

**COUNTY OF MONTEREY**

**REPORT ON COMPLIANCE REVIEW OF COUNTY'S  
CLAIMS PROCEDURES FOR GENERAL LIABILITY  
AND WORKERS' COMPENSATION CLAIMS**

**APRIL 15, 2016**

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**WHITE NELSON DIEHL EVANS LLP**  
Certified Public Accountants & Consultants

**Transmittal Letter**

April 15, 2016

Mr. Michael Miller  
Auditor-Controller  
County of Monterey  
168 West Alisal Street, 3<sup>rd</sup> Floor  
Salinas, CA 93901

Dear Mr. Miller:

At the request of the Auditor-Controller's Office, on August 3, 2015 the County of Monterey ("County") retained White Nelson Diehl Evans LLP ("WNDE" or "our firm") to perform a Compliance Review of the County's Claims Procedures for General Liability and Workers' Compensation Claims (the "Claims Review") for the four fiscal years ended June 30, 2015. We have completed our review. This report summarizes our procedures, findings and recommendations.

The County has contracted with two Third-Party Administrators ("TPAs") to administer claims, as follows:

- General Liability Claims are administered by Carl Warren & Company ("Carl Warren")
- Workers' Compensation Claims are administered by Intercare Holdings Insurance Services, Inc. ("Intercare Insurance Services" or "Intercare").

This engagement involved the review of certain general liability claim documents that were confidential and protected by attorney-client privileges. Accordingly, our firm entered into a confidentiality agreement with the County Counsel's Office with respect to these documents. Also, this engagement involved the review of certain medical files related to workers' compensation claims. Accordingly, our firm entered into a non-disclosure agreement with Intercare with respect to these personal medical files. In light of these agreements, this report contains only high-level, summarized information so as to avoid any possible violation of our agreements with the County Counsel's Office and Intercare.

Please contact us if you have any questions regarding this report.

**White Nelson Diehl Evans LLP**

By: William S. Morgan  
William S. Morgan, CPA

## **REVIEW OF GENERAL LIABILITY CLAIMS (GL CLAIMS)**

### **ADMINISTERED BY CARL WARREN & COMPANY**

#### **SUMMARY OF PROCEDURES**

In connection with our review of general liability claims administered by Carl Warren for the four fiscal years ended June 30, 2015, we performed the procedures set forth below:

1. We reviewed the Third-Party Administrator Contract between the County and Carl Warren. The original contract (Attachment 1) was executed in May 2012. Amendment #1 to the contract (Attachment 2) was executed in March 2015.
2. We reviewed the County's written policies and procedures for processing GL claims.
3. We interviewed and corresponded with the following persons regarding the GL claims:
  - Mr. Steven Mauck, the County's Risk Manager (See Note 1 Below)
  - Ms. Susan Blitch, the County's Senior Deputy County Counsel
  - Mr. Leslie J. Girard, Chief Assistant County Counsel
  - Mr. Charles McKee, County Counsel
  - Ms. Jo Gelinas, Claims Analyst for Carl Warren (retired on December 31, 2015)
4. We selected a total of 16 general liability claim files on which to perform a compliance review - 4 files for each fiscal year. We selected the 2 largest dollar claims each fiscal year, plus 2 claims at random.
5. We obtained listings and narratives from Carl Warren officials as to how the 16 claims were reported on Forms 1099-MISC to plaintiffs and attorneys.

**Note 1:** Mr. Mauck's current classification in the County's payroll system is "Principle Risk and Benefits Analyst". Mr. Mauck is in charge of the Risk Management Division within the County Counsel's Office. However, Mr. Mauck has acted as the County's Risk Manager for over 11 years. Mr. Mauck has routinely used the title of Risk Manager in official documents and reports of the County. Also, Mr. Mauck has a payroll reclassification pending with the County's Human Resources Department to change his classification to "Director of Risk Management". Accordingly, Mr. Mauck has been referred to within this report as the County's Risk Manager.



## **SUMMARY OF FINDINGS**

As a result of our review, we have four major findings, as follows:

- The County uses a four-person “claims review team” process in lieu of following the requirements of the Carl Warren contract
- There is major non-compliance with the terms of the Carl Warren contract
- There are significant weaknesses in the investigation of GL claims, and
- Major non-compliance has occurred regarding the filing of Forms 1099-MISC.

These matters are discussed below.

### **The County Uses a Four-Person “Claims Review Team” Process In Lieu of Following the Requirements of the Carl Warren Contract**

For approximately the past 14 years, the County has used the following procedures for investigating and administering general liability claims:

1. Each County department performs its own internal investigation of a claim, and completes an Incident Investigation Report. Upon receipt of the claim, the TPA claims analyst normally does **not** conduct a formal investigation of the claim, and is only peripherally involved in the investigation of claims after the original filing. On selected claims, the County Counsel’s Office has hired outside investigators, accident reconstructionists, experts witness and other parties to assist with the case.
2. The County has utilized a four-person “claims team” that meets twice a month to discuss all open claims, make decisions regarding claims management and establish claims reserves. During our review, the claims team consisted of:
  - Ms. Susan Blitch, Senior Deputy County Counsel
  - Ms. Cecilia Merillana, Paralegal, employee of County Counsel’s office
  - Ms. Lydia Schumaker, staff person from the Risk Management Division
  - Ms. Jo Gelinas, Claims Analyst, Carl Warren (Note: Ms. Gelinas generally participated in these conferences by phone.)

#### **Our Opinion:**

This team approach of handling claims has the benefit and advantage of allowing all parties to discuss each claim and make decisions on claims using “group wisdom”. Notwithstanding the advantages of the team approach, this methodology was being followed when the Carl Warren contract was executed in May 2012, and has not changed since. None of the team procedures were changed in May 2012 to meet the specific requirements set forth in the Carl Warren contract. Thus, while we do not take issue with the four-person “claims management team” approach in itself, solely for purposes of assessing compliance with the Carl Warren contract, we have concluded that the team approach has been used “in lieu of” following the procedures required in the Carl Warren contract.

## SUMMARY OF FINDINGS (CONTINUED)

### Major Non-Compliance with Terms of the Carl Warren Contract

A copy of the original Carl Warren Contract is included in this report at Attachment 1. Noted below are certain major provisions that have not been complied with:

- Under Section 4.9, Carl Warren is required to make contact with the claimant, witnesses, County Risk management and the County Department head within 24 hours. Also, within 14 days, Carl Warren is required to send a report to the County setting forth the result of its “initial investigation findings”, and provide a “complete investigation report” within 30 days. There is no evidence that these requirements are being met.
- Sections 4.14 through 4.18 set forth how claims reserves are to be established, monitored and updated by Carl Warren. In connection with our firm’s review of the 16 GL claims, we noted major problems with the accuracy of reserves. On 8 of the 16 claims tested, substantial increases were made to claims reserves either on the day that the claim was actually paid, or within a few days before the claim was paid. Thus, these 8 claims were **under reserved** prior to the payment of the claim. Also, 2 claims were significantly **over reserved** at certain points during the administration of the claim. On these 10 claims, we found no evidence that Carl Warren was making any significant analysis and/or adjustments of claim reserves apart from the claims reserves that were decided during the four-person claims team meetings previously discussed herein.
- Sections 4.21 through 4.22.5 set forth certain standard reports to be issued by Carl Warren. Under Section 4.21, Carl Warren agreed to provide these standard reports to the County at no additional cost for the life of the agreement, including all extensions:
  - Snapshot Report
  - Frequency Report
  - Severity Report
  - Cause Profile Report
  - Reserve Trends Report

Our procedures did not include a review of which reports were or were not issued to the County since 2012. However, to the extent that Carl Warren did not provide these reports, and the County did not provide a waiver for these requirements, Carl Warren would be in non-compliance with this section of the agreement.



## SUMMARY OF FINDINGS (CONTINUED)

### Major Non-Compliance with Terms of the Carl Warren Contract (Continued)

At the conclusion of this engagement, we submitted our draft report to Carl Warren officials for their review and comments. On April 12, 2016, Mr. Brandon Schlenker, Assistant Vice President/Customer Group Director for Carl Warren, provided our firm with the following written response setting forth Carl Warren's position on this issue:

"The draft audit report noted the use of a four person claims team in lieu of contract requirements. While this is true in part, our processes for the County have been the same since we took over claims handling from NovaPro Risk Solutions, LLP, in 2012. In fact, we have consistently been directed by the County to maintain the claims program in the same manner employed by NovaPro, with no change in strategy or direction. We have never been authorized to provide all of the deliverables specified in the contract.

Although we have had discussions at different times with the County about utilizing the contract approach, we were directed to continue in accordance with past practices. That practice is based upon the bi-weekly meetings with the Risk Management department and County Counsel's office, at which we collaborate and report on claims status, liability, strategy and resolution in the absence of the more traditional approach. In actuality, Carl Warren & Company prefers to handle the claims from beginning to end, reporting out to our clients, because that is what our adjusters are trained to do."

#### **Our Opinion:**

The basic contract between the County and Carl Warren, which covers approximately a four-year period from May 15, 2012 through June 30, 2016, provided for total fees to Carl Warren of \$322,404. (See Attachment 2.)

Based on our findings of non-compliance described on page 4, and notwithstanding the above position of Carl Warren management, we have concluded that **the County has paid for major claims review services which were required under the contract, but were never utilized by the County or provided by Carl Warren.**

## SUMMARY OF FINDINGS (CONTINUED)

### Major Weaknesses in the Investigation of GL Claims

As previously noted herein, Carl Warren was not providing an investigation of claims within 24 hours, nor were they generally preparing separate reports on claims investigations. The County was generally relying on its internally-prepared Incident Investigation Report. For selected cases, the County Counsel Office would use outside investigators, accident reconstructionists, expert witnesses and other parties.

In our view, it is critical that the Risk Management Division and the County Counsel's Office have one or more **professional forensic investigators** available to investigate claims - either through a TPA or as employees of the County. Such persons need to have professional training and experience in:

- Interviewing witnesses
- Collecting and securing evidence for trial (there are numerous rules of civil and criminal procedure setting forth how evidence must be gathered and the "chain of custody" recorded, in order for such evidence to be admitted in court)
- Assisting attorneys in preparing for trial
- Testifying, if necessary, at a deposition or at trial.

**Observation:** County employees who prepare the Incident Investigation Reports may not have the required level of training and experience, and Carl Warren was generally not performing these types of detailed forensic investigations.

**Observation:** If a proper forensic investigation is not performed on a given claim, the attorneys in the County Counsel's office may not have good, solid evidence on which to litigate their case. This could put pressure on the attorneys to prematurely settle a claim that otherwise should be defended and litigated.

### Major Non-Compliance Regarding the Filing of Forms 1099-MISC

Attachment 3 to this report summarizes the primary laws governing the taxation and reporting of lawsuits, judgments and settlements. Carl Warren has filed Forms 1099-MISC on behalf of the County as part of its contract. Generally, when proceeds of a settlement agreement or lawsuit are paid by the County, a Form 1099-MISC must be sent to **both** the plaintiff and the plaintiff's attorney(s) to report the gross proceeds, and to the IRS.

**Observation:** If the proceeds are **nontaxable** to the Plaintiff, then a separate Form 1099-MISC does **not** need to be sent to the Plaintiff.

Separate penalties are imposed for failure to provide each Form 1099-MISC.



## SUMMARY OF FINDINGS (CONTINUED)

### Major Non-Compliance Regarding the Filing of Forms 1099-MISC (Continued)

In connection with our review, we tested Carl Warren's compliance with filing Forms 1099-MISC for the 16 claims selected for review.

We found that Carl Warren was **non-compliant** on 10 of the claims. On these 10 claims, the proceeds would have been taxable to the Plaintiff. Form 1099-MISC was filed with the Plaintiff's attorney, but was not filed with the Plaintiff.

On the other hand, Carl Warren was compliant on 6 claims which related to personal injury, illness or death. On these 6 claims, Carl Warren properly filed the Forms 1099-MISC with the Plaintiff's attorney(s), but not the Plaintiff (since the proceeds were nontaxable to the Plaintiff).

Since there was a high degree of non-compliance in our sample of 16 claims, we have assumed that there is a large error rate regarding other claims not tested during the past four years. Thus, the County has exposure to significant IRS penalties if audited on this issue.

**Observation:** On many of the County's cases, there were numerous small vendors that provided services in excess of \$600.00 in connection with the case. Carl Warren properly filed Forms 1099-MISC with respect to these vendors.

Through 2014, the **federal penalty** for failure to file Form 1099-MISC was up to \$100.00 per form, not to exceed \$1.5 million in a calendar year. In 2015, that amount increased to \$260.00 per form, not to exceed \$3,000,000 (adjusted for inflation) per calendar year. (See IRS Revenue Procedure 2016-11.)

For **California purposes**, the Franchise Tax Board penalty is generally up to \$50.00 per form, not to exceed \$250,000 in a calendar year. (See Revenue & Taxation Code Section 19183(a).)

## RECOMMENDATIONS

### Clarification of the Duties of the County Counsel's Office, Risk Manager and Outside Third-Party Administrators (TPAs)

In our view, there should be a clear delineation and segregation of the duties of the major parties involved in the review and settlement of claims. We have the following recommendations:

1. County officials should review and amend Ordinance 15.16.010 and 020 to clearly define the specific duties of the:
  - County Counsel's Office (Litigation Division)
  - County Counsel's Office (Risk Management Division), and the
  - Third-Party Administrator (when the functions of the County Counsel's Office and/or the Risk Manager are otherwise subcontracted out to a TPA).
1. When the County contracts with an outside TPA to administer GL claims, all claims should actually be turned over to the TPA, and administered in accordance with the terms of the TPA contract (and administered in accordance Ordinance 15.16.010 and 020, if the Ordinance is amended to specify the duties of the TPA).

### Carl Warren Contract

In this report, we have concluded that Carl Warren is in "non-compliance" with major provisions of their contract. County officials now need to make a determination if the violations of the contract constitute a breach of contract. If so, then the County should notify Carl Warren in writing that it is in breach of the contract, and what actions (if any) the County intends to take before June 30, 2016. In this regard, the County Counsel's office will need decide if Carl Warren will need to immediately comply with the existing contract provisions, and if the twice-monthly team meeting approach will continue until the Carl Warren contract is amended, terminated or renewed.

### Determination of Claims Reserves

In connection with our review, both the County Counsel's Office and Carl Warren officials acknowledged the deficiencies in the reserve process. We recommend the following new procedures for **cases that are being litigated and where the County is using an outside TPA**:

- Within the first 60 days after a claim is filed, attorneys from the County Counsel's Office should provide the TPA with a summary of the case sufficient for the TPA to establish an initial reserve.
- Attorneys in the County Counsel's office should be required to evaluate their cases every 90 days, **or whenever a significant event occurs**, such as information obtained from depositions, interrogatory responses or the outcome of motion pleadings. The TPA would be notified of any changes, so that the TPA could update the reserve estimates.

## RECOMMENDATIONS (CONTINUED)

### Claims Investigations

As previously discussed herein, when an incident occurs giving rise to a claim, County employees from the affected department perform an internal investigation and prepare an Incident Investigation Report. We recommend that this procedure continue. However, depending on the facts and circumstances of each claim, an internal departmental investigation may or may not be sufficient for litigation purposes. Accordingly, a **professional forensic investigator** should be available to supplement the internal investigation. This could be accomplished in one of two ways:

1. If the County continues using the **TPA** arrangement to administer GL claims, then any contract with a TPA should specify in detail what forensic investigative services are expected from the TPA. (Note: If the County wants Carl Warren to provide this service, their existing contract would need to be amended to specify the nature and timing of the forensic investigation services required.)
2. If the County does **not** utilize a **TPA** arrangement to investigate GL claims, then the County should recruit and hire one or more professional forensic investigators.

### Exposure to Penalties from Failure to File Forms 1099-MISC

As previously discussed, a substantial number of Forms 1099-MISC have not been filed with the IRS and Franchise Tax Board (FTB) over the past four years. We suggest two remedial steps:

- County officials should estimate what the total dollar exposure is for possible IRS and FTB penalties resulting from unfiled Forms 1099-MISC over the past four years.
- The County should consider requesting that Carl Warren enter into an indemnification agreement to indemnify the County for any possible penalties that could be assessed by the IRS or FTB if the County is audited on this issue.



**REVIEW OF WORKERS' COMPENSATION CLAIMS**  
**ADMINISTERED BY INTERCARE INSURANCE SERVICES (INTERCARE)**

**SUMMARY OF PROCEDURES**

In connection with our review of workers' compensation claims administered by Intercare for the four fiscal years ended June 30, 2015, we performed the procedures set forth below:

1. We reviewed the Third-Party Administrator (TPA) contract between the County and Intercare, which became effective in October 2011.
2. We reviewed Intercare's written policies and procedures for investigating and processing the County's workers' compensation claims. This included the company's Standard Operating Manual, which has 15 pages of instructions on forensic investigation techniques that the company uses to investigate possible fraud in a workers' compensation claim.
3. We interviewed the following Intercare officials regarding the processing of the County's workers' compensation claims:
  - Mr. Steven Mauck, Risk Manager
  - Ms Agnes Hoeberling, Chief Operating Officer
  - Ms. Connie Hampson, Assistant Claims Manager
  - Ms. Tracy Jacobs, Claims Supervisor
  - Mr. Bruce Miller, company executive
4. We reviewed a recent operational audit report prepared by an outside consultant, Ms. Susan Wright, on the operations of Intercare. Ms. Wright performed extensive testing on the policies and procedures of Intercare over workers' compensation claims. The report generally gave Intercare high marks for their procedures and controls. So as not to unnecessarily duplicate the work of Ms. Wright, our review and testing at Intercare was focused primarily on areas where Ms. Wright indicated ongoing weaknesses in procedures.
5. We selected a total of 16 workers' compensation claim files on which to perform a compliance review - 4 files for each fiscal year. We selected the 2 largest dollar claims each fiscal year, plus 2 claims at random.



## **SUMMARY OF FINDINGS AND RECOMMENDATIONS**

As a result of our review, we found that the policies and procedures of Intercare were generally satisfactory, and that workers' compensation claims were being properly monitored and investigated (where necessary) by Intercare. However, we did have findings below that we wished to call to the County's attention.

### **1. Monitoring of Claims Reserves:**

The Susan Wright report noted that Intercare had deficiencies in establishing and monitoring the accuracy of claims reserves. Our testing revealed the same issue. On 4 of the 16 claims that we reviewed, we noted that there was a "stair-step" approach in periodically increasing the reserves until the date of claim payment, rather than performing an actual analysis on the facts underlying the claim, and adjusting the reserve balance accordingly. We recommend that Intercare perform a general review of **all** the claims being administered for the County as of December 31, 2015, and adjust the claims reserves accordingly if the analysis so warrants.

### **2. Adequacy of County Risk Management Staff Assigned to the Intercare Contract:**

During our field work at Intercare, company officials advised us that the County of Monterey had three unfilled positions in Risk Management:

- Workers' Compensation Manager (vacant over 3 years)
- Senior Risk Analyst (vacant over 3 years), and
- Ergonomics Manager (vacant over 2 years).

Intercare officials advised us that, because these positions had been vacant for an extended period, it was negatively affecting the smooth operation of the contract between the County and Intercare. The Intercare staff previously interacted with Mr. Steven Mauck, the Risk Manager, and these three other persons. With the positions unfilled, Intercare was limited to interacting primarily with Mr. Mauck. When he was not available, or did not have time to perform the function of the missing positions, this slowed down the efficient servicing of the contract.

We have been advised that the Risk Manager is now in the process of filling these positions.

## **SUMMARY OF FINDINGS AND RECOMMENDATIONS (CONTINUED)**

### **3. Light-Duty, Back to Work Program:**

The County currently does not use a light-duty, back to work program to help reduce and control the overall costs of workers' compensation claims. We believe that the County would benefit from a formalized program to require temporary light duty assignments until employees return to their usual and customary duties. Intercare officials indicated that they would be happy to assist the County in establishing the program.

### **4. Reporting of Labor Code Section 4850 Compensation to the State of California:**

The report prepared by Ms, Susan Wright discussed an ongoing problem with the reporting of 4850 compensation to the State of California. Under state regulations, Intercare must file a "Public Entities Self-Insurance Annual Report" with state regulators. The report is required to include both the amount paid to employees for temporary disability and the amount for paid for the Labor Code 4850 differential. Intercare officials advised our firm that the County was not providing Intercare with sufficient information to meet the required regulatory disclosures.

In connection with this review, the Risk Manager advised our firm that the necessary compensation data has now been summarized and forwarded to Intercare for entry into the State of California Public Self-Insurer Annual Reporting system.

**ATTACHMENT 1**



## **1.0 AGREEMENT BETWEEN COUNTY OF MONTEREY AND CONTRACTOR**

- 1.1 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 or County Risk Management Division", and Carl Warren & Company, hereinafter referred to as "CONTRACTOR."
- 1.2 It is agreed that the "day to day" processing and management of litigated and non-litigated claims will be administered pursuant to jointly developed client guidelines, entitled: Carl Warren and the County of Monterey Claims Handling and Litigation Guidelines". The client guidelines must be established and implemented immediately upon the execution of this agreement. It is further agreed that the client guidelines must be reviewed on a continuing and ongoing basis (e.g., at least, annually) by Carl Warren and the County Risk Manager, to meet the County's claims handling needs. All such revisions must be in writing and are subject to the prior written consent of the County.

## **2.0 RECITALS**

- 2.1 WHEREAS, County has invited proposals through the Request for Proposals (RFP # 10296) for Liability Claims Administration Services, in accordance with the specifications set forth in this AGREEMENT; and
- 2.2 WHEREAS, CONTRACTOR has submitted a responsive and responsible proposal to perform such services; and
- 2.3 WHEREAS, CONTRACTOR has the expertise and capabilities necessary to provide the services requested.
- 2.4 NOW THEREFORE, County and CONTRACTOR, for the consideration hereinafter named, agree as follows:

## **3.0 PERFORMANCE OF THE AGREEMENT**

- 3.1 After consideration and evaluation of the CONTRACTOR'S proposal, the County hereby engages CONTRACTOR to provide the services set forth in RFP # 10296 and in this AGREEMENT on the terms and conditions contained herein and in RFP # 10296. The intent of this AGREEMENT is to summarize the contractual obligations of the parties. The component parts of this AGREEMENT include the following:

RFP # 10296 dated March 7, 2011, including all attachments and exhibits  
Addendum #1  
CONTRACTOR'S Proposals dated April 15, 2011 & October 28, 2011,  
AGREEMENT,  
Certificate of Insurance  
Additional Insured Endorsements



- 3.2 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, CONTRACTOR'S Proposal, RFP #10296 including all attachments and exhibits, Addendum, Certificate of Insurance, and Additional Insured Endorsements.
- 3.3 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.
- 3.4 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.
- 3.5 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.

#### **4.0 SCOPE OF SERVICE**

**4.1 Service Office:**

CONTRACTOR and COUNTY agree that the program shall be managed by Carl Warren and Company and initially administered out of the CONTRACTOR'S San Jose office located at:

Carl Warren & Company  
2300 Clayton Rd. Suite 1250  
San Jose, CA 94520  
Tel: 925-674-4660  
Toll Free: 800-998-4763

**4.2 Designated Staffing Level:**

CONTRACTOR shall maintain a designated staffing level within the San Jose location which shall consist of at a minimum, but not limited to: 1 Full-Time Claims Supervisor, Full-Time Senior Claims Adjuster and 1 Back-up Adjuster. CONTRACTOR further agrees to provide the necessary resources to meet the requirements of the AGREEMENT by adding additional corporate resources that the San Jose office may utilize, which shall include, but not limited to:

- 4.2.1 Subrogation Department
- 4.2.2 IT Department

- 4.2.3 Accounting Department
- 4.2.4 Quality Assurance Team
- 4.2.5 RMIS System
- 4.2.6 Check Processing System
- 4.2.7 Claim Intake System
- 4.2.8 New Loss Set Up Processes
- 4.2.9 Quality Assurance
- 4.2.10 Compliance Review
- 4.2.11 General Administration and Operational Support

**4.3 Designated Staffing Team:** Will be appointed by Carl Warren and Company and approved by County, initially the County Risk Management Team will be as set forth below.

- 4.3.1 County Risk Management Team:
  - Service/Retention Leader
  - Senior Lead Adjuster
  - Backup Senior Adjuster if needed

**4.4 Additional Resources Available to support the designated team identified above:**  
CONTRACTOR agrees to provide at a minimum but not limited to the following additional resources from within its corporate resources to assist with the COUNTY'S needs under this AGREEMENT:

4.4.1 IT Department Technical Support (RMIS system)

4.4.2 Support Leader/Concord Office

- 4.4.2.1 Check Processing
- 4.4.2.2 Claim Intake
- 4.4.2.3 New Loss Set Up

- 4.4.3 President
- 4.4.4 Chief Operating Officer
- 4.4.5 Chief Financial Officer
- 4.4.6 Quality Assurance
- 4.4.7 Director of Compliance

**4.5 Subcontracts:**  
COUNTY agrees to allow CONTRACTOR the ability to utilize a subcontractor, subject to COUNTY approved rates, for all automobile and property damage appraisals. COUNTY acknowledges that CONTRACTOR has a long standing and successful relationship with PDA Corporation, however COUNTY reserves the right of approval. It is agreed that the initial property damage appraisal services will be provided by:

PDA Corporation  
Contact: Steve Douglas  
484 Washington Street #312  
Monterey, CA 93940

**4.6 Claim Services:**

CONTRACTOR agrees to provide the COUNTY with the following claim services under this AGREEMENT, including but not limited to:

**4.6.1 General Liability**

Negligent acts, errors or omission, public agency liability, road condition and design, falling tree limbs, permit liability, slip/trip and falls, power outages/surges, sewer liability and harbor liability, coverage investigation, reservation of rights investigation, intentional acts, E & O, etc.

**4.6.2 Auto Liability**

Fleet accidents which are typically rear end collisions or collisions with parked cars, and law enforcement accidents which can include accidents during pursuits; and

**4.6.3 Employment Practices Liability**

Civil rights, harassment, discrimination and wrongful termination claims; and

**4.6.4 Public Officials Liability**

Typically land use, civil rights and employment practices claims against public officials; and

**4.6.5 Law Enforcement Liability**

Property loss during incarceration, property damage due to police activity and use of excessive force; and

**4.6.6 Property Loss**

**4.6.7 Environmental**

**4.6.8 Hazardous Waste**

**4.6.9 Professional Liability**

**4.7 Claim Reporting Requirements:**

CONTRACTOR shall provide the following information on all reports and communications; when setting up a new claim; as well as when responding to a new claim:

4.7.1 Name of Claimant

4.7.2 Name of Insured, Department and Unit Number

4.7.3 Date of Loss

4.7.4 Location of Loss (accident site)

4.7.5 Claim File Number and Policy Number

4.7.6 Description of Loss



- 4.7.7 Plan of Action
- 4.7.8 Initial Reserve

**4.8 Claim Set-up Process:**

CONTRACTOR agrees to establish loss reserves, claim files and loss prevention files as directed by County Risk Management. CONTRACTOR shall within twenty-four (24) hours of receipt of a new claim, shall create a new file, reserve and assign the proper location and cause code to the file, and shall enter the new file/claim into the information system all within the twenty-four (24) hour period. The process shall be closely monitored by CONTRACTOR'S management level staff in order to assure correct coding (etc). Any and all losses may be reported by, email, fax or phone. The most common method is email or fax.

**4.9 Claims Investigation Procedures:**

CONTRACTORS focus for Claims investigations shall be performed in a timely manner, which shall include the gathering of critical information and preservation of potential evidence. CONTRACTOR shall be responsible for making contact with: (1) claimant; (2) witnesses; (3) County Risk Management; and (4) County Department Head within twenty-four (24) hours of receipt of the claim. CONTRACTOR shall be responsible collecting and obtaining the facts, assess the damages and file a written evaluation. The results of all investigations shall be analyzed by the CONTRACTOR and a liability determination shall be made, taking into consideration the possible comparative fault of the claimant, any applicable contractual indemnity provisions and/or California statutes. Within two (2) business days of receipt of a new claim, the CONTRACTORS claims adjuster shall enter the claims information into CONTRACTORS proprietary "mycarlwarren" claims system, which the COUNTY shall have access to. The initial investigation findings shall be reported to the COUNTY within fourteen (14) days with a complete investigative report provided within thirty (30) days. CONTRACTOR shall also investigate and handle through conclusion all telephone-adjusted claims. CONTRACTORS' main goal shall be to complete a comprehensive written evaluation expeditiously and advise the COUNTY of any liability exposure. CONTRACTOR shall then act on the COUNTY'S authority to resolve the claim or claims as quickly, fairly and efficiently as possible. CONTRACTOR shall provide the COUNTY with settlement reports broken into several levels of identified thresholds, distributed electronically to the COUNTY either on a weekly, monthly, and quarterly or annually as requested.

**4.10 Investigation Management:**

CONTRACTOR shall investigate claims with the view of not only determining liability but also to determine if any potential subrogation exists. When an investigation is completed, and subrogation is identified, CONTRACTOR shall notify the COUNTY in writing and CONTRACTOR shall be prepared to follow up on any subrogation related issues. CONTRACTOR shall also be prepared to discuss the information provided from the initial discovery report through any and all final reports.

- 4.10.1 Emergency Response (CAT Claims)
- 4.10.2 Death Case/Serious Injury Response (Amputation, head injury, etc)
- 4.10.3 24/7 On Call Service

#### **4.11 Claim Management Services:**

- 4.11.1 CONTRACTOR shall provide the following supervision protocols with regards to Claim Management Services:
- 4.11.2 The Claims Supervisor shall audit at least ten (10) adjuster files monthly, as well as providing the necessary review all reserve changes, payments to ensure the files are on diary. The Claims Supervisor shall review requested files as often as they or the COUNTY feels necessary. CONTRACTOR shall maintain all files on strict diary process, reviewable at pre-established intervals, to ensure the timely investigation and completion of work as well as the adequacy of the established reserves. CONTRACTOR further acknowledges that the system is capable of being customized per COUNTY requirements. If the COUNTY has a desire CONTRACTOR can set up manager diaries to review files every 10 days, every 30 days, or within 30 days of the last report. Adjusters shall review the diary reports weekly and the Claims Supervisor shall receive reports weekly as to late diaries.
- 4.11.3 CONTRACTOR shall be required to make appropriate notations within each claim file, to verify the review process. CONTRACTORS Claims Supervisors shall have the responsibility concerning monthly auditing of open files to ensure quality control. CONTRACTORS process shall not only audit what the adjuster does, but shall allow CONTRACTOR to identify trends that will enable CONTRACTOR to reduce claims and the costs related to claims on behalf of the COUNTY.

#### **4.12 COUNTY'S Accessibility to Electronic Claim Information/Documentation:**

The following information shall be kept in each claim file by the CONTRACTOR. The COUNTY shall have access to all information via CONTRACTORS CMIS, through the accessibility of CONTRACTORS proprietary "mycarlwarren" system. The information shall consist of, but not limited to the following information:

- 4.12.1 Date claim filed.
- 4.12.2 Date claim denied, if applicable.
- 4.12.3 Date complaint/lawsuit filed, if applicable.
- 4.12.4 Direction given to the claims adjuster at the discretion of supervisory personnel.
- 4.12.5 Documentation regarding all telephone conversations, discussions, and meetings held on the case.
- 4.12.6 Documentation as to coverage issues, liability, damages, injuries and our plan of action.
- 4.12.7 Reserves.
- 4.12.8 An electronic diary schedule which is used to maintain files on diary. Claims will be reviewed every 30 days unless a longer schedule is approved by the County after a discussion of the file.
- 4.12.9 Documentation regarding all statements and claimants, client employees, witnesses, doctors and other investigation efforts.
- 4.12.10 File notes regarding all efforts to conclude the claim, offers of settlement.
- 4.12.11 Dates of any hearings, conferences, depositions, etc., if applicable.
- 4.12.12 Current summary of case



- 4.12.13 Date/name/contact person of when insurance company is put on notice of claim, if applicable.
- 4.12.14 All correspondence or other documents related to the file which will be date-stamped on the day received and shall be documented in the file
- 4.12.15 Plan of Action

#### **4.13 Subrogation pursuit and tracking:**

- 4.13.1 CONTRACTOR agrees to actively pursue subrogation issues whenever possible. CONTRACTOR shall be responsible for the identification, evaluation, administration, collection and deposit of all of the COUNTY'S subrogation funds. CONTRACTOR acknowledges that CONTRACTOR has proven established subrogation programs that have resulted in excellent results for other public entities, and agrees to extend that knowledge to the COUNTY.
- 4.13.2 CONTRACTOR shall investigate each claim to determine if subrogation or recovery potential exists. CONTRACTOR shall be responsible for clearly posting all evaluation findings to the claim file and/or the on-line claim system. CONTRACTOR shall contact the COUNTY for approval to pursue and/or review contracts before any notice is given to any potential third party or parties. Once CONTRACTOR has been granted the appropriate approval from the COUNTY, recovery from responsible third party or parties shall be aggressively pursued by the appropriate claim representative.
- 4.13.3 CONTRACTOR agrees to maintain an in-house subrogation team which shall handle all recovery related issues for COUNTY.

#### **4.14 Claim Reserving:**

CONTRACTOR shall establish initial Case Reserves within 24 hours and re-evaluate initial reserves within seven (7) days of receipt of the claim. Case Reserves shall be established on a case by case basis. CONTRACTOR shall take into consideration all of the following factors when reserving a file:

- 4.14.1 Liability exposure; and
- 4.14.2 Expense; and
- 4.14.3 Venue; and
- 4.14.4 Anticipated life of the claims
- 4.14.5 Probable ultimate resolution value
- 4.14.6 Notice to excess insurer at ½ S.I.R. exposure thresholds; with copy to County Risk Management.

#### **4.15 Documenting Claim Reserves within the Claim File:**

CONTRACTOR shall immediately document all reserve changes within the respective claim file. Both by documents relating to the value (such as litigation budgets, property damage appraisals and medical records) as well as the reserve rationale explained in the adjuster file notes.



**4.16 Reserve Changes:**

CONTRACTOR'S adjuster shall review the reserve each time work is performed on the claim file and/or when new information is received that would change the evaluation of the claim. CONTRACTOR shall ensure that all Reserves are re-evaluated at a minimum, at least every thirty (30) days.

**4.17 Communicating Reserve Changes to COUNTY:**

CONTRACTOR'S status reports shall contain reserve change notices as well as the rationale utilized for each change. CONTRACTORS in-house CMIS, "mycarlwarren" system, shall deliver reserve change notices via email to the COUNTY based on the user's inputs.

**4.18 Compliance with Government Code Section 910:**

Within 7 days (or sooner if needed based on response requirement), CONTRACTOR agrees that CONTRACTORS adjusters will review a government claim form and provide the County with a written recommendation for any and all potential necessary action.

**4.19 Litigation Management:**

4.19.1 CONTRACTOR agrees to manage all litigation actions under this AGREEMENT from a two-prong approach – strategy and cost containment. CONTRACTOR shall work with the COUNTY Departments to ensure appropriate actions are taken by County Counsel and/or County's assigned outside counsel. CONTRACTOR and COUNTY both agree that a strong working relationship between both the adjuster and defense attorney is important since both bring different skills to the claims handling and resolution process. CONTRACTOR agrees and understands that all actions required, such as denial letters, request for rejection of claims, releases and waivers, etc. shall be determined and completed by CONTRACTOR, subject to authority as granted by COUNTY.

4.19.2 CONTRACTOR shall forward and transmit a complete copy of the investigative file and all supporting documentation to the assigned County Counsel and/or outside defense counsel. CONTRACTOR shall assist in providing an objective analysis of those cases that should be vigorously defended, as contrasted to those that should be settled once limited discovery has been conducted to leverage a negotiated settlement. CONTRACTOR shall confer with County Counsel and/or COUNTY'S outside defense counsel to provide a liability evaluation with a plan of action, budget and time line for completion of items listed. The evaluation shall indicate the handling attorney at the defense firm and the transmittal letter shall be signed so everyone has a clear understanding of what is to be done, dates to be completed and at what agreed upon price.

4.19.3 Any and all additional work outside the agreed P.O.A. and budget must be pre-approved by the CONTRACTOR or County Risk Management before any expense for experts, records, etc. can be obtained. Any non legal work shall be referred and completed by the adjuster handling the case in question.

4.19.4 CONTRACTOR must work with County Risk Management to select those claims which must be fully defended to verdict and provide appropriate written notice of

trial dates and full status reports as set forth in the Carl Warren and the County's claim handling and litigation guidelines. CONTRACTOR agrees to be available to work with the assigned counsel to develop a professional and reasonable litigation plan that will achieve the case goals.

4.19.5 CONTRACTOR shall utilize a standard structured settlement plan process, which can reduce loss costs in moderate to severe claims. CONTRACTOR shall upon its own determination that it may be best in some cases to utilize a standard process within the industry referred to as Alternative Dispute Resolution (ADR), to reduce potential litigation costs and loss results. CONTRACTOR shall also assist in the preparation of the defense of a claim by assisting in the preparation of discovery responses, negotiate settlements and subrogation actions.

4.19.6 CONTRACTOR shall keep the COUNTY well informed on all litigated claims, in writing regarding all settlement conferences, motions, hearings, court orders/rulings and trials. When requested by the COUNTY, CONTRACTOR agrees to assist the COUNTY and shall attend trials, hearings, arbitrations, mediations, settlement conferences and any other legal proceedings.

#### **4.20 Claims Management Information System:**

##### **4.20.1 Management System:**

CONTRACTOR shall deliver all claim information to the COUNTY through the CONTRACTOR'S own in-house, internet based information system, [www.mycarlwarren.com](http://www.mycarlwarren.com).

##### **4.20.2 Window-based and web-based:**

CONTRACTOR ensures the COUNTY that there will be no requirement for any additional software installation by the COUNTY in order to fully utilize the CONTRACTORS system – the COUNTY only needs access to the internet and a standard Microsoft or Netscape browser.

##### **4.20.3 Access to Management System:**

CONTRACTOR agrees that all claim file information is proprietary to County of Monterey and further agrees that said information will remain available at all times to the County of Monterey and will be stored electronically in a secure and stable electronic repository with access to the adjuster's file notes, all claimant information, and financial data (including financial summaries and payment details). The COUNTY shall have the right and ability to access an extranet environment to perform intuitive reporting and ad-hoc analyses on risk and loss prevention data as may be needed.

CONTRACTORS system shall allow the COUNTY the ability to link to individual claims information, drill down to a particular payment and read the narrative associated with the payment. The application shall be available for review at any time – 24/7/365 – via a desktop, laptop, Blackberry, iPhone, etc. and shall function in "real time" with updates every two (2) hours.



4.20.4 CONTRACTOR agrees to ensure that the CONTRACTORS "mycarlwarren" system functions in real time; can be accessed 24/7/365; and that it will produce the claim management reports, financial reports, loss runs, etc. as identified by the County during the term of this AGREEMENT.

CONTRACTOR further agrees that the CONTRACTORS system can be customized to specifically meet the COUNTY'S needs and/or desires at no additional cost. CONTRACTOR and COUNTY agree that the primary advantage of the CONTRACTORS "mycarlwarren" system is that it was developed by in-house staff and that it will be fully maintained by CONTRACTORS in-house IT Department at no cost to the COUNTY. CONTRACTOR shall provide the COUNTY with direct emergency 24/7/365 contact numbers to the CONTRACTORS IT Department and agree to resolve all COUNTY issues or concerns in a reasonable and timely manner. CONTRACTOR also acknowledges that CONTRACTOR will be providing the "Cloud" technology and making a fully Contractor I.T supported, operational and secure "Cloud" technology system available at no cost to the COUNTY, in order to provide the COUNTY with the latest technology in document storage and management.

**4.21 Standard Reports:**

CONTRACTOR agrees to provide the COUNTY with an Ad hoc reporting capability, which shall be fully supported as shall all subscription services for emailed reports and event based alerting options. CONTRACTOR shall provide the COUNTY with all statistical reports immediately upon County's request.

CONTRACTOR agrees to provide the following Standard Reports to the COUNTY at no additional cost for the life of the AGREEMENT and any and all AGREEMENT extensions. All reports shall be made available to the COUNTY online, as well as having the ability to have them scheduled for email delivery at pre-established times. CONTRACTOR agrees to provide the report in a frequency option which shall include, but not limited to delivery daily, weekly, monthly and/or quarterly.

**4.22 Reports:**

**4.22.1 Snapshot**

This report shall provide a graphical overview of the program. It shall quickly identify the 5 cause codes that generate the most claims as well as the most severe claims. The report shall also include a Claim Count graph for the previous 12 months and a list of the Top 10 Occurrences based on Total Incurred.

**4.22.2 Frequency Report**

This report shall identify by location codes (or departments) who generate the most claims. The report shall specify the percentage of the program that these claims make up. The report shall be developed in such a way to assist the COUNTY in determining which departments need help in reducing the number of claims submitted.



#### **4.22.3 Severity Report**

This report shall identify which location codes (or departments) generate the most sever claims. It shall specify the percentage of the program these claims make up.

#### **4.22.4 Cause Profile**

This report shall list all cause codes utilized in the program and how many claims have been recorded with each cause code. It shall also indicate the Total Incurred for each cause code.

#### **4.22.5 Reserve Trends**

This report shall list all open claims and what their total incurred amounts were at different ages, starting at 1 month up to 60 months.

#### **4.23 COUNTY Created Custom Reports:**

CONTRACTOR acknowledges and agrees that the COUNTY will have the ability to access an extranet environment to perform intuitive reporting and ad-hoc analysis on risk and loss prevention data. COUNTY shall have the ability to link to individual claims information, drill down to a particular payment and read the narrative associated with the payment.

CONTRACTOR agrees to tailor the loss run set up report to the COUNTY'S specifications at no additional cost. CONTRACTOR further agrees that the Ad hoc reporting system is fully supported as are subscription services for emailed reports and event based alerting.

#### **4.24 CONTRACTOR Created Custom Reports:**

CONTRACTOR agrees to provide the COUNTY with customized reports at no additional cost. COUNTY and CONTRACTOR agree that the time required to produce reports depends on the complexity of the report. CONTRACTOR acknowledges that most Custom Reports typically takes 2-3 days to produce.

#### **4.25 Data Ownership:**

CONTRACTOR confirms that all written claims documentation, including but not limited to all claim file investigation, adjuster notes, correspondence, legal notices, filings, discovery, pleadings, attorney correspondence, financial and accounting information and electronic data, as well as all management and statistical reports and/or any other coverage of claim related data created under this AGREEMENT shall remain the property of the COUNTY. CONTRACTOR agrees that there will be NO Additional Costs associated with the necessary copying of the COUNTY data in a readable format at the termination of the AGREEMENT.

#### **4.26 Training:**

CONTRACTOR agrees to provide the COUNTY with the necessary training of the CONTRACTORS "mycarlwarren" and "Cloud" technology system(s) by a member of the CONTRACTORS IT Department. CONTRACTOR agrees to provide reasonable and ongoing training as requested by COUNTY and at a COUNTY selected locations. Both COUNTY and CONTRACTOR acknowledge that the necessary training shall include at a minimum the ability to access the system, how to work with the available reports, etc.

The COUNTY staff shall also be given the phone number for one the CONTRACTORS IT Specialists whom they can directly call with any questions.

**4.27 Excess Carrier**

County agrees to provide the CONTRACTOR with a list of excess carriers associated with the County program, along with policy numbers and the self-insured retention values for the years prior to the implementation of the program. Any claim which, pursuant to the County's insurance agreements and policies (for all years), meets the carriers established criteria for reporting shall be reported by the CONTRACTOR to the County's excess insurance carrier, with a copy provided to the County.

**4.28 Data Protection:**

4.28.1 CONTRACTOR assures the COUNTY that it will protect the COUNTY data and its privileged and confidential nature. CONTRACTOR acknowledges that it has taken all of the necessary security measures to prevent unauthorized access to the COUNTY'S data including the utilization of industry standard advanced encryption technologies such as 128-bit SSL (secure socket layer), digital web certificates from Verisign which uses public-key cryptology, firewall security devices and secure access lists, and personal login and password verification.

4.28.2 CONTRACTOR shall ensure that its data resides in an industry standard SQL data warehouse. CONTRACTOR'S data is all backed up through an AT&T facility located in Hawthorne, CA. The County's physical data backup storage will be performed centrally through Quantum DLT tape libraries and securely archived offsite through Iron Mountain Off-Site Protection as part of CONTRACTOR'S master Business Continuity Plan.

4.28.3 CONTRACTOR shall provide the COUNTY with Sign in PIN's for those individuals authorized by the COUNTY to access data. The subscriptions shall expire annually and must be renewed annually, with the COUNTY providing the CONTRACTOR with an updated access list. CONTRACTOR shall ensure that the only individuals within the CONTRACTORS organization that have been granted access to the COUNTY'S data will be those individuals dedicated to the COUNTY'S team.

**4.28.4 Internal Controls and Security:**

Data and files transferred or sent by the CONTRACTOR are to be secured and encrypted.

Results from SAS 70 audits conducted on the CONTRACTOR are to be shared with the County.

CONTRACTOR is to create and maintain an audit trail of changes to the system, including but not limited to changes in data and system access changes.

In the event of any discovered defalcation, CONTRACTOR agrees to provide immediate notice to the County.



**4.29 Data Conversion:**

The transfer of all data and claims will be completed by March 15, 2012. All files shall be assigned to the CONTRACTORS adjuster and reviewed; with reserves set up in the system during the approved transition period. CONTRATOR shall work internally (e.g. between NovaPro and Carl Warren) in making the necessary arrangements for the transfer of all open and closed physical and electronic data files.

**4.30 Accounting and Banking Arrangements:**

**4.30.1 Establishment of the Required Trust Account:**

- 4.30.1.1 CONTRACTOR agrees to ensure the timely payment of claims and invoices on the County's program, CONTRACTOR shall work with County to ensure that the banking arrangements are set up prior to the formal transition of claims to CONTRACTOR, in a format that is satisfactory for the County and supportive of CONTRACTOR's administration processes; and
- 4.30.1.2 County agrees to the establishment of an escrow account to ensure the appropriate funding of losses. During the implementation and conversion process, CONTRACTOR shall analyze the County's loss funding history to determine and recommend the appropriate initial levels of imprest balance; and
- 4.30.1.3 CONTRACTOR also agrees to the establishment of a "Call to Fund Large Settlement" payments to ensure the County is aware of checks being issued that may impact the imprest account; and
- 4.30.1.4 County and CONTRACTOR agree that the preferred funding mechanism for the program is to establish a wire transfer for both security purposes and convenience; and
- 4.30.1.5 CONTRACTOR agrees to provide the necessary staff from their Accounting Department to review the County's pay history to determine the initial funding deposit and imprest balance that should be maintained to support the program on an ongoing and continuing basis; and
- 4.30.1.6 CONTRACTOR and County agree that CONTRACTOR will provide the County with a recommendation during the initial implementation meeting as to the appropriate amount, frequency of funding, notification and funding preferences to be used during the program. These recommendations shall be updated as appropriate during agreement term and shall be established, working collaboratively and agreed upon by both parties; and
- 4.30.1.7 CONTRACTOR agrees to keep the County engaged in all discussions regarding the establishment, maintenance, and administration of the account(s) to ensure the financial security of the program is not



compromised; and under no circumstances will CONTRACTOR make system changes or trust account changes without providing reasonable notice and receiving COUNTY'S prior written consent.

4.30.1.8 Contractor furthermore agrees to provide the County with written policies that outline the following procedures:

- 4.30.1.8.1 Establishment and Funding of Escrow Account
- 4.30.1.8.2 Check Formatting
- 4.30.1.8.3 Signature Cards and Authority Levels
- 4.30.1.8.4 Check Processing
- 4.30.1.8.5 Void/Refund/Stop Pay/Purging Checks
- 4.30.1.8.6 Stale-Dated Check Process
- 4.30.1.8.7 Bank Account Reconciliation
- 4.30.1.8.8 Production of 1099's

4.30.1.9 CONTRACTOR agrees that administrative and conversion fees will be charged to the County and not paid from escrow account.

4.30.1.10 CONTRACTOR and County, working collaboratively will develop a systemic process for entering County Counsel legal billing and claim expense costs into the claims system.

4.30.1.11 CONTRACTOR agrees to provide the County with bank reconciliation and supporting documentation, including but not limited to bank statements and check registers on a monthly basis, within ten (10) days of the date of the bank statement. These documents are to be created in a manner that is acceptable to the County.

#### 4.30.2 Financial Reports:

4.30.2.1 The County (Risk Manager) and CONTRACTOR shall review the County's financial reporting requirements to ensure that the reports created by CONTRACTOR will be created in a manner that is acceptable to the County.

4.30.2.2 CONTRACTOR agrees to provide the County with check registers on a monthly basis, and no later than the 5<sup>th</sup> day of the month preceding the month in which the reports are for.

#### 4.30.3 Authority Levels:

CONTRACTOR shall discuss with the County prior to implementation the necessary or required authority levels. CONTRACTOR shall also prepare a letter of authority for each claims adjuster that includes at a minimum, stated claim "Authority Levels":

- 4.30.3.1 Monetary Settlement Authority
- 4.30.3.2 Check Issuance Authority
- 4.30.3.4 Report Formats and Reserve Setting Authority

**4.31 Communication between CONTRACTOR and COUNTY:**

CONTRACTOR agrees that both its claim staff and supervisory personnel assigned to the COUNTY'S agreement shall be available to attend any claim reviews or meetings as requested by the COUNTY. CONTRACTOR'S staff shall also prepare any necessary, status reports at the request of the COUNTY. CONTRACTOR and COUNTY agree that as part of this AGREEMENT. CONTRACTOR will as part of its claims services, have quarterly meetings with County Risk Management. Both COUNTY and CONTRACTOR shall work together in identifying the dates for the quarterly meetings. CONTRACTOR shall also prepare and present an annual stewardship report to the COUNTY within at least thirty (30) days of each fiscal year (FY) end (due on or before e.g. August 1, 2012). The Claims Supervisor shall for purposes of all claims reports and review meetings, act as the liaison between CONTRACTOR and the COUNTY, first annual stewardship reports,

**4.32 Claim Audits:**

COUNTY may perform claim audits within fifteen (15) days notice to CONTRACTOR. CONTRACTOR shall allow the COUNTY'S auditors access to all CONTRACTORS' claim files, claim systems and information contained therein.

**4.33 Transition Plan:**

CONTRACTOR shall comply with the following transition plan in order to meet the commencement date of February 14, 2012

**4.33.1 Work Steps:**

4.33.1.1 CONTRACTOR shall work with the COUNTY in providing the necessary notification prior to transfer, to those individuals involved in the claims regarding the files being transferred, the effective date of the transfer, and information concerning how to contact the CONTRACTOR for claims assistance.

4.33.1.2 CONTRACTOR and COUNTY agree that all current and historical claims data shall be converted and transferred from its current form from the incumbent provider (e.g. Nova Pro) to the CONTRACTOR'S risk management information system's database at the execution of the AGREEMENT. CONTRACTOR agrees that it will identify those files requiring either a hearing, arbitration, mediation or trial within the following thirty days, so that the appropriate individuals may be notified of the transition and that the CONTRACTORS personnel will flag and prepare the necessary files and file documentation and notices so that an evaluation, extension and/or plan of action are completed prior to the scheduled event. Data on open files shall be transferred first and data on closed files shall be transferred shortly (e.g. 30 days) thereafter.

4.33.1.3 CONTRACTOR and COUNTY agree that CONTRACTOR shall provide the County with instant access to claims data. CONTRACTOR agrees that it can meet any requirements for data transmission, storage and network communication required by the COUNTY.



4.33.1.4 CONTRACTOR and COUNTY agree that CONTRACTOR will parallel test system and review audit results of test data with COUNTY prior to system "Go Live" date, on or before March 15, 2012.

4.33.1.5 CONTRACTOR shall provide all administration (equipment, supplies and software), data entry, report processing, standard reports and all location and cause code changes as specified by COUNTY. CONTRACTOR shall provide the COUNTY with an inventory list of existing CONTRACTOR claim files, upon the execution of the AGREEMENT. COUNTY shall cross-reference the list with its files, to ensure transition of all claims into the CONTRACTORS system.

4.33.1.6 Upon execution of the AGREEMENT all further correspondence should be directed to the COUNTY'S assigned Claims Supervisor. Each transferred file shall be reviewed and a report submitted to the COUNTY'S Risk Management Department, Attention: Steve Mauck, within thirty (30) days of receipt to the CONTRACTORS office.

**4.33.2 Timeline:**

Both COUNTY and CONTRACTOR agree that the transfer of all claims and data information shall be completed by March 15, 2012.

**4.33.3 COUNTY Responsibilities during Transition:**

COUNTY and CONTRACTOR agree that CONTRACTORS' adjusters are available to meet with the COUNTY and/or COUNTY'S current TPA to pick up the files, review and correct County location codes and claim statistics, make any and all necessary corrections to the claims data so that it reflects the proper contractor to convert existing departments to new department, appropriation code, and unit codes, within thirty (30) days of receipt of mapping from the County.

**4.33.4 Establish Reporting Locations and Departments:**

CONTRACTOR shall work with and assist the County in the development and/or fine tuning of any and all existing and future Location and Department identifiers. CONTRACTOR will work with the County to ensure that these identifiers are established in such a manner that will allow the County to determine where a loss occurred and also help identify injury trends within a specific department or at a specific location. CONTRACTOR acknowledges that the County's existing codes can be customized within their system, and included in reports that pertain to the County's claims and reports.

## **5.0 TERM OF AGREEMENT**

- 5.1 The initial term shall commence with the signing of the AGREEMENT through and including June 30, 2015, with the option to extend the AGREEMENT for three (3) additional one (1) year periods. County is not required to state a reason if it elects not to renew this AGREEMENT.



- 5.2 If County exercises its option to extend, all applicable parties shall mutually agree upon the extension, including any changes in rate and/or terms and conditions.
- 5.3 County reserves the right to cancel the AGREEMENT, or any extension of the AGREEMENT, without cause, with a thirty (30) day written notice, or immediately with cause.

## 6.0 COMPENSATION AND PAYMENTS

- 6.1 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.

### 6.2 FEES:

#### Annual Fixed Rate

<b>Annual Fixed Rate:</b> Includes all incident reports/files and claims up to and not exceeding 131 claims.	Not to exceed \$80,000 Annually  Note: This fee includes the handling of the County's existing pending.
Exceeding the 131 claims- shall be billed on a pro-rata fee basis utilizing the not to exceed annual rate of \$80,000 dollars.	\$80,000 divided by 131 claims = \$610.00

**Note: The above pricing shall include five (5) User ID's, to access system data. Additional User ID's requested by the COUNTY shall be billed at a rate of \$250.00 dollars annually.**

#### Subrogation Fees:

Any subrogation collected by CONTRACTOR, COUNTY agrees to pay CONTRACTOR a 21% recovery fee. All operational costs accumulated by the CONTRACTOR during recovery of the collection of subrogation shall be included within the CONTRACTORS 21% fee.

- 6.3 Prices shall remain firm for the initial term of this AGREEMENT and, thereafter, may be adjusted annually as provided in this paragraph. County does not guarantee any minimum or maximum amount of dollars to be spent under this AGREEMENT.
- 6.4 Negotiations for rate changes shall be commenced, by CONTRACTOR, a minimum of ninety days (90) prior to the expiration of this AGREEMENT.
- 6.5 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.
- 6.6 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.
- 6.7 Tax:  
6.7.1 Pricing as per this AGREEMENT is inclusive of all applicable taxes.

- 6.7.2 County is registered with the Internal Revenue Service, San Francisco office, and registration number 94730022K. The County is exempt from Federal Transportation Tax; an exemption certificate is not required where shipping documents show Monterey County as consignee.

## **7.0 INVOICES AND PURCHASE ORDERS**

- 7.1 Invoices for all services rendered per this AGREEMENT shall be billed directly to the County of Monterey Risk Management a division of the County of Monterey Human Resources Department at the following address:

County of Monterey Risk Management  
168 West Alisal Street, 3<sup>rd</sup> Floor  
Attn: Risk Management  
Salinas, CA 93901

- 7.2 CONTRACTOR shall reference the RFP number 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.
- 7.3 All County of Monterey Purchase Orders issued for the AGREEMENT is valid only during the fiscal year in which they are issued (the fiscal year is defined as July 1 through June 30).
- 7.4 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 the AGREEMENT must be approved by County in writing via an Amendment.

## **8.0 STANDARD INDEMNIFICATION**

- 8.1 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.

## 9.0 INSURANCE REQUIREMENTS

### 9.1 Evidence of Coverage:

9.1.1 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.

9.1.2 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.

9.1.3 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.

### 9.2 Insurance Coverage Requirements:

9.2.1 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:

9.2.1.1 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.

9.2.1.2 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.

9.2.1.3 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.

- 9.2.1.4 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.

### 9.3 Other Insurance Requirements:

- 9.3.1 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.
- 9.3.2 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.
- 9.3.3 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.



- 9.3.4 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.
- 9.3.5 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.

## 10.0 RECORDS AND CONFIDENTIALITY

- 10.1 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.
- 10.2 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.
- 10.3 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.
- 10.4 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.

## 11.0 NON-DISCRIMINATION

- 11.1 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 there under (California Code of Regulations, Title 2, §7285.0, et seq.).
- 11.2 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.
- 11.3 CONTRACTOR shall include the non-discrimination and compliance provisions of the clause in all AGREEMENTs with subcontractors to perform work under the contract.

## 12.0 OVERRIDING CONTRACTOR PERFORMANCE REQUIREMENTS

- 12.1 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.
- 12.2 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.

## 13.0 CONFLICT OF INTEREST

- 13.1 CONTRACTOR covenants that CONTRACTOR, its responsible officers, and its employees having major responsibilities for the performance of work under the AGREEMENT, presently have no interest and during the term of this AGREEMENT



will not acquire any interests, direct or indirect, which might conflict in any manner or degree with the performance of CONTRACTOR'S services under this AGREEMENT.

#### **14.0 COMPLIANCE WITH APPLICABLE LAWS**

- 14.1 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.
- 14.2 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.
- 14.3 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.

#### **15.0 FORCE MAJEURE**

"Force Majeure" means any cause beyond the reasonable control of a party, including but not limited to acts of God, civil or military disruption, fire, strike, flood, riot, war, or inability due to the aforementioned causes to obtain necessary labor, materials or facilities.

If any party hereto is delayed or prevented from fulfilling its obligations under this AGREEMENT by Force Majeure, said party will not be liable under this AGREEMENT for said delay or failure, nor for damages or injuries resulting directly from the inability to perform scheduled work due to Force Majeure.

CONTRACTOR shall be granted an automatic extension of time commensurate with any delay in performing scheduled work arising from Force Majeure. CONTRACTOR agrees to resume such work within three (3) days after the Force Majeure has subsided enough to do so.

#### **16.0 RIGHTS AND REMEDIES OF THE COUNTY FOR DEFAULT**

In the case of default by CONTRACTOR, County may procure the articles or services from other sources and may recover the loss occasioned thereby from any unpaid balance due to CONTRACTOR or by proceeding against any performance bond of CONTRACTOR, if any, or by suit against CONTRACTOR. The prices paid by County shall be considered the prevailing market price at the time such purchase(s) may be made.

Inspections of deliveries or offers for deliveries that do not meet specifications shall be made at the expense of CONTRACTOR.

### **17.0 TRAVEL REIMBURSEMENT**

Travel reimbursements shall not exceed the IRS allowance rates as per County of Monterey Travel Policy. A copy of County's Travel Policy is available on the Auditor-Controller's web site at: <http://www.co.monterey.ca.us/auditor/policy.htm>.

### **18.0 INFORMATION PORTABILITY AND ACCOUNTABILITY ACT— HIPAA COMPLIANCE**

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 there under (collectively, the "HIPAA Standards").

### **19.0 INTELLECTUAL PROPERTY RIGHTS**

All data provided by County belongs to County. All records compiled by CONTRACTOR in completing the work described in this AGREEMENT, including but not limited to written reports, studies, drawings, blueprints, negatives of photographs, graphs, charts, plans, source codes, specifications and all other similar recorded data, shall become and remain the property of County. Use or distribution of County data by CONTRACTOR is prohibited unless CONTRACTOR obtains prior written consent from County.

For systems hosted or stored on equipment not owned by County, CONTRACTOR shall furnish all data to County upon request by County at any time during the term of this AGREEMENT in a useable format as specified by County and at no additional cost to County.

Notwithstanding anything to the contrary contained in this AGREEMENT, it is understood and agreed that CONTRACTOR shall retain all of its rights in its proprietary information including, without limitation, methodologies and methods of analysis, ideas, concepts, expressions, know how, methods, techniques, skills, knowledge and experience possessed by CONTRACTOR prior to this AGREEMENT.



## 20.0 NOTICES

Non-Assignment: CONTRACTOR shall not assign this contract or the work required herein without the prior written consent of County.

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  
Tel. No.: (831) 755-4990  
FAX No.: (831) 755-4969  
[DerrM@co.monterey.ca.us](mailto:DerrM@co.monterey.ca.us)

**TO CONTRACTOR:**

CARL WARREN & COMPNAY  
11209 N. Tatum Blvd. #130  
Phoenix, AZ 85028

Tel. No.: (888) 858- 2807  
FAX No.: (866) 302-5035  
[rmcabee@carlwarren.com](mailto:rmcabee@carlwarren.com)

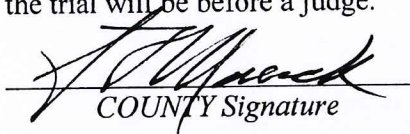
## 21.0 LEGAL DISPUTES

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.

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.

CONTRACTOR shall continue to perform under this AGREEMENT during any dispute.

The parties agree to waive their separate rights to a trial by jury. This waiver means that the trial will be before a judge.

  
COUNTY Signature

STEVE MAUCK  
Printed Name

RISK MANAGER  
Title

5-16-12  
Date

  
CONTRACTOR Signature

Caryn Siebert  
Printed Name

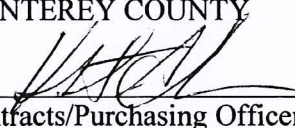
President  
Title

May 15, 2012  
Date




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

MONTEREY COUNTY

For   
Contracts/Purchasing Officer

Dated: 6-22-12

Approved as to Fiscal Provisions:

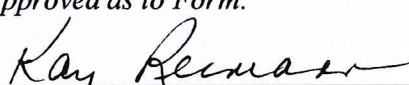
  
Deputy Auditor/Controller

Dated: 5-18-12

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

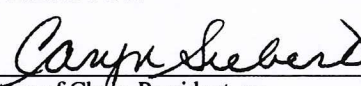
~~Dated: 5/17/12~~  
~~Date: \_\_\_\_\_~~

Approved as to Form:

  
Deputy County Counsel

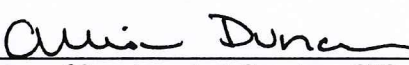
Dated: 5/17/12

CONTRACTOR

By:   
Signature of Chair, President, or  
Vice-President

Caryl Siebert - President  
Printed Name and Title

Dated: May 15, 2012

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

Allison Duncan - CFO  
Printed Name and Title

Dated: May 15, 2012

County Board of Supervisors' Agreement Number: A-12239.

\*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.

# **AGREEMENT ROUTING FORM** **For all County Agreements**

Date: 5-16-12

Vendor Name: **CARL WARREN & COMPANY**

Title/Brief Descr of Agreement:

Originating Dept. Name: **RISK MANAGMENT**

Dept. Contact Person WITH phone # or extension: **Kari Picoli, ext. 3090**

*PLEASE* **RUSH**

MYA DETAILS (for the purchase order process)	
<b>NEW AGREEMENTS:</b>	<b>AMENDMENTS:</b>
Department # 1050	If you are amending an agreement which had a start date of May 2011 or later, please enter the MYA number below.
Unit # 8032	
Commodity Code(s) <i>95327</i>	MYA#
Other Instructions: <i>4 COPIES FOR SIGNATURE</i>	Other Instructions:

## **Approval Guidelines for All Agreements:**

When using County boilerplate Agreement and PSA:

Route to vendor first for signature unless there have been line-outs made to the boilerplate wording. Line outs should be approved by County Counsel first.

When using non-standard Agreement:

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.

ROUTING AND APPROVALS*				
Each Approving Authority is requested to forward the Service Contract to the next Approving Authority in the order listed herein. Thank you.				
	Approving Authority:	Approval Initials	Comments:	Date Reviewed
1st	County Counsel (if necessary)	<i>Kay R</i>		<i>5/17/12</i>
2nd	Risk Management (if necessary)	<i>[Signature]</i>		<i>5/17/12</i>
3rd	Auditor-Controller (required)	<i>[Signature]</i>		<i>5/18/12</i>
4th	Contracts/Purchasing (required)	<i>[Signature]</i>		<i>6/22/12</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 #: *1210 \*423* (to be assigned by Contracts/Purchasing)



**ATTACHMENT 2**

**AMENDMENT #1  
TO AGREEMENT BETWEEN  
COUNTY OF MONTEREY AND  
CARL WARREN & COMPANY**

**THIS AMENDMENT** is made to the AGREEMENT, by and between **Carl Warren & Company**, hereinafter "CONTRACTOR", and the County of Monterey, a political subdivision of the State of California, hereinafter referred to as "COUNTY", for providing General Liability claims administration.

**WHEREAS**, the COUNTY and CONTRACTOR previously entered into the original AGREEMENT on June 22, 2012; and

**WHEREAS**, the COUNTY authorized up to three (3), one-year (1) extensions where the increase in compensation did not exceed 5%; and

**WHEREAS**, the proposed increase in compensation result from this amendment does not exceed 5% of the annual compensation amount; and

**WHEREAS**, the COUNTY and CONTRACTOR hereby wish to amend the AGREEMENT, to increase the amount of the AGREEMENT by \$82,404, from \$240,000 to **\$322,404**, and extend the term by one year through **June 30, 2016**.

**NOW THEREFORE**, the County and CONTRACTOR hereby agree to amend the AGREEMENT in the following manner:

1. Section 5. "TERM OF AGREEMENT" shall be amended by removing "The initial term shall commence with the signing of the AGREEMENT through and including June 30, 2015, with the option to extend the AGREEMENT for three (3) additional one (1) year periods" and replacing it with: **"This Amendment to the Agreement will commence on July 1, 2015, and will expire on June 30, 2016, with the option to extend the AGREEMENT for two (2) additional one (1) year periods."**
2. Section 6. "COMPENSATION AND PAYMENTS", Subsection 6.2 – "Fees, Annual Fixed Rate" shall be amended by increasing the amount of the AGREEMENT by \$82,404 from \$240,000 for a total amount not to exceed the sum of **\$322,404**.
3. Except as provided herein, all remaining terms, conditions and provisions of the AGREEMENT are unchanged and unaffected by this AMENDMENT and shall continue in full force and effect, as set forth in the AGREEMENT.
4. A copy of the AMENDMENT shall be attached to the original AGREEMENT executed by the COUNTY on June 22, 2012.



IN WITNESS WHEREOF, the parties have executed the AMENDMENT on the day and year written below.

MONTEREY COUNTY

[Signature]  
Deputy Contracts/Purchasing Officer Agent

Dated: 3/17/15

Approved as to Fiscal Provisions:

[Signature]  
Deputy Auditor/Controller

Dated: 3/10/17

RISK MANAGEMENT  
Approved as to Liability Provisions:  
COUNTY OF MONTEREY  
APPROVED AS TO INDEMNITY/  
INSURANCE LANGUAGE  
Risk Management

By: [Signature]  
Date: 3/9/15

Approved as to Form:

[Signature]  
Deputy County Counsel

Dated: 3/10/15

CONTRACTOR

By: [Signature]  
Signature of Chair, President, or  
Vice-President

Carmy Siebert, President  
Printed Name and Title

Dated: 2/27/15

By: [Signature]  
(Signature of Secretary, Asst. Secretary, CFO,  
Treasurer or Asst. Treasurer)\*

Allison Duncan, CFO  
Printed Name and Title

Dated: 2/27/15

\*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.

ROUTING FORM RQN #: \*651

ate: 3-5-15

☐ AGREEMENT☒ AMENDMENT☐ BOARD REPORT FOR PRE-APPROVAL

Vendor Name: CARL WARREN &amp; COMPANY.

Title/Brief Description of Document: Amendment No. 1

Originating Dept.: RISK MANAGEMENT

Dept. Contact WITH Phone #: KARI, 796-3090

This Agreement or Amendment requires Board Approval: Yes ☐ No ☒This Agreement <sup>HAS AN EXISTING</sup> requires ~~Board Approval~~. Yes ☒ No ☐

## AGREEMENT TYPE

<input checked="" type="checkbox"/> RQNSA – Standard Agreement	<input type="checkbox"/> RQNS – Non-Standard Agreement
<input type="checkbox"/> RQNIT – ITD Standard Agreement	<input type="checkbox"/> RQNIN – ITD Non-Standard Agreement
<input type="checkbox"/> RQNPB – Pre-Board Standard Agreement	<input type="checkbox"/> Non-Standard Board Agreement (Not to be tracked within RQN)
<input type="checkbox"/> Insurance & Endorsement Current	<input type="checkbox"/> VDR & Non-Resident State Forms Verified

## ROUTING AND APPROVALS\*

Each Approving Authority is requested to forward the Service Contract to the next Approving Authority in the order listed herein. Thank you.

	Approving Authority:	Approval Initials	Comments:	Date Reviewed
1st	ITD(for all ITD related contracts)	/		
2nd	County Counsel (required)	Kay R	A15-00549	3/10/15
3rd	Risk Management (non-standard insurance and/or indemnity provisions)	/		
4th	Auditor-Controller (required)	YH		3-10-15
5th	Contracts/Purchasing (required)	KR		
	Return to Originating Department Instructions			

\* In the event that one of the approving authorities has an issue with the document and will not sign, the document 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 originating department shall restart the routing process again from the beginning by resubmitting the document through the approval process. The original Routing Form should be included for reference.

EXISTING MYA #: 1210 \* 423



**ATTACHMENT 3**

## LAWS REGARDING THE TAXATION AND REPORTING OF LAWSUIT JUDGMENTS AND SETTLEMENTS

### Definition of "Damages"

The term "damages" generally means an amount received through the prosecution of a legal suit or action, or through a settlement agreement entered into in lieu of prosecution. (See Treasury Regulation 1.104-1(c)(1)).

### Nontaxable Damages under IRC Section 104(a)(2) on Account of "Personal Physical Injury or Physical Sickness"

The amount of any damages received on account of personal physical injury or physical sickness is excluded from the recipient's gross income under IRC Section 104(a)(2) and, thus, is not reportable to the recipient. Noted below are the general tax rules governing this area of law, based on various IRS rulings and case law.

**Observation:** The "administrative position" of the IRS is that, in order to have physical injury or sickness, the person would need to seek **medical treatment** for some type of **bodily harm**, such as bruising, bleeding, swelling, etc.

If a suit or action **originates** from a physical injury or physical sickness, then all damages (other than punitive damages) that flow from that injury or sickness are treated as payments received on account of physical injury or sickness. (See PL 104-188, House Report 104-586, pages 143-144.)

- **Illustration 1:** Assume that, due to a physical injury or sickness, a person suffers a "loss of consortium" with a spouse, including the loss of companionship, affection and sexual relations. Any damages awarded for loss of consortium would be nontaxable, because they resulted from the original physical injury or sickness.
- **Illustration 2:** Assume that an employee is off work for 3 months due to a **non-work related** physical injury or sickness. The employer provides 1 month of paid sick leave. Assume that the employee is awarded damages covering the additional 2 months of compensation. Normally, damages awarded to cover "lost wages" would be taxable compensation, reportable on Form W-2 and subject to federal and state income tax withholding and other applicable payroll taxes. However, in this instance, the inability of the employee to provide services for the additional 2 months resulted from, and was on account of, physical injury or sickness. Thus, the damages for lost wages would not be taxable or reportable.



### Damages for Emotional Distress

Damages for **emotional distress** are **not** excludable from income unless they are 1) “attributable to a physical injury or physical injury” or 2) are not in excess of **the amount paid for medical care** (as described in IRC Section 213(d)) **attributable to emotional distress**. Accordingly, Chief Counsel Advice 200935032 concluded that emotional stress is not considered a physical injury or sickness unless there is **actual medical treatment for the emotional stress**.

In a 2009 Tax Court case (Richard S. Moulton, Jr., TC Memo 2009-38), Mr. Moulton experienced depression, sleep disorders and high blood sugar caused by stress from a wrongful termination. The court did **not** consider these symptoms to constitute personal physical injury or sickness, so the damages were not excluded from gross income.

In a 2013 Tax Court case (Sharp, TC Memo 2013-290), even though the taxpayer (Ms. Sharp) had a settlement agreement stating that her employer was paying her for emotional distress, the court held that Ms. Sharp failed to provide evidence that the physical manifestations of emotional distress rose to the level of “physical injuries”.

### Taxable Damages

Generally, damage awards for the following types of actions are taxable:

- Breach of employment contract
- Age discrimination
- Sex discrimination
- Race discrimination
- Wrongful termination
- Harassment
- Libel and injury to reputation
- Violation of constitutional rights

**Observation:** Revenue Ruling 96-65 provides an in depth discussion of the tax treatment of wrongful discharge actions due to discrimination.

Also, **punitive damages** are generally taxable under IRC Section 104(a), regardless of the underlying claim. Exception: Punitive damages for wrongful death are not taxable, since the wrongful death would have been caused by a physical injury or illness. See IRC Section 104(c)(1).

## Allocation of Damages Between Taxable and Nontaxable Amounts

A legal suit or action, or a settlement agreement, will often contain an allocation of damages between various causes of action. The facts and circumstances of each damage claim or settlement amount must be carefully examined to determine what compensation is taxable vs. nontaxable.

An allocation of damages between various causes of action will generally not be challenged by the IRS if the allocation between the parties is made in an impartial and objective manner, at **arms-length** and in **good faith**. In this regard, the allocations must be consistent with the facts presented in the case, and must reflect **true economic substance**. (See Robinson v. Commissioner, 102 T.C.116.) If the allocation is purely tax motivated and/or does not reflect the realities of the settlement, the court is likely to disregard the allocation for tax purposes.

### How Should Taxable Damages Be Reported?

Generally, lost wages, front pay, back pay and other compensation for services awarded to an employee or former employee are reportable on **Form W-2**, subject to federal and state income tax withholding and other applicable payroll taxes.

Taxable damages to nonemployees are generally reported on **Form 1099-MISC**. See the discussion below as to how gross proceeds would be reported to both a plaintiff and the plaintiff's attorney.

### Form 1099 Requirements Related to Attorneys

#### 1. Rules Adopted By the Taxpayer Relief Act of 1997:

Under provisions of the Taxpayer Relief Act of 1997 (Act Section 1021(c)), beginning January 1, 1998, payments to attorneys over \$600, including legal fees payable to a **corporation**, are to be reported on Form 1099. The provisions apply whether or not the attorney is the exclusive payee. Payments to law firms are considered payments to attorneys, and therefore must be reported.

#### 2. IRC Regulations:

Since 1997, the IRS has issued numerous proposed regulations regarding the reporting of payments to attorneys. As a result of this series of rulings, there has been much confusion regarding the reporting of attorney fees. In 2007, the IRS issued Treasury Decision 9270, adopting Final Regulations 1.6041-1, -3 and -5, setting forth rules governing payments to attorneys. The Final Regulations primarily address the issue of dual reporting of payments to attorneys and clients. Congress mandated reporting by a payor under both IRC Section 6045(f) (to an attorney) and IRC Section 6041 (to the attorney's client) with respect to the same payment. Accordingly, the IRS has taken the position that, in cases in which a payment is made to the attorney for the benefit of the client, IRC Section 6041 requires reporting with respect to the client and IRC Section 6045(f) requires reporting with respect to the attorney. These regulations applied to payments made in or after 2007.



### Form 1099 Requirements Related to Attorneys (Continued)

#### 3. Court Decisions Regarding the Taxation of Litigation Awards:

Through 2004, there was a split opinion between various U.S. Circuit Courts as to whether fees paid directly to attorneys out of a judgment or settlement award would be treated as a direct reduction in the amount of the taxpayer's gross income, or merely as a potential deductible expense.

In a 2005 U.S. Supreme Court case (Commissioner vs. Banks, January 24, 2005, Case Number 03-892), the court resolved the disputes between the circuit courts. The court ruled that most taxpayers will be required to include the full amount of litigation proceeds in gross income, and deduct attorney's fees as a miscellaneous itemized deduction.

#### 4. Form 1099 Instructions:

In conformance with guidance in the 2007 Final Regulations, the 2014 Form 1099-MISC instructions include the following example under the subheading "Payments to Attorneys":

"For example, a person who, in the course of a trade or business, pays \$600 of taxable damages to a claimant by paying that amount to a claimant's attorney is required to furnish Form 1099-MISC to the claimant under section 6041 and furnish Form 1099-MISC to the claimant's attorney under section 6045(f). For more examples and exceptions relating to payments to attorneys, see Regulations 1.6045-5."

#### 5. Suggested Filing Instruction by the IRS Chief Council Office:

In 2009, the IRS Chief Council Office issued a Chief Council Memo (CCM), which was designated as PMTA 2009-035 (Program Manager's Technical Advice No. 2009-035). This CCM provided extensive examples and tables as to how the proceeds of legal settlements and the related attorney fees should be reported to the IRS.

**WNDE Position:** In light of the position of the U.S. Supreme Court, the 2007 Final Regulations, the 2014 Form 1099-MISC instructions and the guidelines set forth in PMTA 2009-035, it is our opinion that taxable settlement proceeds paid by the County of Monterey should have been reported as follows to plaintiffs and their attorneys for the calendar years 2011 through 2014:

- If the County made payments of gross settlement proceeds **solely to a plaintiff**, without designating or separately identifying the amount of attorney fees, the **gross** settlement proceeds (including any attorney fees) should have been reported to the **plaintiff** on Form 1099-MISC, Box 3, "Other Income".

**Form 1099 Requirements Related to Attorneys (Continued)**

- If the County paid gross settlement proceeds via a **joint check** made payable to the plaintiff and attorney (or a legal corporation), the **gross** settlement proceeds should have been reported to **both** the **plaintiff** on Form 1099-MISC, Box 3, "Other Income", and to the **attorney** on Form 1099-MISC, Box 14, "Gross Proceeds Paid to an Attorney".
- If the County paid **net** settlement proceeds to the plaintiff, and made a **separate payment (or payments) to the attorney** for his or her legal fees, then the **gross** settlement proceeds (including attorney fees) should have been reported to the **plaintiff** on Form 1099-MISC, Box 3, and that the amount of the separate payment(s) to the attorney should have been reported on Form 1099-MISC, Box 14. (Note: The amount in Box 14 would represent the portion of the gross settlement proceeds remitted directly to the attorney.)