

**AGREEMENT BETWEEN COUNTY OF MONTEREY AND ERGOVERA
ERGONOMIC CONSULTING TO PROVIDE ERGONOMICS SERVICES**

This AGREEMENT is made and entered into by and between the County of Monterey, a political subdivision of the State of California, hereinafter referred to as "County", and ErgoVera Ergonomic Consulting, hereinafter referred to as "CONTRACTOR."

RECITALS

WHEREAS, County has invited proposals through the Request for Proposals (RFP) #10366 for Ergonomics Services, in accordance with the specifications set forth in this AGREEMENT; and

WHEREAS, CONTRACTOR has submitted a responsive and responsible proposal to perform such services; and

WHEREAS, CONTRACTOR has the expertise and capabilities necessary to provide the services requested.

NOW THEREFORE, County and CONTRACTOR, for the consideration hereinafter named, agree as follows:

1.0 PERFORMANCE OF THE AGREEMENT

1.1 After consideration and evaluation of the CONTRACTOR'S proposal, the County hereby engages CONTRACTOR to provide the services set forth in RFP # 10366 and in this AGREEMENT on the terms and conditions contained herein and in RFP # 10366. The intent of this AGREEMENT is to summarize the contractual obligations of the parties. The component parts of this AGREEMENT include the following:

The AGREEMENT including all Attachments, Exhibits and Appendices
RFP #10366 Addenda 1 and 2
RFP # 10366 dated 4/19/12, including all attachments and exhibits
CONTRACTOR'S Proposal dated 5/22/12,
Certificate of Insurance
Additional Insured Endorsements
Business Associates Agreement

1.2 All of the above-referenced contract documents are intended to be complementary. Work required by one of the above-referenced contract documents and not by others shall be done as if required by all. In the event of a conflict between or among component parts of the contract, the contract documents shall be construed in the following order: AGREEMENT including all Attachments, Exhibits and Appendices, RFP #10366

Addenda 1 and 2, RFP #10366 including all attachments and exhibits, Certificate of Insurance, and Additional Insured Endorsements.

- 1.3 CONTRACTOR warrants that CONTRACTOR and CONTRACTOR's agents, employees, and subcontractors performing services under this AGREEMENT are specially trained, experienced, competent, and appropriately licensed to perform the work and deliver the services required under this AGREEMENT and are not employees of the County, or immediate family of an employee of the County.
- 1.4 CONTRACTOR, its agents, employees, and subcontractors shall perform all work in a safe and skillful manner and in compliance with all applicable laws and regulations. All work performed under this AGREEMENT that is required by law to be performed or supervised by licensed personnel shall be performed in accordance with such licensing requirements.
 - 1.4.1 CONTRACTOR must maintain all licenses throughout the term of the AGREEMENT.
- 1.5 CONTRACTOR shall furnish, at its own expense, all materials, equipment, and personnel necessary to carry out the terms of this AGREEMENT, except as otherwise specified in this AGREEMENT. CONTRACTOR shall not use County premises, property (including equipment, instruments, or supplies) or personnel for any purpose other than in the performance of its obligations under this AGREEMENT.

2.0 SCOPE OF SERVICE

- 2.1 Contractor Minimum Work Performance Percentage: CONTRACTOR shall perform with his own organization contract work amounting to not less than 50 percent of the original total contract price, except that any designated 'Specialty Items' may be performed by subcontract and the amount of any such 'Specialty Items' so performed may be deducted from the original total AGREEMENT price before computing the amount of work required to be performed by CONTRACTOR with its organization.
- 2.2 **The Scope of Work includes but is not limited to the following:**
 - 2.2.1 **General Information on Evaluations:** Level I (L1) and Ergonomic Investigation (EI) evaluations are performed on request by County's employee, manager (with employee's agreement) and/or Ergonomics Manager in response to an identified risk. The requestor is required to complete County's standard Ergonomic Evaluation Request form. Workers' Compensation evaluation requests may be made on this form as well, including those prescribed by a doctor or referred by the Third Party Administrator (TPA). County's Ergonomics Manager will develop CONTRACTOR schedules consistent with mutually agreed upon service dates at the time of Agreement award(s). At a minimum CONTRACTOR should expect to work on-site at County facilities between 1-6 days per month. An average day of on-site work will typically entail 8 hours of work and between 4-6 evaluations, or one training plus approximately four evaluations.

2.2.2 Level I (L1) Preventive Ergonomic Evaluation and Report (individual):

Employee typically has no or low symptoms, is a new hire or has relocated. Evaluation may be used for follow up purposes also. No claim has been filed or reported by the employee. The evaluation is typically 30-40 minutes with which CONTRACTOR shall use the County's template report of findings and recommendations submitted to the Ergonomics Manager for distribution. The employee receives education and training in safe work practices and how to use their existing equipment. They are often encouraged to register for training. The evaluation is designed to prevent the onset of injury and claim filing. Digital photography is used to take one to two representative pictures of the employee at work. Departments are responsible for the implementation of the recommendations with some exceptions

2.2.2.1 L1 evaluations may be done individually or up to 10 in one day provided they are all needed in the same location. A half day service or full day service may be requested.

2.2.3 Level 2 (L2) Ergonomic Investigation (EI) Evaluation and Report:

This Level 2 preventive evaluation is provided to employees with low to high signs and symptoms but no reported Workers' Compensation claim or employees with a non-occupational medical reason that would benefit from an ergonomic evaluation. The reports are prepared on a County of Monterey EI form which CONTRACTOR shall utilize. The evaluation typically takes one hour of onsite time to perform followed by report preparation and submission. Reports should include root cause analysis and biomechanical analysis of typical tasks that may cause discomfort. The employee receives education and training in safe work practices and how to use their existing equipment. They are often encouraged to register for training. The L2 evaluation is designed to prevent the onset of injury and claim filing. Digital photography is used to take as many representative pictures of the employee at work as needed to demonstrate root cause. Reports are submitted directly to the Ergonomics Manager.

2.2.4 Level 3 (L3) Medical Only, Complex and/or Lost Time Workers' Compensation Evaluation and Report:

This Level 3 ergonomic evaluation is typically prescribed by the physician and authorized in advance by County TPA (Intercare). CONTRACTOR will receive pre-authorization to perform the ergonomic evaluation using their own report format and submit the report to County's Ergonomics Manager, the TPA, and the physician. Reports shall include root cause analysis and biomechanical analysis of typical tasks that may cause discomfort. The employee receives education and training in safe work practices and how to use their existing equipment. They are often encouraged to register for training. The L3 evaluation is designed to manage the injury more effectively and reduce or eliminate the root cause of the claim. Digital photography is used to take as many representative pictures of the employee at work as needed to demonstrate root cause. Reports are submitted directly to the Ergonomics Manager first, and upon approval by County's ergonomics manager,

CONTRACTOR is then responsible for sending the report to the TPA Adjuster and the physician.

2.2.4.1 L3 evaluations are the only services herein in which CONTRACTOR invoices the TPA directly instead of invoicing the County.

2.2.5 **Follow-up Evaluations:** After employees have been seen for an EI or WC ergonomic evaluation, a follow up is often requested. These are typically shorter than the original evaluation and should include a review of the prior recommendations and what actions were taken. CONTRACTOR may use their own written format for follow-ups provided the report includes actions taken from prior recommendations and findings to justify additional actions. Digital photography of 1-2 pictures is recommended.

2.2.6 **“Office Ergonomics” and “Back Safety in the Office” Training:** Interactive classroom training lasting approximately 2 hours for 10-45 participants shall be offered every other month with office ergonomics and back safety training. CONTRACTOR shall provide training that meets the scope of the Cal-OSHA 5110 regulation and other recommended best practices. County shall provide the printed handouts for the trainings. However, upon request, CONTRACTOR may be asked to create customized handouts for specific trainings. The training programs shall include at a minimum (depending on training focus):

- a. An overview of the County’s ergonomics process;
- b. The exposures which have been associated with Repetitive Motion Injuries (RMIs) and back injuries;
- c. The symptoms and consequences of injuries caused by RMIs and Back injuries;
- d. The importance of reporting symptoms and injuries to the employer;
- e. Methods used by the employer to minimize RMIs and Back injuries.

CONTRACTOR shall hand out satisfaction surveys that have been approved by County at the end of each training. County will review the surveys to measure performance of CONTRACTOR training effectiveness.

2.2.7 **Hourly Consultation:** From time to time, projects may arise requiring assistance by CONTRACTOR to advise on facility planning with ergonomics issues, perform department wide ergonomics projects, or assist with other areas of expertise that may be outside the scope of services listed herein.

2.2.8 **Ergonomic Evaluation Report Format:** All preventive ergonomic evaluations performed will be documented on County’s approved evaluation forms attached hereto as EXHIBIT 1 – L1 Evaluation Report and EXHIBIT 2 – Ergonomics Investigation Report, so that there is consistency between service providers and evaluations performed. When CONTRACTOR performs ergonomic evaluations for Workers’ Compensation services specifically, CONTRACTOR may use their own evaluation report format provided that they are consistent with the

information requested in County's evaluation forms attached hereto as EXHIBIT 1 and EXHIBIT 2.

2.2.9 **Recommended Ergonomics Products:** All ergonomic products will be recommended from an approved list of products from County of Monterey approved vendors posted on website, see link in Section 2.2 herein). However, note that some exceptions with regards to ordering outside of the pre-approved list may be necessary from time to time.

2.2.10 **Submittal of Reports:** All evaluation reports shall be submitted to County in Microsoft Word format (compatible with Word version 2003) or may be alternatively submitted as an optimized/reduced file size PDF. Reports shall be sent via email directly to County's Ergonomics Manager. Note that County has a total 50 Mg file size limit on email attachments per each email sent. County's Ergonomics Manager will review each report and notify CONTRACTOR if changes need to be made to the evaluation to assure accuracy and best outcome.

2.3 **Service Locations:** There are approximately 75 County buildings throughout Monterey County which may require services. Building and property locations include but are not limited to Pajaro, Castroville, Royal Oaks, Salinas, Monterey, Carmel Valley, Marina, Seaside, Prunedale, Aromas, Soledad, King City, and as far reaching in the South County as the San Louis Obispo County border. CONTRACTOR agrees to provide services to all locations if requested by County.

3.0 TERM OF AGREEMENT

3.1 The term of the AGREEMENT shall be for a period of three (3) years, effective September 1, 2012 through and including August 31, 2015, with the option to extend the AGREEMENT for two (2) additional one (1) year periods.

3.1.1 County is not required to state a reason if it elects not to renew.

3.1.2 CONTRACTOR must commence negotiations for any desired rate changes a minimum of ninety days (90) prior to the expiration of the AGREEMENT term end date. Both parties shall agree upon rate extension(s) or changes in writing.

3.3 County reserves the right to cancel the AGREEMENT, or any extension of the AGREEMENT, without cause, with a thirty day (30) written notice, or immediately with cause.

4.0 COMPENSATION AND PAYMENTS

4.1 It is mutually understood and agreed by both parties that CONTRACTOR shall be compensated under this AGREEMENT in accordance with the pricing sheet attached hereto as ATTACHMENT A. The total amount of this AGREEMENT is not to exceed \$75,000.00 during the term of the AGREEMENT.

- 4.2 Prices shall remain firm for the initial term of this AGREEMENT and, thereafter, may be adjusted annually as provided in Section 3.1.2 herein.
- 4.3 County does not guarantee any minimum or maximum amount of dollars to be spent under this AGREEMENT.
- 4.4 Any discount offered by the CONTRACTOR must allow for payment after receipt and acceptance of services, material or equipment and correct invoice, whichever is later. In no case will a discount be considered that requires payment in less than 30 days.
- 4.5 CONTRACTOR shall levy no additional fees or surcharges of any kind during the term of this AGREEMENT without first obtaining approval from County in writing.
- 4.6 Tax:
- 4.6.1 Pricing as per this AGREEMENT is inclusive of all applicable taxes.
- 4.6.2 County is registered with the Internal Revenue Service, San Francisco office, and registration number 94-6000524. The County is exempt from Federal Transportation Tax; an exemption certificate is not required where shipping documents show Monterey County as consignee.

5.0 INVOICES AND PURCHASE ORDERS

- 5.1 L3 evaluations which are invoiced to the TPA directly by CONTRACTOR. Invoices for all other services rendered per this AGREEMENT, except for shall be billed directly to County's Risk Management Division at the following address:

**County of Monterey, Risk Management Division
Attn: Alison Heller-Ono
168 W. Alisal St., 3rd Floor
Salinas, CA 93901**

- 5.2 CONTRACTOR shall reference RFP #10366 on all invoices submitted to County. CONTRACTOR shall submit such invoices periodically or at the completion of services, but in any event, not later than 30 days after completion of services. The invoice shall set forth the amounts claimed by CONTRACTOR for the previous period, together with an itemized basis for the amounts claimed, and such other information pertinent to the invoice. County shall certify the invoice, either in the requested amount or in such other amount as County approves in conformity with this AGREEMENT, and shall promptly submit such invoice to County Auditor-Controller for payment. County Auditor-Controller shall pay the amount certified within 30 days of receiving the certified invoice.
- 5.3 All County of Monterey Purchase Orders issued for the AGREEMENT are valid only during the fiscal year in which they are issued (the fiscal year is defined as July 1 through June 30).

- 5.4 **Unauthorized Surcharges or Fees:** Invoices containing unauthorized surcharges or unauthorized fees of any kind shall be rejected by County. Surcharges and additional fees not included in the AGREEMENT must be approved by County in writing via an Amendment.

6.0 STANDARD INDEMNIFICATION

- 6.1 CONTRACTOR shall indemnify, defend, and hold harmless County, its officers, agents, and employees, from and against any and all claims, liabilities, and losses whatsoever (including damages to property and injuries to or death of persons, court costs, and reasonable attorneys' fees) occurring or resulting to any and all persons, firms or corporations furnishing or supplying work, services, materials, or supplies in connection with the performance of this AGREEMENT, and from any and all claims, liabilities, and losses occurring or resulting to any person, firm, or corporation for damage, injury, or death arising out of or connected with CONTRACTOR's performance of this AGREEMENT, unless such claims, liabilities, or losses arise out of the sole negligence or willful misconduct of County. "CONTRACTOR's performance" includes CONTRACTOR's action or inaction and the action or inaction of CONTRACTOR's officers, employees, agents and subcontractors.

7.0 INSURANCE REQUIREMENTS

- 7.1 Evidence of Coverage:
- 7.1.1 Prior to commencement of this AGREEMENT, CONTRACTOR shall provide a "Certificate of Insurance" certifying that coverage as required herein has been obtained. Individual endorsements executed by the insurance carrier shall accompany the certificate. In addition CONTRACTOR upon request shall provide a certified copy of the policy or policies.
- 7.1.2 This verification of coverage shall be sent to the County's Contracts/Purchasing Department, unless otherwise directed. CONTRACTOR shall not receive a "Notice to Proceed" with the work under this AGREEMENT until it has obtained all insurance required and such, insurance has been approved by County. This approval of insurance shall neither relieve nor decrease the liability of CONTRACTOR.
- 7.2 Qualifying Insurers: All coverage's, except surety, shall be issued by companies which hold a current policy holder's alphabetic and financial size category rating of not less than A- VII, according to the current Best's Key Rating Guide or a company of equal financial stability that is approved by County's Purchasing Officer.
- 7.3 Insurance Coverage Requirements:

7.3.1 Without limiting CONTRACTOR's duty to indemnify, CONTRACTOR shall maintain in effect throughout the term of this AGREEMENT a policy or policies of insurance with the following minimum limits of liability:

7.3.1.1 Commercial general liability insurance, including but not limited to premises and operations, including coverage for Bodily Injury and Property Damage, Personal Injury, Contractual Liability, Broadform Property Damage, Independent Contractors, Products and Completed Operations, with a combined single limit for Bodily Injury and Property Damage of not less than \$1,000,000 per occurrence.

7.3.1.2 Business automobile liability insurance, covering all motor vehicles, including owned, leased, non-owned, and hired vehicles, used in providing services under this AGREEMENT, with a combined single limit for Bodily Injury and Property Damage of not less than \$1,000,000 per occurrence.

7.3.1.3 Workers' Compensation Insurance, if CONTRACTOR employs others in the performance of this AGREEMENT, in accordance with California Labor Code section 3700 and with Employer's Liability limits not less than \$1,000,000 each person, \$1,000,000 each accident and \$1,000,000 each disease.

7.3.1.4 Professional liability insurance, if required for the professional services being provided, (e.g., those persons authorized by a license to engage in a business or profession regulated by the California Business and Professions Code), in the amount of not less than \$1,000,000 per claim and \$2,000,000 in the aggregate, to cover liability for malpractice or errors or omissions made in the course of rendering professional services. If professional liability insurance is written on a "claims-made" basis rather than an occurrence basis, CONTRACTOR shall, upon the expiration or earlier termination of this AGREEMENT, obtain extended reporting coverage ("tail coverage") with the same liability limits. Any such tail coverage shall continue for at least three years following the expiration or earlier termination of this AGREEMENT.

7.4 Other Insurance Requirements:

7.4.1 All insurance required by this AGREEMENT shall be with a company acceptable to County and issued and executed by an admitted insurer authorized to transact Insurance business in the State of California. Unless otherwise specified by this AGREEMENT, all such insurance shall be written on an occurrence basis, or, if the policy is not written on an occurrence basis, such policy with the coverage required herein shall continue in effect for a period of three years following the date CONTRACTOR completes its performance of services under this AGREEMENT.

- 7.4.2 Each liability policy shall provide that County shall be given notice in writing at least thirty days in advance of any endorsed reduction in coverage or limit, cancellation, or intended non-renewal thereof. Each policy shall provide coverage for CONTRACTOR and additional insureds with respect to claims arising from each subcontractor, if any, performing work under this AGREEMENT, or be accompanied by a certificate of insurance from each subcontractor showing each subcontractor has identical insurance coverage to the above requirements.
- 7.4.3 Commercial general liability and automobile liability policies shall provide an endorsement naming the County of Monterey, its officers, agents, and employees as Additional Insureds with respect to liability arising out of the CONTRACTOR'S work, including ongoing and completed operations, and shall further provide that such insurance is primary insurance to any insurance or self-insurance maintained by the County and that the insurance of the Additional Insureds shall not be called upon to contribute to a loss covered by the CONTRACTOR'S insurance. The required endorsement form for Commercial General Liability Additional Insured is ISO Form CG 20 10 11-85 or CG 20 10 10 01 in tandem with CG 20 37 10 01 (2000). The required endorsement form for Automobile Additional Insured endorsement is ISO Form CA 20 48 02 99.
- 7.4.4 Prior to the execution of this AGREEMENT by County, CONTRACTOR shall file certificates of insurance with County's contract administrator and County's Contracts/Purchasing Division, showing that CONTRACTOR has in effect the insurance required by this AGREEMENT. CONTRACTOR shall file a new or amended certificate of insurance within five calendar days after any change is made in any insurance policy, which would alter the information on the certificate then on file. Acceptance or approval of insurance shall in no way modify or change the indemnification clause in this AGREEMENT, which shall continue in full force and effect.
- 7.4.5 CONTRACTOR shall at all times during the term of this AGREEMENT maintain in force the insurance coverage required under this AGREEMENT and shall send, without demand by County, annual certificates to County's Contract Administrator and County's Contracts/Purchasing Division. If the certificate is not received by the expiration date, County shall notify CONTRACTOR and CONTRACTOR shall have five calendar days to send in the certificate, evidencing no lapse in coverage during the interim. Failure by CONTRACTOR to maintain such insurance is a default of this AGREEMENT, which entitles County, at its sole discretion, to terminate this AGREEMENT immediately.

8.0 RECORDS AND CONFIDENTIALITY

- 8.1 Confidentiality: CONTRACTOR and its officers, employees, agents, and subcontractors shall comply with any and all federal, state, and local laws, which provide for the

confidentiality of records and other information. CONTRACTOR shall not disclose any confidential records or other confidential information received from the County or prepared in connection with the performance of this AGREEMENT, unless County specifically permits CONTRACTOR to disclose such records or information. CONTRACTOR shall promptly transmit to County any and all requests for disclosure of any such confidential records or information. CONTRACTOR shall not use any confidential information gained by CONTRACTOR in the performance of this AGREEMENT except for the sole purpose of carrying out CONTRACTOR's obligations under this AGREEMENT.

8.2 County Records: When this AGREEMENT expires or terminates, CONTRACTOR shall return to County any County records which CONTRACTOR used or received from County to perform services under this AGREEMENT.

8.3 Maintenance of Records: CONTRACTOR shall prepare, maintain, and preserve all reports and records that may be required by federal, state, and County rules and regulations related to services performed under this AGREEMENT.

8.4 Access to and Audit of Records: County shall have the right to examine, monitor and audit all records, documents, conditions, and activities of CONTRACTOR and its subcontractors related to services provided under this AGREEMENT. The parties to this AGREEMENT may be subject, at the request of County or as part of any audit of County, to the examination and audit of the State Auditor pertaining to matters connected with the performance of this AGREEMENT for a period of three years after final payment under the AGREEMENT.

9.0 NON-DISCRIMINATION

9.1 During the performance of this contract, CONTRACTOR shall not unlawfully discriminate against any employee or applicant for employment because of race, religious creed, color, national origin, ancestry, physical disability, mental disability, medical condition, marital status, age (over 40), sex, or sexual orientation. CONTRACTOR shall ensure that the evaluation and treatment of its employees and applicants for employment are free of such discrimination. CONTRACTOR shall comply with the provisions of the Fair Employment and Housing Act (Government Code, §12900, et seq.) and the applicable regulations promulgated thereunder (California Code of Regulations, Title 2, §7285.0, et seq.).

9.2 The applicable regulations of the Fair Employment and Housing Commission implementing Government Code, §12900, et seq., set forth in Chapter 5 of Division 4 of Title 2 of the California Code of Regulations are incorporated into this AGREEMENT by reference and made a part hereof as if set forth in full.

9.3 CONTRACTOR shall include the non-discrimination and compliance provisions of the clause in all AGREEMENTs with subcontractors to perform work under the contract.

10.0 OVERRIDING CONTRACTOR PERFORMANCE REQUIREMENTS

- 10.1 Independent Contractor: CONTRACTOR shall be an independent contractor and shall not be an employee of Monterey County, nor immediate family of an employee of County. CONTRACTOR shall be responsible for all insurance (General Liability, Automobile, Workers' Compensation, unemployment, etc.) and all payroll-related taxes. CONTRACTOR shall not be entitled to any employee benefits. CONTRACTOR shall control the manner and means of accomplishing the result contracted for herein.
- 10.2 Minimum Work Performance Percentage: CONTRACTOR shall perform with his own organization contract work amounting to not less than 50 percent of the original total AGREEMENT amount, except that any designated 'Specialty Items' may be performed by subcontract and the amount of any such 'Specialty Items' so performed may be deducted from the original total AGREEMENT amount before computing the amount of work required to be performed by CONTRACTOR with his own organization or per a consortium.
- 10.3 Non-Assignment: CONTRACTOR shall not assign this contract or the work required herein without the prior written consent of County.
- 10.4 Any and all of CONTRACTOR's subcontractors shall comply with all of County of Monterey requirements, including insurance and indemnification requirements as detailed in this AGREEMENT.

11.0 CONFLICT OF INTEREST

- 11.1 CONTRACTOR covenants that it presently has no interest, and shall not have any interest, direct or indirect, which would conflict in any manner with the performance of services required under this AGREEMENT. Without limitation, CONTRACTOR represents to and agrees with the COUNTY that CONTRACTOR has no present, and will have no future, conflict of interest between providing the COUNTY services hereunder and any other person or entity (including but not limited to any federal or state environmental or regulatory agency) which has any interest adverse or potentially adverse to the COUNTY, as determined in the reasonable judgment of the Board of Supervisors of the COUNTY.
- 11.2 CONTRACTOR agrees that any information, whether proprietary or not, made known to or discovered by it during the performance of or in connection with this AGREEMENT for the COUNTY will be kept confidential and not be disclosed to any other person. CONTRACTOR agrees to immediately notify the COUNTY by notices provided in accordance with Section 20 of this AGREEMENT, if it is requested to disclose any information made known to or discovered by it during the performance of or in connection with this AGREEMENT. These conflict of interest and future service

provisions and limitations shall remain fully effective five (5) years after termination of services to the COUNTY hereunder.

12.0 COMPLIANCE WITH APPLICABLE LAWS

- 12.1 CONTRACTOR shall keep itself informed of and in compliance with all federal, state and local laws, ordinances, regulations, and orders, including but not limited to all state and federal tax laws that may affect in any manner the Project or the performance of the Services or those engaged to perform Services under this AGREEMENT. CONTRACTOR shall procure all permits and licenses, pay all charges and fees, and give all notices required by law in the performance of the Services.
- 12.2 CONTRACTOR shall report immediately to County's Contracts/Purchasing Officer, in writing, any discrepancy or inconsistency it discovers in the laws, ordinances, regulations, orders, and/or guidelines in relation to the Project of the performance of the Services.
- 12.3 All documentation prepared by CONTRACTOR shall provide for a completed project that conforms to all applicable codes, rules, regulations and guidelines that are in force at the time such documentation is prepared.

13.0 DRUG FREE WORKPLACE

- 13.1 CONTRACTOR and CONTRACTOR'S employees shall comply with the COUNTY'S policy of maintaining a drug free workplace. Neither CONTRACTOR nor CONTRACTOR'S employees shall unlawfully manufacture, distribute, dispense, possess or use controlled substances, as defined in 21 U.S. Code § 812, including, but not limited to, marijuana, heroin, cocaine, and amphetamines, at any COUNTY facility or work site. If CONTRACTOR or any employee of CONTRACTOR is convicted or pleads nolo contendere to a criminal drug statute violation occurring at a COUNTY facility or work site, the CONTRACTOR shall, within five days thereafter notify the head of the COUNTY department/agency for which the AGREEMENT services are performed. Violation of this provision shall constitute a material breach of this AGREEMENT.

14.0 TRAVEL REIMBURSEMENT

- 14.1 Travel reimbursements are not permitted for this AGREEMENT.

15.0 INFORMATION PORTABILITY AND ACCOUNTABILITY ACT— HIPAA COMPLIANCE

- 15.1 CONTRACTOR agrees to operate its business in a manner as necessary to permit County to comply with its obligations under the Health Insurance Portability and Accountability Act of 1996, Subtitle F, Public Law 104-191, relating to the privacy and security of confidential health information, and any final regulations or rules promulgated by the U.S. Department of Health and Human Services thereunder (collectively, the "HIPAA Standards"). As such, CONTRACTOR shall agree to and sign the BUSINESS ASSOCIATES AGREEMENT attached hereto.

16.0 REQUIREMENTS FOR WORK/SERVICES PERFORMED AT THE HEALTH DEPARTMENT

- 16.1 CONTRACTOR shall procure all necessary permits and licenses and abide by all applicable laws, regulations and ordinances of the United States and of the State of California. The Agency will be in compliance with Title 22, OSHA, Federal and State Labor Laws and the Joint Commission on Accreditation of Health Care Organizations.

17.0 BACKGROUND CHECKS

- 17.1 CONTRACTOR may be required to submit a State level criminal background clearance (plus fingerprinting) in order to do onsite evaluations within County facilities that are deemed restricted or high security, including but not limited to the Sheriff's Office, Probation Department, 911 Center, and District Attorney's Office if requested. The cost of the background check and other such details will be negotiated at the time of the request should there be such a request. It is the decision of the individual department as to whether or not a background clearance shall be required.

18.0 ACCESSIBILITY

- 18.1 CONTRACTOR shall inform himself regarding any peculiarities and limitations of the spaces available for the installation of all work and materials furnished and installed under the AGREEMENT. CONTRACTOR shall exercise due and particular caution to determine that all parts of CONTRACTORS work are made quickly and easily accessible.

19.0.0 NOTICES

- 19.1 Notices required to be given to the respective parties under this AGREEMENT shall be deemed given by any of the following means: (1) when personally delivered to County's contract administrator or to CONTRACTOR'S responsible officer; (2) when personally delivered to the party's principle place of business during normal business hours, by leaving notice with any person apparently in charge of the office and advising such person of the import and contents of the notice; (3) 24 hours after the notice is transmitted by FAX machine to the other party, at the party's FAX number specified pursuant to this AGREEMENT, provided that the party giving notice by FAX must promptly confirm receipt of the FAX by telephone to the receiving party's office; or, (4) three (3) days after the notice is deposited in the U. S. mail with first class or better postage fully prepaid, addressed to the party as indicated below.

Notices mailed or faxed to the parties shall be addressed as follows:

TO COUNTY:

Contracts/Purchasing Officer
County of Monterey, Contracts/Purchasing
168 W. Alisal Street, 3rd Floor.
Salinas, CA 93901-2439
derrm@co.monterey.ca.us
Tel. No.: (831) 755-4990
FAX No.: (831) 755-4969

TO CONTRACTOR:

ErgoVera Ergonomic Consulting
Attn: Deidre Rogers
11765 Edgewood Dr.
Felton, CA 95018
drogers@ergovera.com
Tel No. (831) 335-8448
FAX No. (831) 335-8484

20.0.0 LEGAL DISPUTES

- 20.1 CONTRACTOR agrees that this AGREEMENT and any dispute arising from the relationship between the parties to this AGREEMENT, shall be governed and interpreted by the laws of the State of California, excluding any laws that direct the application of another jurisdiction's laws.
- 20.2 Any dispute that arises under or relates to this AGREEMENT (whether contract, tort, or both) shall be resolved in the Superior Court of California in Monterey County, California.
- 20.3 CONTRACTOR shall continue to perform under this AGREEMENT during any dispute.
- 20.4 The parties agree to waive their separate rights to a trial by jury. This waiver means that the trial will be before a judge.

IN WITNESS WHEREOF, the County and CONTRACTOR execute this AGREEMENT as follows:

MONTEREY COUNTY

CONTRACTOR

[Signature]
Contracts/Purchasing Officer

By: Deidre Rogers-Smallman
Signature of Chair, President, or Vice-President

Dated: 8-22-12

Deidre Rogers-Smallman, Nurse-Ergonomist
Printed Name and Title

Approved as to Fiscal Provisions:

Dated: 7/27/12

[Signature]
Deputy Auditor/Controller

By: _____
(Signature of Secretary, Asst. Secretary, CFO, Treasurer or Asst. Treasurer)*

Dated: 8-4-12

RISK MANAGEMENT
~~Approved as to Liability Provisions:~~
APPROVED AS TO INDEMNITY/
INSURANCE LANGUAGE

Printed Name and Title

Risk Management
By: Stylin Schumaker
Date: 8-17-12

Dated: _____

Approved as to Form:

Maui A. Kirkbride
Deputy County Counsel

Dated: 8/9/12

County Board of Supervisors' Agreement Number: _____.

*INSTRUCTIONS: If CONTRACTOR is a corporation, including limited liability and non-profit corporations, the full legal name of the corporation shall be set forth above together with the signatures of two specified officers. If CONTRACTOR is a partnership, the name of the partnership shall be set forth above together with the signature of a partner who has authority to execute this Agreement on behalf of the partnership. If CONTRACTOR is contracting in an individual capacity, the individual shall set forth the name of the business, if any, and shall personally sign the Agreement.

ATTACHMENT A Section 5: Pricing

REVISED

RFP #10366 Attachment A – Pricing Sheet

Services may be provided anywhere throughout Monterey County as per RFP Section 2.1 but are most frequently performed in Salinas, Monterey, Seaside, Marina, or King City, CA.

Important: All evaluation services should include one inclusive rate to cover onsite time, research, report preparation, distribution and travel.

Service Description	Inclusive Rate
Evaluation Services	
Level I evaluation- (preventive, non symptomatic, new hire)	325.00
EI evaluation- (preventive, symptomatic, non-occ medical prescribed)	370.00 (Within the Salinas, Monterey, Seaside, Pajaro, Royal Oaks, Prunedale, and Aromas areas) 400.00 Soledad location (Note: If group of three or more, this rate will only apply to first person. Others can be seen for regular \$370.00 rate.) 420.00 King City (Note: If group of three or more, this rate will only apply to first person. Others can be seen for regular \$370.00 rate.) 550.00 Lake San Antonio or Lake Nacimiento
WC Evaluation; MD Prescribed and authorized by TPA	480.00
Follow up evaluation, All types	325.00
Technical Analysis: non-traditional, material handling, healthcare or other	132.00/hour
Other Services	
Training development	Hourly rate: 132.00
Training onsite	For one 2 hour class: 550.00 (includes new video clips) For more than one two hour class: 525.00

ATTACHMENT A (Continued)

Proposal for RFP # 10366

Consultation (facility planning, additional research or report preparation)	Hourly rate: 132.00
Cancellation fee (if any):	Fixed rate: None
Other Services:	

BUSINESS ASSOCIATE AGREEMENT

This Agreement is made effective the ____ of ____, 2012, by and between the COUNTY OF MONTEREY, hereinafter referred to as "Covered Entity", and ErgoVera Ergonomic Consulting, hereinafter referred to as "Business Associate", (individually, a "Party" and collectively, the "Parties").

WITNESSETH:

WHEREAS, Sections 261 through 264 of the federal Health Insurance Portability and Accountability Act of 1996, Public Law 104-191, known as "the Administrative Simplification provisions," direct the County of Monterey to develop standards to protect the security, confidentiality and integrity of health information; and

WHEREAS, pursuant to the Administrative Simplification provisions, the Secretary of Health and Human Services has issued regulations modifying 45 CFR Parts 160 and 164 (the "HIPAA Privacy Rule"); and

WHEREAS, the Parties wish to enter into or have entered into an arrangement whereby Business Associate will provide certain services to Covered Entity, and, pursuant to such arrangement, Business Associate may be considered a "business associate" of Covered Entity as defined in the HIPAA Privacy Rule (the agreement evidencing such arrangement is entitled *Agreement to Provide Ergonomic Services* and is hereby referred to as the "Arrangement Agreement"); and

WHEREAS, Business Associate may have access to Protected Health Information (as defined below) in fulfilling its responsibilities under such arrangement;

THEREFORE, in consideration of the Parties' continuing obligations under the Arrangement Agreement, compliance with the HIPAA Privacy Rule, and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the Parties agree to the provisions of this Agreement in order to address the requirements of the HIPAA Privacy Rule and to protect the interests of both Parties.

I. DEFINITIONS

Except as otherwise defined herein, any and all capitalized terms in this Section shall have the definitions set forth in the HIPAA Privacy Rule. In the event of an inconsistency between the provisions of this Agreement and mandatory provisions of the HIPAA Privacy Rule, as amended, the HIPAA Privacy Rule shall control. Where provisions of this Agreement are different than those mandated in the HIPAA Privacy Rule, but are nonetheless permitted by the HIPAA Privacy Rule, the provisions of this Agreement shall control.

The term "Protected Health Information" means individually identifiable health information including, without limitation, all information, data, documentation, and materials, including without limitation, demographic, medical and financial information,

that relates to the past, present, or future physical or mental health or condition of an individual; the provision of health care to an individual; or the past, present, or future payment for the provision of health care to an individual; and that identifies the individual or with respect to which there is a reasonable basis to believe the information can be used to identify the individual.

Business Associate acknowledges and agrees that all Protected Health Information that is created or received by Covered Entity and disclosed or made available in any form, including paper record, oral communication, audio recording, and electronic display by Covered Entity or its operating units to Business Associate or is created or received by Business Associate on Covered Entity's behalf shall be subject to this Agreement.

II. CONFIDENTIALITY REQUIREMENTS

- (a) Business Associate agrees:
 - (i) to use or disclose any Protected Health Information solely: (1) for meeting its obligations as set forth in any agreements between the Parties evidencing their business relationship or (2) as required by applicable law, rule or regulation, or by accrediting or credentialing organization to whom Covered Entity is required to disclose such information or as otherwise permitted under this Agreement, the Arrangement Agreement (if consistent with this Agreement and the HIPAA Privacy Rule), or the HIPAA Privacy Rule, and (3) as would be permitted by the HIPAA Privacy Rule if such use or disclosure were made by Covered Entity;
 - (ii) at termination of this Agreement, the Arrangement Agreement (or any similar documentation of the business relationship of the Parties), or upon request of Covered Entity, whichever occurs first, if feasible, Business Associate will return or destroy all Protected Health Information received from or created or received by Business Associate on behalf of Covered Entity that Business Associate still maintains in any form and retain no copies of such information, or if such return or destruction is not feasible, Business Associate will extend the protections of this Agreement to the information and limit further uses and disclosures to those purposes that make the return or destruction of the information not feasible; and
 - (iii) to ensure that its agents, including a subcontractor, to whom it provides Protected Health Information received from or created by Business Associate on behalf of Covered Entity, agrees to the same restrictions and conditions that apply to Business Associate with respect to such information. In addition, Business Associate agrees to take reasonable steps to ensure that its employees' actions or omissions do not cause Business Associate to breach the terms of this Agreement.
- (b) Notwithstanding the prohibitions set forth in this Agreement, Business Associate may use and disclose Protected Health Information as follows:

- (i) if necessary, for the proper management and administration of Business Associate or to carry out the legal responsibilities of Business Associate, provided that as to any such disclosure, the following requirements are met:
 - (A) the disclosure is required by law; or
 - (B) Business Associate obtains reasonable assurances from the person to whom the information is disclosed that it will be held confidentially and used or further disclosed only as required by law or for the purpose for which it was disclosed to the person, and the person notifies Business Associate of any instances of which it is aware in which the confidentiality of the information has been breached;
- (ii) for data aggregation services, if to be provided by Business Associate for the health care operations of Covered Entity pursuant to any agreements between the Parties evidencing their business relationship. For purposes of this Agreement, data aggregation services means the combining of Protected Health Information by Business Associate with the protected health information received by Business Associate in its capacity as a business associate of another covered entity, to permit data analyses that relate to the health care operations of the respective covered entities.
- (c) Business Associate will implement appropriate safeguards to prevent use or disclosure of Protected Health Information other than as permitted in this Agreement. The Secretary of Health and Human Services shall have the right to audit Business Associate's records and practices related to use and disclosure of Protected Health Information to ensure Covered Entity's compliance with the terms of the HIPAA Privacy Rule. Business Associate shall report to Covered Entity any use or disclosure of Protected Health Information which is not in compliance with the terms of this Agreement of which it becomes aware. In addition, Business Associate agrees to mitigate, to the extent practicable, any harmful effect that is known to Business Associate of a use or disclosure of Protected Health Information by Business Associate in violation of the requirements of this Agreement.

III. AVAILABILITY OF PHI

Business Associate agrees to make available Protected Health Information to the extent and in the manner required by Section 164.524 of the HIPAA Privacy Rule. Business Associate agrees to make Protected Health Information available for amendment and incorporate any amendments to Protected Health Information in accordance with the requirements of Section 164.526 of the HIPAA Privacy Rule. In addition, Business Associate agrees to make Protected Health Information available for purposes of accounting of disclosures, as required by Section 164.528 of the HIPAA Privacy Rule.

IV. TERMINATION

Notwithstanding anything in this Agreement to the contrary, Covered Entity shall have the right to terminate this Agreement and the Arrangement Agreement immediately if Covered Entity determines that Business Associate has violated any material term of this Agreement. If Covered Entity reasonably believes that Business Associate will violate a material term of this Agreement and, where practicable, Covered Entity gives written notice to Business Associate of such belief within a reasonable time after forming such belief, and Business Associate fails to provide adequate written assurances to Covered Entity that it will not breach the cited term of this Agreement within a reasonable period of time given the specific circumstances, but in any event, before the threatened breach is to occur, then Covered Entity shall have the right to terminate this Agreement and the Arrangement Agreement immediately.

V. MISCELLANEOUS

Except as expressly stated herein or the HIPAA Privacy Rule, the parties to this Agreement do not intend to create any rights in any third parties. The obligations of Business Associate under this Section shall survive the expiration, termination, or cancellation of this Agreement, the Arrangement Agreement and/or the business relationship of the parties, and shall continue to bind Business Associate, its agents, employees, contractors, successors, and assigns as set forth herein.

This Agreement may be amended or modified only in a writing signed by the Parties. No Party may assign its respective rights and obligations under this Agreement without the prior written consent of the other Party. None of the provisions of this Agreement are intended to create, nor will they be deemed to create any relationship between the Parties other than that of independent parties contracting with each other solely for the purposes of effecting the provisions of this Agreement and any other agreements between the Parties evidencing their business relationship. This Agreement will be governed by the laws of the State of California. No change, waiver or discharge of any liability or obligation hereunder on any one or more occasions shall be deemed a waiver of performance of any continuing or other obligation, or shall prohibit enforcement of any obligation, on any other occasion.

The parties agree that, in the event that any documentation of the arrangement pursuant to which Business Associate provides services to Covered Entity contains provisions relating to the use or disclosure of Protected Health Information which are more restrictive than the provisions of this Agreement, the provisions of the more restrictive documentation will control. The provisions of this Agreement are intended to establish the minimum requirements regarding Business Associate's use and disclosure of Protected Health Information.

AGREEMENT FOR ERGONOMICS SERVICES PER RFP 10366
BUSINESS ASSOCIATE AGREEMENT

In the event that any provision of this Agreement is held by a court of competent jurisdiction to be invalid or unenforceable, the remainder of the provisions of this Agreement will remain in full force and effect. In addition, in the event a party believes in good faith that any provision of this Agreement fails to comply with the then-current requirements of the HIPAA Privacy Rule, such party shall notify the other party in writing. For a period of up to thirty days, the parties shall address in good faith such concern and amend the terms of this Agreement, if necessary to bring it into compliance. If, after such thirty-day period, the Agreement fails to comply with the HIPAA Privacy Rule, then either party has the right to terminate upon written notice to the other party.

IN WITNESS WHEREOF, the Parties have executed this Agreement as of the day and year written above.

COVERED ENTITY:
COUNTY OF MONTEREY

By: _____

Title: _____

Date: _____

BUSINESS ASSOCIATE:

By: Deidre Rogus-Snellman

Title: Nurse Ergonomist

Date: 7/25/12

jk 8/13/12

CONTRACT ROUTING FORM For all Contracts \$100,000 or less	Date: 8-6-12
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Vendor Name: **Workplace Wellness/VSI/ErgoVera/EORM**
 Title/Brief Descr of Agreement: **For Ergonomic Services**
 Originating Dept. Name: **RISK MANAGEMENT**
 Dept. Contact Person WITH phone # or extension: **ALISON HELLER, Ext. 5856**

Keep signed copy of Final form RFP 10366 folder,

MYA DETAILS (for the purchase order process)	
NEW AGREEMENTS:	AMENDMENTS:
Department # Risk Management	If you are amending an agreement which had a start date of May 2011 or later, please enter the MYA number below.
Unit #	
Commodity Code(s)	MYA#
Other Instructions: Multi-Year Agreements	Other Instructions:

jk
ret'd 8/20/12

Approval Guidelines for All Agreements:
Departments are required to obtain County Counsel's signature prior to obtaining the vendor's signature for any agreement that does not utilize a pre-approved boilerplate document.
 If a department chooses to utilize a pre-approved boilerplate document and does not modify it, the department may send the contract directly to the vendor for signature first.

Approval Guidelines for PSA's (Professional Services Agreement):
 County Counsel's signature is only required on a standard PSA, when modifications are made to any of the document's standardized terms and conditions. Risk Management's signature is only required when exceptions and/or changes are made to the standard insurance requirements and/or to the standard indemnification language.

ROUTING AND APPROVALS*				
<i>Each Approving Authority is requested to forward the Service Contract to the next Approving Authority in the order listed herein. Thank you.</i>				
	Approving Authority:	Approval Initials	Comments:	Date Reviewed
1st	County Counsel (if necessary)	<i>[Signature]</i>		<i>8/9/12</i>
2nd	Risk Management (if necessary)	<i>[Signature]</i>		<i>8-17-12</i>
3rd	Auditor-Controller (required)	<i>[Signature]</i>		<i>8/9/12</i>
4th	Contracts/Purchasing (required)	<i>[Signature]</i>		<i>8-22-12</i>
	Return to Originating Department			

* In the event that one of the approving authorities has an issue with an agreement or its supporting documentation and will not sign, the agreement shall be returned immediately to the originating department's key contact person identified herein along with a brief written explanation regarding the issue.. Once that issue is corrected, the department shall resume the routing process again by sending the agreement directly to the approving authority who originally withheld approval. The original Routing Form shall still be utilized (a new Routing Form should not be created).

MYA #: _____ (to be assigned by Contracts/Purchasing)

jk 8/22/12

MONTEREY COUNTY COUNSEL
RECEIVED
2012 AUG 7 AM 8 37