execution.

### **5.7 The consultant's signature.**

The department must ordinarily obtain the signature of the consultant (or the officers of the consultant) before the agreement is signed by the County (whether by the Board of

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County Counsel is delegated the authority to modify the standard form documents set forth in this Manual if the modification is designed to comply with changes in law (whether statutory or case law), regulations, or policies imposed by a government agency with which the County contracts (e.g., if the State of California requires a change to certain contractual provisions). This delegation applies to all standard form documents set forth in this Manual. (See Section 5.18 regarding County Counsel's authority to draft specialized contract formats for certain departments.)

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Supervisors, County Executive Officer, or department head), unless the consultant provides a compelling reason not to sign prior to County. For agreements that are to be approved by the Board of Supervisors, the department can attach to the Board Report faxed copies of the agreement with the consultant, so long as the original is received and forwarded to the Clerk of the Board before the Board meeting or the department provides an explanation at the Board meeting, satisfactory to the Board, as to why the original signature could not be provided prior to the Board meeting.

In some circumstances, agreements with state or federal agencies must first be signed by the County's duly authorized representative(s). In these circumstances, it is the department's responsibility to forward a signed original to the Clerk of the Board or the County Executive Officer within 10 days of department's receipt of the agreement that has been executed by the representative(s) of the state or federal agency.

There are special signature requirements when the consultant is a corporation. (See item <21> of Section 5.17) In addition, although not recommended, agreements may be signed in counterpart (that is, there may be two "originals" of the agreement, with the County's signature on one and the consultant's/contractor's signature on the other) provided the agreement includes a provision permitting counterpart signatures.

#### **5.8 Personal services agreements with compensation of more than \$50,000.**

Except as provided in Section 5.6, all personal services agreements under which the County or the consultant is paid more than \$50,000, and all agreements which do not state a compensation maximum, must be approved by the Board of Supervisors (Shasta County Code, Section 3.04.010). These agreements must be reviewed by the Risk Manager, County Counsel, and County Administrative Office staff before they are submitted to the Board of Supervisors.

County Counsel may take an active role, together with the department head, in drafting and/or negotiating those agreements that require approval by the Board of Supervisors. These agreements ordinarily use the same clauses that are contained in the Personal Services Agreement (ATTACHMENT B). Use of the standardized clauses found in the standard format agreement is *highly recommended* because those clauses protect the County against liability and expedite County Counsel review.

In addition, departments shall use the Request for Personal Services Agreement Review/Approval (ATTACHMENT H) form either in digital or hard copy when seeking review

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by County Counsel, the Risk Manager, or IT. The Personal Services Agreement Review/Approval (ATTACHMENT H) provides an easy checklist for the information County Counsel looks for when reviewing agreements. Departments shall use the Request for Personal Services Agreement Review/Approval (ATTACHMENT H) form as a cover sheet when submitting hard copy agreements to County departments such as County Counsel, Risk Management, or IT for signature. Departments shall use the Request for Personal Services Agreement Review/Approval (ATTACHMENT H) as a cover sheet when submitting agreements to the County Administrative Office for the County Executive Officer's consideration of signing. A Word® version of the document can be obtained from the County's Intranet.

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#### **5.9 Aggregate personal services agreements.**

An "aggregate personal services agreement" commits a consultant to perform a series of related services during the term of the agreement for a set hourly or unit price, if and when called upon to do so by a department head. Examples include agreements for pest control services, property appraisals, or laboratory services. If the stated maximum compensation payable under an aggregate personal services agreement over its entire term does not exceed \$50,000, the County Executive Officer, as Purchasing Agent, may sign the agreement. The agreement may be negotiated by the department and the Purchasing Division, with the assistance of County Counsel as requested.

In order to confirm who has signature authority for an aggregate personal services agreement, the department must check in the County's financial management system to see if the consultant is currently under an agreement with the County for similar services (Purchasing can assist in determining whether the services are similar or not); if so, and the combined compensation for all of the agreements could exceed \$50,000, an amendment or a new aggregate agreement must be approved by the Board of Supervisors.

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As with other agreements, the department administers the aggregate agreement. If the County Executive Officer signed the aggregate agreement, it is essential that the compensation not exceed \$50,000. If it appears that total compensation will exceed \$50,000, an amendment to the aggregate agreement must be prepared for approval by the Board of Supervisors.

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If the aggregate contract is a public works contract -- for example, if the contract is with a contractor to perform minor alterations or repairs to County buildings as requested during the year -- the rules for public works contracts in Chapter 6.0 must be followed.

#### **5.10 Personal property maintenance agreements.**

As used in this section, a “maintenance agreement” is a personal services agreement for labor and materials necessary to properly maintain specified equipment, vehicles, or other personal property owned or used by the County. Although agreements for the maintenance of personal property are a type of personal services agreement, they are processed differently from other personal services agreements.

Maintenance agreements are negotiated by the Purchasing Division, usually at the time the equipment, vehicle, or personal property is purchased or rented. If the maximum compensation for labor and materials exceeds \$50,000, the maintenance agreement must go to the Board of Supervisors for approval; if it is \$50,000 or less, the County Executive Officer may sign it. To calculate the dollar amount of the maintenance agreement, the face value of the maintenance agreement should be added to the actual or projected cost of any necessary materials that the County will be required to purchase. If no flat dollar amount is stated in the maintenance agreement -- for example, if maintenance is on an “as needed” basis for an hourly rate plus the cost of materials -- then the Purchasing Division or the department head should estimate the annual cost of the maintenance agreement to determine which procedures apply and include “not to exceed” compensation language.

In addition, see Section 2.5.5, which allows a department head to obtain maintenance and/or support services by way of a Purchase Order (without a separate personal services agreement), under specified circumstances.

Note that “maintenance” is not the same as “repair.” Department heads may obtain minor repair services for County tools and equipment without a formal agreement. Section 5.6 describes the procedures. See Section 5.6.4 also regarding the authority of certain department heads to pay for repairs to vehicles, boats, and heavy equipment using a request for payment form.

The procedures in Chapter 6.0 must be followed for the repair of publicly owned, leased, or operated buildings or structures -- including the repair of equipment, such as heating, ventilation, and air conditioning (“HVAC”) systems, that are fixtures. Also, see Section 5.6.2

regarding the requirement that agreements for the maintenance, cleaning, or repair of County-owned or leased buildings be processed through Facilities Management.

#### **5.11 Agreements for advertising space or services.**

Section 26227 of the Government Code allows a county to expend money from the general fund in order to meet the social needs of the population of a county in a variety of areas, including the areas of health, law enforcement, public safety, and welfare; this statute impliedly authorizes expenditures for advertising the activities and programs of the County. In addition, section 26109 of the Government Code allows a board of supervisors, by ordinance, to regulate the sale of advertising space on a county's real or personal property for the sole purpose of raising revenue; however, the Shasta County Board of Supervisors has not adopted such an ordinance.

The Department of Support Services may purchase advertising space, in any medium, for the recruitment of employees, under a Blanket Purchase Order or by request for payment form.

The Department of Public Works may publish any notice or solicitation related to the normal and customary functions of the department (such as bid solicitations or notices of public hearings) under a Blanket Purchase Order or by a request for payment form.

The Clerk of the Board may publish normal and customary notices of public hearings, summaries of ordinances and the like, either by use of a Blanket Purchase Order or by a request for payment form.

The Department of Resource Management may publish normal and customary public notices relating to its land use planning function, by use of a Blanket Purchase Order or by a request for payment form.

The Auditor-Controller shall process any of the foregoing claims without requiring a Purchase Order or contract.

In addition to the foregoing, any department head may purchase advertising space in newspapers, magazines, or other periodic media, or on billboards, or may purchase radio or television "air time," if the advertising is normal and customary for that department, or is part of a media campaign previously approved by the Board of Supervisors. The department may use a request for payment form or Purchase Order if the cost is \$2,000 or less, and must use a Purchase Order if over \$2,000 but \$10,000 or less. Purchases of advertising space or airtime of more than \$10,000 must be approved by the County Executive Officer, and by the Board of Supervisors if

\$50,000 or more, and require a formal written agreement. If an advertising consultant insists on execution of an agreement (in addition to a County Purchase Order) for the purchase of advertising space or time when the cost is \$10,000 or less, and if the advertising consultant's agreement is not in the County's Personal Services Agreement (ATTACHMENT B) standard format, then the agreement must be signed by the County Executive Officer or be approved by the Board of Supervisors (depending upon the amount of the agreement and its duration), and be approved as to form by County Counsel and Risk Management.

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Department heads may also authorize payments for the drafting, set-up, and printing of brochures, fliers, mailers, or similar documents which are needed for the normal and customary activities of the department, or are part of a Board of Supervisors-approved publicity campaign, by using a request for payment form if \$2,000 or less, or by Purchase Order if more than \$2,000. This will be considered a purchase of goods, rather than the obtaining of services.

Department heads are authorized to sign personal services agreements for the production of radio and television advertising, so long as the County's Personal Services Agreement (ATTACHMENT B) format is used, the advertising is for a non-controversial program or service, and Section 5.6 is otherwise followed. Department heads should discuss a proposed advertising campaign with the County Executive Officer if there are any questions about whether the advertisement would be considered controversial or inappropriate by members of the public. Agreements for advertising must be signed by the County Executive Officer if total compensation is above \$10,000 and \$50,000 or less, or must be approved by the Board of Supervisors (if over \$50,000).

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#### **5.12 HIPAA and Business Associate Agreements.**

Public Law 104-191, the 1996 Health Insurance Portability and Accountability Act ("HIPAA") and the regulations adopted pursuant thereto, impose a comprehensive approach to ensuring the privacy and security of protected health information ("PHI") and electronic protected health information ("EPHI").

Pursuant to HIPAA, certain county departments, or parts thereof, have been designated by the Board of Supervisors as "covered components" of the County (see Administrative Policies 8-400 and 8-410), because they provide health care services or closely support the provision of health care. HIPAA requires that agreements with "business associates" of the County's "covered components" contain certain provisions so as to ensure the privacy and security of PHI

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and EPHI. Such agreements (called “Business Associate Agreements”) must prescribe how PHI and EPHI will be used and disclosed and must provide assurance that the County’s business associate will protect PHI and EPHI. Depending upon the nature of a particular agreement, the County’s “covered components” may be required to include the standard Business Associate Agreement as an addendum to agreements they prepare. The addendum is attached to this policy as Addendum to Contract/Agreement (HIPAA Business Associate Agreement) **(ATTACHMENT D)**. Additionally, non-covered components may be asked to become a Business Associate of a contractor. All departments should consult with County Counsel whenever a question arises as to whether a Business Associate Agreement addendum is required and/or HIPAA or Health Information Technology for Economic and Clinical Health HITECH is referenced in the agreement. All agreements referencing HIPAA must be reviewed and approved as to form by County Counsel regardless of whether the agreement includes a Business Associate Agreement addendum is attached.

#### **5.13 Reporting of payments made to sole proprietors.**

State law requires the County to report to the Employment Development Department (“EDD”) payments to “individual service providers” (i.e., sole proprietors) of \$600 or more during any calendar year, so that the state can locate parents who owe child support. (Unemployment Insurance Code, section 1088.8)

It is the obligation of each department that administers an agreement to make a report to EDD at any time the department believes that total payments by the County (including payments made through another department of the County) to a sole proprietor may exceed \$600 in any calendar year. The department may contact the Auditor-Controller to determine if the consultant has agreements through other departments. This reporting requirement applies to only those consultants who are individuals or sole proprietors; it does not apply to persons employed by a corporation, partnership, or limited liability company.

Reports must be made, using form DE542, within 20 days of entering into any agreement that would bring the County’s payments to the consultant to over \$600 in any calendar year. Each new agreement with the same consultant (if the agreement will exceed \$600 in a calendar year) must be reported. The report forms can be obtained from the EDD at 888-745-3886 (toll free) or at [www.edd.ca.gov](http://www.edd.ca.gov). Submit one copy to EDD and one copy to the Auditor-Controller.

In order to properly fill out the report form, the department will need the consultant's/contractor's social security number and street address (not post office box). This information should be obtained before the agreement is finalized.

#### **5.14 Inter-department agreements/memoranda of understanding.**

The state or federal government will occasionally require two or more County departments to enter into an "agreement," "contract," or "memorandum of understanding" in order to transfer funds between the departments or to memorialize the County's commitment to undertake certain multi-department functions. There may also be other reasons why two or more County departments wish to enter into an "agreement," "contract," or "memorandum of understanding" with each other. Because these "agreements," "contracts," and "memoranda of understanding" are not true contracts (because there is only one party, the County) department heads and the County Executive Officer may jointly sign any of these "agreements," "contracts," or "memoranda of understanding," even if the level of compensation or term of agreement would ordinarily require approval by the Board of Supervisors. County Counsel review of inter-department "agreements," "contracts," or "memoranda of understanding" is not required.

#### **5.15 Amendments.**

After the consultant begins work, the department may find that the agreement needs to be amended in order to modify the contractor's/consultant's scope of work, to extend the term, or for some other reason. In such cases, the department must prepare an agreement amendment to deal with these contingencies.

Ordinarily, any proposed amendment to an existing agreement must be approved by the same official or body who/that originally had the responsibility for approving the agreement. For example, if an agreement originally required the signature of the chairman of the Board of Supervisors, any amendment to that agreement must also be signed by the chairman.

There are two exceptions to this general rule.

First, the agreement itself may delegate amendment authority (usually to the department head), so long as delegation of such authority is legally permissible. If the Board of Supervisors, through the agreement, has delegated authority to the County Executive Officer or a department head to sign an amendment, a copy of the amendment must be provided to the Clerk of the Board within 10 days of its execution.



Second, if the proposed amendment to the compensation clause would have changed the level of approval required if the amendment had been a part of the original agreement, approval of the amendment must be obtained from the person or entity who would have been required to approve such an agreement initially had the amendment been part of the original agreement. For example, certain personal services agreements costing not more than \$50,000 may be signed by the County Executive Officer, and the approval of the Board of Supervisors is not required. However, if the scope of the agreement is expanded so that the total compensation would then exceed \$50,000, approval of the amendment must come from the Board of Supervisors, even though the Board did not have to approve the original agreement.

The Sample Agreement Amendment (ATTACHMENT E) is a sample amendment to use as a guide.

The remainder of this section describes how to draft an amendment.

The title of the amendment should indicate which amendment it is and should restate the title of the original agreement. Example: “Second Amendment to Personal Services Agreement Between County of Shasta, Through Its Health and Human Services Agency and XYZ, Inc., for CalWORKs Training Services.”

The introductory paragraph should again refer to the number of the amendment and the parties; for example: “This Second Amendment is entered into between the County of Shasta, a political subdivision of the State of California (“County”), and XYZ, Inc., (“Consultant”).” This introduction should be followed by recitals which described the contractual relationship to date and very briefly describe the purpose of the amendment.

Remove any brackets and the guidance language within the brackets which don’t apply to the amendment.

The recitals (the paragraphs which begin with “Whereas”) are used to briefly describe the purpose of the amendment (e.g., “to increase the number of clients to be served by consultant.”) Refer, briefly, to all of the terms that will be amended, as well as any prior amendments.

Under the recitals, list the title and new text of each section or paragraph of the original agreement to be amended. If only one of the paragraphs in a section will be amended, state, “Section 1, Responsibilities of Consultant, paragraph (A) is amended to read as follows: ¶[insert new text]” (and at the end of the new text, state, “The remainder of Section 1 remains

unchanged.”). Be sure to track the existing language into the amendment by either amending the section in its entirety or specifying exactly which paragraph is to be changed.

When the amendment changes the amount or rate of compensation, the amendment should ordinarily state the effective date of that change, to avoid a claim that the compensation change relates back to the effective date of the original agreement.

Do not necessarily delete any language from the agreement by an amendment simply because of the passage of time. Instead, add the new information (including, if appropriate, any new or amended attachments) to the existing language. For example: “Compensation for the extended term (from July 1, 2011, through June 30, 2012) shall not exceed \$4,000” or state an effective date for the particular amendment (for example, “Section 1, Compensation, of the Agreement is amended, as of the effective date of this First Amendment, to read as follows:”).

As noted above, if the amendment results in an increase in compensation, make sure the correct official signs the amendment. For example, if an original agreement had compensation of \$10,000 or less, the department head may have signed it. However, if the amendment will raise the compensation to over \$10,000 over the entire term of the agreement, then either the County Executive Officer (if total compensation is \$50,000 or less over the entire term of the agreement) or the Chairman of the Board of Supervisors must sign the agreement, instead of the department head.

If the amendment extends the term of the agreement, maintain the original starting date and make reference in the “recitals” to the number of days, months, or years that will be added to the term. Also state the last day of the term. Do not modify the term to delete the original starting date. Unless otherwise provided in this Manual, if the amendment increases the total term of the agreement to over three years, the amendment must be signed by the Board of Supervisors.

Three other sample paragraphs which are ordinarily included in amendments are shown in [the Sample Agreement Amendment \(ATTACHMENT E\)](#).

Whenever an amendment must be signed by the County Executive Officer or reviewed by County Counsel, the Risk Manager, or Information Technology, include with the amendment a copy of the original agreement, and any earlier amendments, in order to facilitate review.

### 5.16 Agreement termination.

This section discusses the procedures relating to the complete or partial termination of agreements by the County, both “for cause” and “without cause.” An agreement may be terminated “for cause” when the contractor’s/consultant’s performance is materially unsatisfactory or other significant agreement terms have not been satisfied. “Without cause” means the agreement may be terminated for any reason.

Departments should carefully consider the type of termination clause to be used in each agreement the department drafts.

As a general rule, an agreement should allow the County to terminate “for cause,” and should also include a clause for *unilateral* termination “without cause” to be exercised solely by the County. Whether or not to allow both parties to terminate without cause must be given careful consideration in that the County may have expended considerable effort and funds in establishing and administering the agreement at the time the consultant terminates. However, if the consultant insists on a clause allowing mutual termination without cause, that provision may be included in the agreement, with the concurrence of the Risk Manager and after consulting with County Counsel regarding the risk.

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#### 5.16.1 Termination without cause.

The right of the County to terminate an agreement “without cause” depends on the inclusion in the agreement of language specifically granting the County that power. In the absence of such a clause, attempting to terminate the agreement without cause normally constitutes a breach of contract which may subject the County to liability for damages. Before terminating an agreement without cause, carefully check the agreement language to be sure such action is authorized.

Termination of an agreement should not be undertaken lightly, since it may result in litigation, even when the agreement authorizes the County to terminate without cause. Before taking action to terminate, the department should carefully consider whether an amendment or another remedy would be more appropriate than termination. Consult with County Counsel except in the clearest of cases.

The County may terminate an agreement without cause only by a written notice to the consultant. Generally, the written notice should state: (1) that the agreement is being terminated without cause and citing the clause authorizing such termination, (2) the effective

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date of the termination, (3) the extent of the termination (whether the entire agreement or only certain separable parts), and (4) any special instructions (such as where and when to deliver County property used by the consultant). The County should also send a copy of the notice of termination to each known assignee, guarantor, or surety of the consultant.

The notice of termination should also generally require the consultant to: (1) stop work on the terminated portion of the agreement, (2) terminate all subcontracts related to the terminated portion of the agreement, (3) immediately advise the County of any special circumstances precluding the stoppage of work, (4) take such action as may be necessary to protect and preserve County property in the possession of the consultant and deliver such property to the County, (5) promptly notify the County in writing of any legal proceedings against the consultant growing out of the agreement or any commitment related to the terminated portion of the agreement, (6) settle all outstanding liabilities and claims arising out of termination of subcontracts, (7) promptly submit a final claim supported by appropriate schedules, and (8) dispose of any termination inventory as directed by the County.

Note that every personal services agreement should contain a clause allowing the County to terminate if funding for the contracted services ceases or is materially decreased during the term of the agreement. Notice of termination in this situation may be oral and termination is immediate. A department should never give oral notice of termination without first contacting County Counsel, because terminating an agreement without sufficient proof of a material decrease in funding would constitute a breach of contract.

#### **5.16.2 Termination for cause.**

An agreement may be terminated “for cause” when the contractor’s/consultant’s performance is materially unsatisfactory or other significant terms have not been satisfied. Problems concerning the contractor’s/consultant’s performance must be fully documented in writing and made a part of the contract manager’s contract file. When work under an agreement is unsatisfactory, the department head, after consulting with County Counsel, should notify the consultant in writing by certified mail, with return receipt; explain why the work is not satisfactory and what corrective action is expected; and give a specified period of time in which to satisfactorily perform the work.

Depending on how the contract's clause is written, the right to terminate the contract can be exercised by the department head, the County Executive Officer, or the Board of Supervisors.

Under a termination for cause, the County is not liable for the contractor's/consultant's costs on undelivered services or goods, and is entitled to repayment of any advance payment and of any progress payments applicable to such services or goods. The County must generally pay the consultant the contract price for any completed services or delivery of supplies.

If the department is considering terminating an agreement for cause, he or she should consult County Counsel. After reviewing the case, County Counsel will make recommendations for an appropriate course of action and outline the necessary steps to be taken.

#### **5.17 Use of the standard format personal services agreement.**

The Personal Services Agreement (ATTACHMENT B) has been prepared by County Counsel for use by departments. Departments may obtain a copy of the format from the County's Intranet or as an attachment to an e-mail from County Counsel.

Unless otherwise indicated in the instructions below, each of the standard paragraphs contained in the format should be included in every agreement.

Note that some language in the standard format is optional. If the language contained in brackets in the standard format does not apply to your particular situation, make sure the bracketed language is not included in the agreement.

Specialized language must be drafted to fit the particular circumstances of each case. The standard format contains numbered notes that indicate where the specialized language should be inserted. In drafting the specialized language, the following numbered notes should be consulted. The numbers correspond to the numbered note in the format (e.g. [keyboard <4>], which appears in Section 1 of the standard format agreement, is explained in item <4>, below).

#### **Numbered note instructions:**

- <1> The title of the agreement should contain the full legal name of the person or business entity providing the services. This should be the name under which the consultant files income tax returns. Insert the consultant's name at <1>. If the consultant is doing business under a fictitious business name, both the person's name and the business

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name should be included (i.e., “Mary Smith d.b.a. Smith Consulting Services”). If the consultant is a corporation, include “Inc.” if “Inc.” is part of the official name of the corporation, or add “a California [or whatever state applies] corporation” if “Inc.” is not part of the corporation’s name.

County departments are not contracting entities; the agreement must be issued in the name of the County rather than a department.

It is a good idea to very briefly describe the purpose of the agreement in the title, so that it can be tracked more easily. For example, “Personal Services Agreement Between County of Shasta, through its Health and Human Services Agency and XYZ, Inc. for CalWORKS Training Services.”

<2> As stated above, the County, not the department, is the contracting party. You may, however, include your department's name in the introductory paragraph by stating, “Personal Services Agreement Between the County of Shasta, a political subdivision of the State of California (“County”) through its Department of [your department] and [Consultant’s name] (“Consultant).”

<3> Again, enter the full name of the person or business entity providing the service in this introductory paragraph of the agreement. Throughout the remainder of the standard format agreement, the contractor will be referred to as “Consultant.” [The term “Contractor” is ordinarily used in public works contracts and “Consultant” in personal services agreements, but either is acceptable for any contract; be sure, however, to use one term consistently throughout.] You may also refer to the County or Consultant by another term (such as “Licensee,” “Architect,” or “Provider,” but you need to go through the

standard agreement and change the party's name from "County" or "Consultant" wherever those terms appear.

<4> Briefly indicate in general terms the purpose of the agreement. For example, the agreement may be "for the purpose of training the clients of the Health and Human Services Agency in techniques of stress management." If you have stated the purpose of the agreement in the title, repeat that language here, or elaborate a little, but keep the description to one sentence.

<5> If the agreement uses specialized terminology and you want to define terms to assist the reader (such as the County Executive Officer, the Board of Supervisors, or a court) in understanding the agreement, insert a paragraph called, "Section 1. Definitions" here and list your definitions in lettered paragraphs. Be sure to renumber all of the subsequent agreement sections.

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<6> Section 1, "Responsibilities of Consultant," contains the "meat" of the agreement. This section describes what the Consultant is required to do in exchange for the compensation to be paid. This paragraph should ordinarily begin with a general statement of the goal or outcome to be achieved. Then, state in clear and explicit terms each and every service the Consultant must provide to the County. Depending on the circumstances, include the specific dates and times of performance (for example: "Consultant shall provide to the staff of the Planning Division one training workshop, on December 3, 2018, from 8:00 a.m. to 5:00 p.m."), the place where the services will be provided, the identity of the employees or clients receiving the services, the quantity and quality of the services, a description of any documents to be produced, etc. Remember that the Consultant is required to do *only* those things that are listed in this paragraph. If a

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task is not listed, the Consultant does not have to do it. We cannot rely on an unwritten “understanding” with the Consultant, or with “past practice.”

Never include language such as “the services shall be performed on a date as agreed upon by the parties.” Such language constitutes only an “agreement to agree,” and is not legally enforceable. If you must use such language, then insert a clause that provides for a method to resolve an inability to agree, such as: “the services shall be performed on a date as agreed upon by the parties; however, should the parties be unable to agree upon a date, then the County shall have the authority, in its sole discretion, to set the date upon which the services shall be performed.”

If there is a document, such as a proposal, which describes the Consultant’s services, you can simply state that the Consultant shall “perform those duties prescribed in Attachment ‘A,’ which is incorporated by this reference” and then mark the proposal “Attachment A” and include it with the agreement. However, you must make sure that the attachment does not contain clauses that are inconsistent or conflict in any way with any of the provisions of the standard format agreement. If there is a conflict, or the possibility of a conflict, state, “In the case of any conflict between the provisions of this document and Attachment A, the provisions of this document shall govern.”

If the description of the Consultant’s work is lengthy, break the text into paragraphs and letter each paragraph.

If the agreement requires the Consultant to prepare a report or other document and compensation for the agreement exceeds \$5,000, add



the paragraph shown on the format in brackets and letter each paragraph accordingly. Otherwise, delete the bracketed paragraph.

See Section 5.4 for more information about drafting this section of the agreement.

- <7> Here, explain the County’s responsibilities. At a minimum, the County has the responsibility to pay (“compensate”) the Consultant for his, her, or its services. [If you have added a definition section as “Section 1”, be sure that you refer in this section to Section 4, not Section 3, regarding compensation.]

In addition to the County’s responsibility to pay for services, other duties may be required, such as providing support staff, clerical services, or general oversight; the furnishing of such things as office space, materials, equipment, or supplies; or a guarantee that the Consultant will have access to County facilities, staff reports, and data needed to complete the work (but note that providing such access may affect the Consultant’s tax status; see Section 5.5). Any additional duties to be undertaken by the County should be specifically delineated here. If there are no additional duties, skip to item <8>.

- <8> Sometimes, the Consultant is paid a lump sum at the end of the agreement’s term for all of the work performed. If this is the case, simply type in the total amount to be paid at item <8>. A lump sum amount should be exact; the phrases “up to” or “an amount not to exceed” should not be used.

Sometimes, a lump sum payment is not the appropriate method of payment. Two other options for payment are:

- The Consultant may be paid at a particular hourly rate (or at various hourly rates, depending on which of the Consultant's employees do the task), "up to" or "not to exceed" a specified compensation maximum; this type of compensation is usually paid each month or each quarter for services rendered the preceding month or quarter. When the Consultant is to be paid at an hourly rate, avoid stating "\$100 per hour or fraction thereof," since the Consultant would receive \$200 for 65 minutes of work. Instead, state that compensation will be paid in quarter-hour or six-minute increments; or
- The Consultant may be paid as certain tasks or units of service of a larger project are completed. If this method of compensation is chosen, be sure to withhold 20 to 25 percent of the total agreement amount until after all work is completed. In that way, the Consultant will be motivated to complete all of the services required by the agreement. If payment is by task or unit of service, require the Consultant to provide some sort of proof that the task or unit of service has been completed before authorizing payment of each claim.

The method of compensation, whether lump sum, hourly, or by progress payments, should be clearly described in this section of the agreement. If the method of payment is other than by lump sum, you must delete the standard language and draft your own. The following gives you guidance on the language for the various methods of compensation; however, call County Counsel if you need assistance.

If the agreement provides for hourly compensation, you must state a contract maximum. Example: "Consultant shall be paid at the rate of \$40 per hour for services rendered; however, in no event shall

consultant be paid in excess of \$3,600 for all services consultant is obligated to render pursuant to this agreement.” Always specify the maximum compensation for the entire agreement (whether the term is a few months or three years). Make sure this sum complies with the authority delegated by the Board of Supervisors (for example, a department head cannot ordinarily sign an agreement having total compensation exceeding \$10,000). Also state how frequently payments will be made (monthly or quarterly or after all services are rendered).

If the agreement is for more than one year, and you have agreed with the Consultant that compensation will change over time, specify the maximum for each year. For example, “Consultant shall be paid at the rate of \$25 per hour as compensation for services rendered during Fiscal Year 2017-18, but total compensation for that year shall not exceed \$1,250; at the rate of \$26 per hour during Fiscal Year 2018-19, but not to exceed \$1,300; and at the rate of \$27 per hour during Fiscal Year 2019-20, but not to exceed \$1,350.”

If the agreement provides for a number of different rates for service, and it is likely that the Consultant will ask for minor changes in one or more of those rates during the term of the agreement, you may insert, “During the term of this agreement, the [insert department head’s title] may approve, in writing and in advance, changes in any of Consultant’s rates, provided that the increase in any single rate shall not exceed 10 percent over the original rate during the entire term of this agreement and provided further that the rate increase shall not increase the total compensation payable under this agreement.” If the agreement includes a budget for the Consultant, similar language may be inserted to allow the department head to authorize transfers between

line items in the agreement budget, so long as total compensation is not increased.

If it is possible that the scope of the agreement may be modified, resulting in a decrease in compensation, the department head can be authorized to independently execute an amendment lowering total compensation. You may insert, “The [insert department head’s title] may, in writing, approve a decrease in services, resulting in a decrease in compensation, not to exceed 25 percent of total compensation.”

“Unit of service” agreements also must have a compensation maximum. You might state, “Consultant shall be paid \$500 for each class taught. The maximum compensation payable for Consultant’s services shall be \$4,000; no additional sums will be paid for services rendered.”

For “progress payment” agreements, tie payments to the completion (and County’s acceptance) of each task. For example, “Consultant shall be paid the following amounts as each task is completed and accepted by County: Task 1, \$5,000; Task 2, \$3,500; and Task 3, \$1,500. In no event shall total compensation exceed \$10,000.”

If the Consultant is to be paid for travel expenses, that should also be referenced in this paragraph. Generally, the County will pay for actual travel expenses incurred; we usually require that travel expenses be approved in advance (to keep the Consultant from using an unusually expensive mode of travel). In other cases, the agreement may provide that “reimbursement for travel expenses will be at the same rates and under the same conditions as provided to County employees.” If travel expenses are to be paid, the agreement must state: “Consultant must

submit original receipts to document each expense, or reimbursement will be denied.”

The agreement may also include a provision for compensation for other items, such as training materials or copies of reports. The terms and conditions of such reimbursement should be described in this paragraph.

Make sure that reimbursement for expenses does not push the total compensation over the maximum amount that is authorized for the County official (the department head or County Executive Officer) who will be signing the agreement.

The Health and Human Services Agency is authorized to draft certain personal services agreements that do not include a maximum compensation, but only hourly rates. Those agreements are for counseling (whether individual, family or group counseling), anger management treatment, domestic violence treatment, and/or psychological consultation only. Those agreements must be signed by the Board of Supervisors. All other personal services agreements must state a lump sum or a compensation maximum.

- <9> Insert the title of the department head or contract administrator at item <9> in Section 4, “Billing and Payment.”

The standard language assumes a single payment after all the work is completed. If monthly, quarterly, or progress payments are to be made, rather than a lump sum payment, delete the first sentence and substitute language similar to the following: “Consultant shall submit to [name of department head or contract administrator] a monthly statement of services rendered [and costs incurred, accompanied by

original receipts] by the fifth [or 10th or 15th] day of each month for services rendered the preceding month” *or* “Consultant shall submit to [name of department head or contract administrator] a statement of services rendered [and costs incurred, accompanied by original receipts] after completing each [describe unit of service, such as “class,” “report,” “examination,” etc.] *or* “Consultant shall submit a bill for services rendered [and costs incurred, accompanied by original receipts] to [name of department head or contract administrator] in accordance with the following schedule: [describe schedule].”

- <10> If the County is reimbursing the Consultant for any expenses (such as travel costs), add the phrase “and costs incurred” here. Make sure that those costs have been described in the section titled, “Responsibilities of County.”

Do not delete the last sentence of this section of the standard format regarding the County's payments to the Consultant.

- <11> Insert the date the agreement will end. If you are unsure when the work will be completed, state “upon County’s acceptance of the work described in this agreement, but no later than [date].” If the term of the agreement is to commence at a date after signing, substitute that date for the phrase “as of the date it has been signed by the parties.” Since the agreement is ordinarily signed by the Board of Supervisors, County Executive Officer, or department head after it is signed by the Consultant, this means that the agreement will not become effective until the County executes it.

If the agreement term crosses fiscal years, modify the paragraph contained in the brackets with the appropriate paragraph as indicated in the template.

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Remember that agreements with a term longer than a total of three years must be signed by the Board of Supervisors unless otherwise addressed in this Manual.

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Try to have the term of the agreement correspond to the beginning and/or end of the County fiscal year.

Sometimes, the agreement will require the Consultant to provide the County a report after all of the rest of the work is completed. You may state that “the agreement will end on [date], except for the final report, which shall be due [date]” or words to that effect.

<12> Insert the termination notice period, which could be 30 days or 60 days, or some other appropriate time period.

<13> Insert the title of the person who will give notice of termination. Ordinarily, this will be the department head.

<14> Insert the department head’s title.

<15> The standard format personal services agreement should ordinarily contain unilateral indemnification, to the benefit of the County. However, if the Consultant insists on mutual indemnification, contact the Risk Manager and County Counsel to seek approval to use the mutual indemnification clause set forth in Section 7.2.2.

<16> Section 11 of the standard format begins with two paragraphs prescribing the minimum insurance requirements for all personal services agreements (general liability and workers' compensation coverage). Most agreements require only general liability and

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workers' compensation. At item <15>, add the language for any other insurance coverages that are required for your particular type of agreement. (See Chapter 7.0, which describes in detail the insurance coverages needed for each type of agreement, and provides further information about proof of insurance.)

Be sure that the remaining paragraphs of this section, beginning with either C or D, are correctly lettered and inserted.

- <17> Insert the department head's title, not the department head's name (e.g., "Director of Support Services"), the name of the department, the mailing address, and a telephone and FAX number.
- <18> Insert the full name of the Consultant, the Consultant's mailing address, and the Consultant's telephone and FAX number.
- <19> Insert any of the optional sections which are required for your agreement by this Manual, law or regulation. Number the section(s) consecutively. Also give the appropriate number to the last standard section, "Severability."
- <20> Insert the name and title of the department head, County Executive Officer, or Chairman of the Board of Supervisors, depending on which officer is authorized to sign the agreement. (See Section 5.6 regarding signature authority.) If the Chairman of the Board of Supervisors will be signing the agreement, add an attestation line for the Clerk of the Board, an "approved as to form" for County Counsel, and an "approved" line for the Risk Manager. Make sure that the Consultant's signature is lower on the page than the Clerk's attestation because the Clerk can only attest to the Chairman's signature and not to anyone else's.



If the County Executive Officer can sign the agreement, but the insurance clause has been modified, include an “approved” line for the Risk Manager. If the County Executive Officer can sign the agreement, but the indemnification clause has been modified, include an “approved as to form” line for County Counsel and an “approved” line for the Risk Manager.

- <21> Insert the name and title of the Consultant or, in the case of a business entity, the Consultant’s representative(s) or officer(s) authorized to bind the Consultant to the agreement. Pursuant to section 313 of the Corporations Code, if the Consultant is a corporation, the agreement should be signed by two of the corporation’s officers: one from the “executive group,” i.e., the chairman of its board, its president or a vice-president *and* one from the “financial group,” i.e., its secretary or assistant secretary, treasurer or assistant treasurer or its chief financial officer, unless the Board of Directors has authorized, in writing, a particular corporate officer to sign agreements. If the Board of Directors of the corporation has adopted such an authorization, attach a copy of the resolution to the agreement. If a person holds more than one corporate office (for example, president and chief financial officer), that one person may sign the agreement and bind the corporation. In that case, indicate below the signature line what corporate offices the signer holds.

If two signatures are needed for a corporation, add another signature line and type the names and titles of the corporate officers under them.

- <22> Insert the Consultant’s federal tax identification number. However, if the Consultant is an individual, his/her social security number or Individual Taxpayer Identification Number is the Consultant’s tax

number. To help avoid identity theft, only the original of the agreement should contain the social security number or the Individual Taxpayer Identification Number. All copies should have those numbers deleted.

*NOTE: If the only deviation is a change to the insurance coverage, and compensation is \$10,000 or less, the department head can sign as long as the agreement is approved by the Risk Manager; if the indemnification clause is changed, both the Risk Manager and County Counsel must approve.*

#### **5.18 Other personal services agreement formats.**

The County Counsel is authorized to approve in advance certain specialized contract formats referred to in Section 5.6.4 and other routine agreements, such as group home, respite, or day care agreements for the Health and Human Services Agency; these services may be paid for, at the option of the Health and Human Services Agency by submitting a Purchase Order or other approved documentation to the Auditor-Controller. In addition, the County Counsel may approve, and the Health and Human Services Agency Director may sign, standard format agreements for Opportunity Center clients to work for private businesses and government entities, pursuant to subsection 5.6.4.

For a select list of services totaling \$5,000 or less, departments may use the County's simplified purchase order for services form rather than a formal personal services agreement (Administrative Manual 2-201).

## **Chapter 6.0 CONTRACTS FOR PUBLIC WORKS PROJECTS COSTING UNDER \$45,000.**

### **Section 6.1 Definition of “public works project.”**

The Public Contract Code defines the term “public works project” as a project for the construction, improvement, demolition, alteration, renovation, or repair of publicly owned, leased, or operated buildings and structures. This would include the installation of fixtures such as HVAC systems or permanent wiring. However, maintenance work (as distinguished from repair work) is *not* considered a public works project.\*\*

An example of a public works project is the removal of asbestos from a building (because it involves demolition). Painting, except for minor repainting, is also considered a public works project (Public Contract Code, sections 20150.2, 22002). The installation of an alarm system is also a public works project (because the work involves the alteration of a building), but maintenance of the system is a personal service.\*

### **6.2 Procedures for public works projects costing less than \$45,000.**

The Board of Supervisors has delegated to the Director of Public Works the authority to sign Public Works Construction Contracts, (ATTACHMENT F) with compensation of \$10,000 or less, and the County Executive Officer to sign public works contracts with compensation of \$45,000 or less (subject to formal bidding requirements when applicable -- see the next paragraph). The Board has also delegated to the Chief Information Officer and his/her designee the authority to negotiate and sign contracts for and administer, and oversee public works projects for telephone, telecommunication, and other information services cabling projects with compensation of \$10,000 or less. For purposes of this Chapter, the term Director of Public Works includes the Chief Information Officer for purposes of telephone, telecommunication, and

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\* The distinction between maintenance and repair work is difficult to make in some situations. The distinction is important, since contracts for the maintenance of County buildings are personal services contracts, whereas contracts for the repair of the same buildings are public works contracts. Contact County Counsel for advice on determining the nature of the contract.

\*\* Although not considered a “public works project” subject to bidding requirements, some maintenance work requires payment of prevailing wages. See 8 CCR §§16000, *et seq.*

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other information services cabling projects. All other contracts for public works projects must be presented to the Board for signature.

Although County public works projects estimated to cost \$4,000 or more generally must go through the formal bidding process (Public Contract Code, section 20150.4), the threshold applicable to Shasta County is \$45,000 because the Board of Supervisors has opted to become subject to the Uniform Public Construction Cost Accounting Act (Public Contract Code, sections 22000, *et seq.*; Resolution 2005-93). Under that Act, a county may agree to follow accounting procedures published by the State Controller's office. By agreeing to follow those procedures, the County may carry out public works projects estimated to cost \$45,000 or less by either "force account" or by entering into a negotiated contract with a construction contractor without bidding.

The term "force account" is used to describe the employment of County personnel to perform construction or repair work. The County may also use unpaid labor (such as volunteers, conservation camp workers, or Sheriff's work release inmates) to accomplish some or all of the work. When public works projects are done by force account, the Public Works Department acts as the general contractor for the County. In addition, the County may subcontract portions of a public works project, such as electrical or plumbing work (and the subcontracting may be accomplished by negotiated contract without bidding).

Although the Public Works Department may use force account for projects of \$45,000 or less, it is not required to do so. If the County elects to contract out for a project of \$45,000 or less, the contract may be awarded through private negotiations without first going out to bid or preparing detailed plans and specifications; however, those contracts still must provide for prevailing wages (if the contract is more than \$1,000), bonds (unless waived), and insurance. The Public Works Department will negotiate the contract, with the assistance of the Purchasing Division and County Counsel if requested. County Counsel has drafted a standard format Public Works Construction Contract (ATTACHMENT F). Whether or not the standard format is used, the contract must be approved by the County Counsel and the Risk Manager before it is signed by the County Executive Officer or Director of Public Works, as applicable.

Whether the project is undertaken by force account or negotiated contract, if a contract or subcontract exceeds \$1,000, prevailing wages must be paid (Labor Code, section 1771). For purposes of determining if the prevailing wage requirement applies, "public works" includes

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installation work and carpet-laying, as well as the other activities listed in Section 6.1 (Labor Code, section 1720).

State law does not require that a contractor or subcontractor provide a labor and materials payment bond for work performed on public works projects of \$25,000 or less (Civil Code, section 3247). However, the Director of Public Works may require the contractor or subcontractor on such a project to provide a payment bond if deemed advisable. If a payment bond is required, it must be in an amount equal to at least 100 percent of the contract/subcontract price (Civil Code, section 3248(a)).

A performance bond is required from the contractor or subcontractor before the contractor/subcontractor enters into any public works contract, including negotiated contracts of \$45,000 or less. However, the Director of Public Works may waive the requirement of a performance bond if all the following are met:

- the contract or subcontract price is \$25,000 or less;
- if there are any other subcontracts on the same project, the total dollar amount of all the contracts together does not exceed \$25,000;
- the Director of Public Works, with the concurrence of the affected department head, if any, determines that it would be in the best interests of the County to waive the performance bond; and
- the Risk Manager approves the waiver.

All contractors and subcontractors must also obtain comprehensive general liability and workers' compensation insurance as required by Chapter 7.0 of this policy. In addition, any contractor or subcontractor required to be licensed by a state or local agency must show proof of licensure before commencing work.

Public works projects costing more than \$45,000 must be approved, in advance, by the Board of Supervisors. The procedures for undertaking those projects are not covered by this Manual. Departments should contact the Public Works Department regarding such projects.

In determining whether a project costs \$45,000 or less, all costs of materials, labor (including the salaries and benefits of County employees, as well as any subcontractor's labor costs), and overhead must be included. It is illegal to split a project into two or more separate parts in an attempt to bring each part under the \$45,000 limit (Public Contract Code, section 22033). Project splitting is a ground for disciplinary action.

The Uniform Public Construction Cost Accounting Act does not limit a department head's ability to buy materials or contract for services in emergency situations. (See Section 2.10.)

Various provisions of state law require certain clauses in every public works contract. For this reason, all public works contracts, including a subcontract for a force account project, regardless of the dollar amount, must be reviewed and approved by County Counsel before they are entered into. To reduce the time required to approve the contract, the Public Works Construction Contract (ATTACHMENT F) should be used.

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**6.3 Signatures.** When the contractor is a corporation, special rules apply to the contractor's signature of the contract. See item <21> of Section 5.17.

**6.4 Aggregate public works contracts.** The Public Works Department may negotiate public works contracts with local trades people to provide periodic services, such as plumbing or electrical services, in connection with small public works projects (Public Contract Code, sections 22000, *et seq.*). Such "aggregate public works contracts" will ordinarily be entered into by way of bidding or through the RFP/RFQ process. More than one contract may be let for each building trade.

With regard to aggregate public works contracts, the relevant cost figure is not the price of any individual project but the price of the contract as a whole. Any aggregate services contract over \$45,000 must go to the Board of Supervisors; those of \$45,000 or less may be signed by the County Executive Officer after review by County Counsel and the Risk Manager, and if \$10,000 or less, by the Director of Public Works if the standard contract format is used and the contract is approved by County Counsel and the Risk Manager. (See Section 5.6 for more information on aggregate contracts.)

**6.5 Cabling projects by Information Technology Department.**

The Chief Information Officer may use his/her own employees to undertake telephone, communications, or data cabling projects within County-owned or leased facilities, so long as each discrete project costs less than \$45,000.

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## **Chapter 7.0 INSURANCE AND INDEMNITY PROVISIONS FOR ALL AGREEMENTS AND CONTRACTS.**

### **Section 7.1 Overview.**

Indemnity and insurance provisions are intended to protect the County from incurring losses attributable to the actions or responsibilities of others. Section 7.2 discusses indemnification. Section 7.3 describes what types of insurance or bonds each kind of contract requires. Waivers of Liability are covered under Administrative Policy 3-205.

Department heads are ultimately responsible for all of the terms of a proposed contract, including the indemnification and insurance provisions. Each department head and the department's contract administrator should be familiar with the requirements of this Chapter in order to successfully encourage contractors/consultants to accept these provisions in their agreements.

When there is any question about whether a consultant is able to obtain the necessary policies of insurance, the department head or contract administrator should contact the Risk Manager to discuss whether the standard insurance provisions can be modified before concluding negotiations with the consultant.

Each department is responsible for obtaining the appropriate proof of insurance and forwarding it with a copy of the proposed contract to the Risk Manager for review and approval before the contract is signed on behalf of the County. As discussed in Section 7.6, the only proof of insurance which is acceptable is an endorsement or an amendment to the insurance policy of the consultant, which names the County, its elected officials, officers, employees, agents, and volunteers as "additional insureds." A certificate of insurance is not acceptable because a certificate does not bind the insurance company. However, while the endorsement or amendment will contain the "additional insureds" language, it might not include the limit of liability (that is, the maximum dollar amount the insurer is obligated to pay when a covered loss occurs). In that case, the consultant must also provide a certificate of insurance reflecting the policy limits. After review by the Risk Manager, the proof of insurance documents will be returned to the department if they were not sent electronically.

The department is also responsible for obtaining a renewal insurance endorsement or policy amendment *prior* to the expiration of the current endorsement or insurance policy amendment. Renewal endorsements or amendments, along with a photocopy of the current

endorsement or amendment, must be forwarded to the Risk Manager for approval prior to the expiration of the coverage.

As part of their contract negotiations, department heads or contract administrators should obtain documentation showing that the contractor's/consultant's insurance coverage is supplied by a domestic insurer which has received a financial rating of "A-" or better and a policyholder surplus rating of at least "VII" from A.M. Best. Similarly, all construction contracts, as well as any other contract which requires a bond, must be accompanied by proof of bonding obtained from a domestic bonding company with an A.M. Best financial rating of "A-" or better.

The Risk Manager is required to review all agreements over \$50,000 and any contract in which the insurance clause does not follow the standard format. The Risk Manager may require higher limits of coverage when the basic limits prescribed in this Manual are deemed to be inadequate. For example, higher limits may be required for particularly complex construction or maintenance contracts, programs having members of the public assigned to them in a custodial capacity, programs having a large concentration of the public in one place at one time, or programs requiring a high degree of professional care or judgment.

When deemed necessary, the Risk Manager will require coverage endorsements to be attached to the Commercial General Liability Insurance policy, or require the policy to be amended to include coverage for auto and non-owned auto, broad-form contractual, broad-form property damage, contractor's protective, products/completed operations, XCU (explosion, collapse, underground), host liquor, personal injury, or fire-legal liability.

The Risk Manager may waive various types of insurance coverage or reduce the limits of coverage when he or she determines that the risk of loss is outweighed by the County's need to secure the services of that particular consultant. The Risk Manager may also modify the language of the standard insurance provisions under the same circumstances.

The Risk Manager will confirm that insurers and sureties which provide coverage or bonds are admitted to do business in California.

The County will assume no responsibility for the cost of insurance provided by a consultant, lessor, lessee, or any entity funded by the County.



## 7.2 Indemnification provisions.

Contractual indemnification is a means by which parties to a contract may allocate the risks of liability and loss between themselves. An indemnification provision also usually requires the indemnifying party to provide a legal defense against third party claims arising out of the agreement.

There are two basic types of indemnification provisions and numerous variations. The two basic types are unilateral and mutual. Unilateral indemnification means one of the parties agrees to indemnify the other party to the agreement. Mutual indemnification means each party will indemnify the other party, usually for the claims resulting from the indemnifying party's own conduct.

### 7.2.1 Types of indemnification clauses.

Four types of indemnification provisions are listed below in order of preference, according to the degree of protection they afford the County, as well as the degree of risk to the County. The provision that provides the greatest protection and the least risk to the County is listed first:

**Standard unilateral indemnification** -- This provision is used in the Personal Services Agreement (ATTACHMENT B). It is a unilateral provision that indemnifies the County for its entire loss arising out of the performance of the agreement, regardless of whether the County's negligence contributed to the loss. However, if the loss was caused by the sole negligence of the County (rather than the concurrent negligence of both the County and the consultant), state law prohibits indemnification, so the provision specifically excludes sole negligence of the County. The standard unilateral indemnification provision *must* be used in County agreements unless the County Counsel and Risk Manager have approved use of another indemnification provision. It affords the County the greatest degree of protection.

**Limited unilateral indemnification** -- The limited unilateral indemnification provision indemnifies the County for loss arising out of the performance of the agreement, but if the County's conduct contributed to the loss, indemnification of the County will be reduced accordingly. The County does not obligate itself to indemnify the other party. Approval by County Counsel and the Risk Manager to use this provision in an agreement is necessary.

**Mutual indemnification** -- Under a mutual indemnification provision, each party agrees to indemnify the other party for the loss caused by the indemnifying party's conduct. If

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both parties are partly responsible for the loss, then each party will indemnify the other based upon its degree of fault. This type of provision is sometimes referred to as “comparative” mutual indemnification. The County should attempt to negotiate use of the limited unilateral indemnification provision or other more favorable provision before agreeing to mutual indemnification because it imposes on the County risk of liability to the other party. Approval by County Counsel and the Risk Manager is necessary before this provision can be used.

**Unilateral indemnification by County** -- Under this indemnification provision, the County agrees to indemnify the consultant, but the consultant does not agree to indemnify the County. This provision should rarely be used in situations other than commercial leases where the County is the tenant. Approval by County Counsel and the Risk Manager to use this provision in an agreement is necessary.

#### 7.2.2 Required indemnification language.

Agreements must include the standard unilateral indemnification language from the “INDEMNIFICATION” section in the Personal Services Agreement (ATTACHMENT B), unless another provision is authorized by County Counsel and the Risk Manager.

Some consultants or contractors insist on mutual indemnification clauses. In that case, the department must obtain the prior approval of the Risk Manager and County Counsel to modify the standard language. Upon approval, the following language can be used in lieu of the initial paragraph(s):

“Each party shall defend, indemnify, and hold the other party, its officials, officers, employees, agents, and volunteers, harmless from and against any and all liability, loss, expenses (including reasonable attorney's fees), or claims for injury or damage arising out of the performance of this agreement, but only in proportion to and to the extent such liability, loss, expenses (including reasonable attorney's fees), or claims for injury or damage are caused by or result from the negligent or intentional acts or omissions of the indemnifying party, its officials, officers, employees, agents, subcontractors, or volunteers.”

#### 7.3 Required insurance coverage.

The types of insurance coverage required under a particular contract depend on the subject matter of the contract. The department should ensure that, absent a waiver of coverage

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To the fullest extent permitted by law, Consultant shall indemnify and hold harmless County, its elected officials, officers, employees, agents, and volunteers against all claims, suits, actions, costs, expenses (including, but not limited to, reasonable attorney's fees of County Counsel and counsel retained by County, expert fees, litigation costs, and investigation costs), damages, judgments, or decrees arising from the work or the provision of services undertaken pursuant to this agreement by Consultant, or by any of Consultant's subcontractors, any person employed under Consultant, or under any subcontractor, or in any capacity, except when the injury or loss is caused by the sole negligence or intentional wrongdoing of County. Consultant shall also, at Consultant's own expense, defend the County, its elected officials, officers, employees, agents, and volunteers, against any claim, suit, action, or proceeding brought against County, its elected officials, officers, employees, agents, and volunteers, arising from the work or the provision of services undertaken pursuant to this agreement by Consultant, or any of Consultant's subcontractors, any person employed under Consultant, or under any Subcontractor, or in any capacity. Consultant shall also defend and indemnify County for any adverse determination made by the Internal Revenue Service or the State Franchise Tax Board and/or any other taxing or regulatory agency and shall defend, indemnify, and hold harmless County with respect to Consultant's “independent contractor” status that would establish a liability on County for failure to make social security deductions or contributions or income tax withholding payments, or any other legally mandated payment. The provisions of this paragraph are intended to be interpreted as broadly as permitted by applicable law. This provision shall survive the termination, expiration, or cancellation of this agreement.¶

[For any contract where a design professional, as that term is defined in Civil Code Section 2782.8, is being contracted with, add the following paragraph:¶]

“For professional services provided under this agreement [or contract], Contractor [or Consultant] shall indemnify, defend, and hold harmless County, its elected officials, officers, employees, agents, and volunteers from and against any and all claims, demands, actions, losses, liabilities, damage, and costs, including reasonable attorneys' fees, arising out of or resulting from the negligent performance of the professional services provided under this agreement [or contract]. Consultant shall also, at Consultant's own expense, defend the County against any suit or action brought against County founded upon any claim, action or proceeding which is based upon the work or the provision of services undertaken pursuant to this agreement. The words “professional services”

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by the Risk Manager, all of the following listed insurance coverages are obtained for the particular type of contract.

**7.3.1 Personal services agreements -- professionals.**

Examples: State licensed architects, engineers, consultants, counselors, attorneys, accountants, clinics, or medical professionals.

Required Insurance:

- Commercial General Liability Insurance, with any required endorsements, with combined single limit of \$1 million per occurrence.
- Workers' Compensation as required by law, and Employer's Liability Insurance with limits of \$1 million.
- Professional or Technical Errors and Omissions Insurance with limits of \$1 million.

**7.3.2 Personal services agreements -- non-professionals.**

Examples: Social services and health services providers (those not requiring professional liability coverage), persons providing staff training, food and beverage concessions, space rentals to groups for club functions or other recreational activities, or service plumbing.

Required Insurance:

- Commercial General Liability Insurance, with any required endorsements, with combined single limit of \$1 million per occurrence.
- Workers' Compensation as required by law, and Employer's Liability Insurance with limits of \$1 million.

**7.3.3 Environmental risk agreements.**

Examples: Pest control; weed abatement; underground tank removal; environmental testing; well monitoring; asbestos removal or testing; fueling; transfer station operation; or the collection, transportation, or disposal of toxic, hazardous, or infectious waste.

Required Insurance:

- Commercial General Liability Insurance, with any required endorsements, with combined single limit of \$1 million per occurrence.
- Workers' Compensation as required by law, and Employer's Liability Insurance with limits of \$1 million.

- Contractor's Pollution Liability, Environmental Impairment Liability, or Hazardous Waste Liability Insurance of \$1 million per occurrence.

#### **7.3.4 Aircraft/airport operations.**

Examples: Fueling, maintenance, repair, washing and detailing, storage (including tie-down), sales and leasing, rental, or operation of aircraft.

Required Insurance:

- Commercial General Liability Insurance, with any required endorsements, with combined single limit of \$1 million per occurrence.
- Workers' Compensation as required by law, and Employer's Liability Insurance with limits of \$1 million.
- Hangarkeepers' Liability Insurance of \$1 million per occurrence and \$2 million aggregate (with the County and its officers, employees, agents, and volunteers named as additional insureds.)
- For fixed base operations, flight schools, flying clubs, or fueling or refueling operations conducted by Contractor: Comprehensive Airport Liability Insurance for bodily injury (including death), and property damage including owned and non-owned aircraft coverage of \$1 million per occurrence and \$3 million aggregate (with the County and its officers, employees, agents, and volunteers named as additional insureds.)

#### **7.3.5 Leases with tenants on County property.**

Required Insurance:

- Commercial General Liability Insurance, with any required endorsements, with combined single limit of \$1 million per occurrence.
- Workers' Compensation as required by law, and Employer's Liability Insurance with limits of \$1 million.
- Not less than replacement value Fire Legal Liability Insurance on all real property being leased, including improvements and betterments owned by the County.

#### **7.3.6 Construction or repair (public works) contracts.**

Examples: Building construction, renovation, demolition; road/bridge construction; underground tank removal; asbestos removal; building-moving; and plumbing, painting, or electrical work which results in a modification to a building.

Required Insurance and Bonds:

- Commercial General Liability Insurance, with any required endorsements, with combined single limit of \$1 million per occurrence.
- Workers' Compensation as required by law, and Employer's Liability Insurance with limits of \$1 million.
- Work and Materials (Builder's Risk) Insurance:
  - \$100,000 coverage for any loss on contracts for remodeling renovation, alteration, or maintenance of existing buildings.
  - 100 percent of the contract sum for all bridge construction and for all new construction of \$250,000 or less (for construction over \$250,000, consult the Risk Manager).
- Bonds:
  - Payment Bond: For public works projects of more than \$25,000, a payment bond is required in the amount of 100 percent of the contract price, and shall inure to the benefit of persons performing labor or furnishing materials in connection with the work of the contract. This bond must be maintained in full force and effect until all work under the contract is completed and accepted by the County, and until all claims for materials and labor have been paid. For projects \$25,000 or less, a payment bond may be reduced or waived by the Risk Manager.
  - Performance Bond: A performance bond is required in the amount of 100 percent of the contract price, and shall guarantee the faithful performance by Contractor of all work under the contract. It shall also guarantee the replacement or rectification of any defective materials or faulty workmanship. The Risk Manager may approve the waiver of a performance bond for contracts under \$4,000.

#### 7.4 General liability and workers' compensation insurance coverage -- required contract language.

The **"INSURANCE COVERAGE"** language in the **Personal Services Agreement (ATTACHMENT B)** is required in all County agreements unless waived or modified by the Risk Manager.

Proof of insurance coverage must be approved by the Risk Manager, and attached to the agreement prior to any other departmental approval or placing the agreement on the Board of Supervisors' agenda. Department heads must give the Risk Manager sufficient time to review the documentation. As noted in Section 7.6, proof is limited to either an endorsement or an amendment to the Contractor's/Consultant's policy of insurance. As to all insurance except workers' compensation and professional liability coverage, the endorsement or policy amendment must include the County and its elected officials, officers, employees, agents, and volunteers as additional insureds. If the endorsement or amendment does not reflect the limits of liability, a certificate of insurance reflecting the limits must be also provided. In accordance with this Manual, the Risk Manager may require an increase in coverage limits or approve a decrease or waiver of coverage, or may modify the language of the agreement's insurance provisions.

#### 7.5 Bonds -- required contract language.

The language for bonds may be obtained from the Risk Manager. All bonds must be submitted to the Risk Manager for review. Bonds must be from a domestic insurer or bonding company, which is admitted to do business in California, with a financial rating of "A-" or better by A.M. Best's Key Rating Guide. The bonds must be in an amount sufficient to assure completion of the contractual obligation. Departments may want to consider requiring a performance bond for personal services agreements (consult County Counsel for more information). See Section 6.2 for more information about bonds required for Public Works projects.

#### 7.6 Insurance endorsements and policy amendments for all agreements and contracts.

The consultant (or contractor) must submit either *endorsements* to the insurance policies or *amendments* to the policies themselves demonstrating that the consultant has the coverage required by Section 7.2 and that the County and its elected officials, officers, employees, agents, and volunteers are "additional insureds" under those policies before any services are performed

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A. Without limiting Contractor's [or Consultant's] duties of defense and indemnification, Contractor [Consultant] and any subcontractor shall obtain, from an insurance carrier authorized to transact business in the State of California, and maintain continuously during the term of this agreement Commercial General Liability Insurance, including coverage for owned and non-owned automobiles, and other insurance necessary to protect the County and the public with limits of liability of not less than \$1 million combined single limit bodily injury and property damage; such insurance shall be primary as to any other insurance maintained by the County.¶

B. Contractor [Consultant] and any subcontractor shall obtain and maintain continuously Workers' Compensation and Employer's Liability Insurance to cover Contractor [Consultant], subcontractor, Contractor's [Consultant's] partners, subcontractor's partners, Contractor's [Consultant's] employees, and subcontractor's employees with an insurance carrier authorized to transact business in the State of California covering the full liability for compensation for injury to those employed by Contractor [Consultant] or subcontractor. Each such policy shall be endorsed to state that the Workers' Compensation carrier waives its right of subrogation against the County, its elected officials, officers, employees, agents, and volunteers which might arise in connection with this agreement. Contractor [Consultant] hereby certifies that Contractor [Consultant] is aware of the provisions of section 3700 of the Labor Code which requires every employer to insure against liability for workers' compensation or to undertake self-insurance in accordance with the provisions of the Labor Code, and Contractor [Consultant] shall comply with such provisions before commencing the performance of the work or provision of services pursuant to this agreement.¶

C. [Insert here other types of insurance as required by this policy or the Risk Manager.]¶

[C. or D.] Contractor [Consultant] shall require subcontractors to furnish satisfactory proof to County that liability and workers' compensation and other required types of insurance have been obtained and are maintained similar to that required of Contractor [Consultant] pursuant to this agreement.¶

[D. or E.] With regard to all insurance coverage required by this agreement:¶

(1) Any deductible or self-insured retention exceeding \$25,000 for Contractor [Consultant] or subcontractor shall be disclosed to and be subject to approval by the County Risk Manager prior to the effective date of this agreement.¶

(2) If any insurance coverage required hereunder is provided on a "claims made" rather than "occurrence" form, Contractor [Consultant] or subcontractor shall maintain such insurance coverage with an effective date earlier or equal to the effective date of this agreement and continue coverage for a period of three years after the expiration of this agreement and any extensions thereof. In lieu of ...

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and before the contract is signed on behalf of the County. Note that a “certificate of insurance” is not an acceptable way to add insureds because it does not clearly bind the consultant’s insurance carrier. However, if the endorsement or amendment does not reflect the limits of liability (the maximum dollar amount the insurer would have to pay if a covered loss occurs), a certificate of insurance reflecting the limits must be provided in addition to the endorsement or policy amendment.

If the County Executive Officer will be signing the contract, the endorsement or policy amendment (and certificate, if needed) should be attached to the contract before it is forwarded to the CEO. If the Board of Supervisors will be signing the contract, those documents must be included in the Board’s agenda packet.

The department head must carefully review the endorsement and the policy itself to confirm that the endorsement does, in fact, amend the policy of insurance; that the policy provides the appropriate types and levels of coverage (see Section 7.2); that the County and its elected officials, officers, employees, agents, and volunteers are specifically listed as “additional insureds”; and that the other language required by the insurance section of the standard agreement and public works contract are included in the insurance policy. If there are any questions about insurance coverage, the Risk Manager should be consulted.

Risk Management offers insurance coverage to contractors/consultants who have difficulty obtaining the insurance coverage required by this policy. Contact the Risk Manager for details.

On occasion, the Risk Manager will waive the requirement for insurance. This will occur if the consultant (or contractor) is uninsured and the Risk Manager determines that the County’s need for services from that consultant outweighs the risk of loss. The Risk Manager may also modify the insurance language when appropriate. If the department needs to have the insurance provisions waived or modified, but if all of the other standard contract provisions are included in the contract, the department head can sign the contract as long as the Risk Manager approves the waiver or modification in writing; include an “approved” signature block on the contract and so long as the other requirements of Section 5.6.3 are met.

The standard indemnification clause should not be waived or modified except with regard to agreements with another county or the federal or state government. Any change to the

indemnification section requires approval by both the Risk Manager (include an “approved” signature block) and County Counsel (include an “approved as to form” block).

## **Chapter 8.0 DOCUMENTS.**

### **Section 8.1 Modification of documents.**

County Counsel is delegated the authority, without Board of Supervisors’ approval, to modify any documents included in this Manual (See 8.2 below) to the extent necessary to adapt the document to the particular circumstances of the transaction, to comply with changes in state or federal law (whether statutory or case law), regulations, policies imposed by a government agency with which the County contracts (e.g. if the State of California requires a change to certain contractual provisions), or to correct errors in or omissions from documents(s). The Risk Manager must approve, in advance, any changes by County Counsel to the indemnity or insurance provisions contained in any documents included in this Manual.

The County Executive Officer is delegated the authority, without Board of Supervisors’ or County Counsel approval, to modify Request for Personal Services Agreement Review/Approval (ATTACHMENT H).

The County Executive Officer is delegated the authority, without Board of Supervisors’ approval, to post such modified documents to the County Intranet.

### **8.2 Documents included in this Manual.**

The following documents are attached to and included in this Manual:

- Real Property Lease Agreement- **ATTACHMENT A**
- Personal Services Agreement - **ATTACHMENT B**
- Withholding Waiver Request Form - **ATTACHMENT C**
- Addendum to Contract/Agreement (HIPAA Business Associate Agreement) - **ATTACHMENT D**
- Sample Agreement Amendment - **ATTACHMENT E**
- Public Works Construction Contract - **ATTACHMENT F**
- Hold Harmless Addendum - **ATTACHMENT G**
- Request for Personal Services Agreement Review/Approval - **ATTACHMENT H**

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