



COUNTY OF HUMBOLDT

AGENDA ITEM NO.

21

For the meeting of: June 19, 2018

Date: May 24, 2018

To: Board of Supervisors

From: Jeff M. Dolf, Agricultural Commissioner/Sealer of Weights & Measures

Subject: **FY 2017-18 SUPPLEMENTAL BUDGET REQUEST FOR BUDGET UNIT 1100261 (4/5 vote required)**

RECOMMENDATION(S):

That the Board of Supervisors:

1. Approve FY 2017-18 supplemental budget request for the Agricultural Commissioner's Office for fees collected for participation in the county track and trace program.

Revenue:	1100261-608421	\$150,000
Expenditure:	1100261-2118	\$150,000

SOURCE OF FUNDING:

Fees related to required participation in the county's track and trace program.

Prepared by Jeff M. Dolf CAO Approval Jeff M. Dolf

REVIEW: Auditor CS County Counsel _____ Human Resources _____ Other _____

TYPE OF ITEM:

Consent

Departmental

Public Hearing

Other _____

PREVIOUS ACTION/REFERRAL:

Board Order No. _____

Meeting of: _____

BOARD OF SUPERVISORS, COUNTY OF HUMBOLDT

Upon motion of Supervisor Wilson Seconded by Supervisor Bass

Ayes Bass, Fennell, Sundberg, Bohn, Wilson

Nays _____

Abstain _____

Absent _____

and carried by those members present, the Board hereby approves the recommended action contained in this Board report.

Dated: 6/19/18

By: Kathy Hayes

Kathy Hayes, Clerk of the Board

DISCUSSION:

The Agricultural Commissioner's Office is requesting approval of a supplemental budget to adjust FY 2017-18 accounts to reflect fees collected from cannabis permit holders required to participate in the county's track and trace program. At the time the FY 2017-18 budget was prepared (March 2017) the future of the county's track and trace program and associated fees to be collected were unknown.

At your July 25, 2017 meeting, your Board directed the Agricultural Commissioner's Office to implement a local track and trace program for county cannabis program permittees. On September 5, 2017 your Board approved a contract with SICPA Product Security, LLC (SICPA) to provide a track and trace program to Humboldt County. Fees associated with participation in the program were approved by your Board at its October 3, 2017 meeting. Participants in the track and trace program are charged \$400 for training, a \$90/month account fee and \$.07 per unique identifier stamp. Fees are deposited in revenue account 1100261-608421 and per the agreement with SICPA, fees specific to training, account fees and \$.02/per stamp are paid to SICPA (expenditure account 1100261-2118) based on monthly invoices submitted to the Agricultural Commissioner's Office. There currently 470 sites registered in the county track and trace program (a site can constitute multiple permits on a single or multiple contiguous parcels).

The Cannabis Track and Trace Pilot Project is consistent with your Board's Strategic Priority Framework's core roles of encouraging local enterprise, and the creation of private sector jobs and opportunities.

FINANCIAL IMPACT:

There is no financial impact associated with approval of this supplemental budget. Revenue (1100261-608421) and expenditure (1100261-2118) accounts are requested to be adjusted by \$150,000 to account for revenue collected from fees associated with required participation in the county's track and trace program. Humboldt County retains \$.05 for every stamp sold to participants in the program. The county's per stamp charges are intended to assist the commissioner's office with covering costs associated with implementation and oversight of the track and trace program or for conducting cultivation site inspections. Any funds unspent by the commissioner's office and derived from the unique identifier stamps will be transferred to county economic development for promotion of the cannabis industry.

OTHER AGENCY INVOLVEMENT:

Auditor-Controller

ALTERNATIVES TO STAFF RECOMMENDATIONS:

Your Board could choose to deny the supplemental budget request, however this is not recommended as approval of the request will result in improved accounting of fees collected under the county's track and trace program.

ATTACHMENTS:

SICPA Security LLP track and trace contract definition of services and payment terms.

Attachment 1

Humboldt County Track and Trace Contract with SICPA Product Security LLP

**COUNTY OF HUMBOLDT
PROFESSIONAL SERVICES AGREEMENT**

This Agreement, dated as of _____, 2017, is by and between the COUNTY OF HUMBOLDT, hereinafter referred to as the "COUNTY", and SICPA Product Security, LLC, hereinafter referred to as the "CONTRACTOR".

WITNESSETH

WHEREAS, pursuant to Government Code Section 31000, COUNTY may retain independent contractors to perform special services to or for COUNTY or any department thereof; and,

WHEREAS, COUNTY desires to obtain CONTRACTOR for its Cannabis Inventory Tracking Software System ("ITSS"); and,

WHEREAS, CONTRACTOR is willing to provide such services on the terms and conditions set forth in this AGREEMENT and is willing to provide same to COUNTY.

NOW, THEREFORE it is agreed that COUNTY does hereby retain CONTRACTOR to provide the services described in Exhibit "A", and CONTRACTOR accepts such engagement, on the General Terms and Conditions hereinafter specified in this Agreement, the Additional Provisions attached hereto, and the following described exhibits, all of which are incorporated into this Agreement by this reference:

- Exhibit A Definition of Services
- Exhibit B Payment Terms
- Exhibit C Insurance Requirements
- Exhibit D Transition Adjustment Allowance – Not applicable
- Exhibit E Mendocino Contract with SICPA Product Security, LLC, including SICPA response to RFP No. 34-16
- Exhibit F Service Level Agreement
- Exhibit G Humboldt County Nuclear Free Ordinance Compliance Section
- Exhibit H Mendocino County RFP 34-16

The term of this Agreement shall be from Sept. 5, 2017 through December 31, 2018.

The compensation payable to CONTRACTOR hereunder shall not to exceed Twenty-Three Thousand Dollars (\$23,000) for the term of this Agreement.

IN WITNESS WHEREOF, the parties have entered into this Agreement as of the first date written above.

TWO SIGNATURES ARE REQUIRED FOR CORPORATIONS:

- (1) CHAIRPERSON OF THE BOARD, PRESIDENT, OR VICE PRESIDENT; AND
- (2) SECRETARY, ASSISTANT SECRETARY, CHIEF FINANCIAL OFFICER OR TREASURER.

[CONTRACTOR'S NAME]:

By: _____

Date: _____

Name: _____

Title: _____

By: _____

Date: _____

Name: _____

Title: _____

COUNTY OF HUMBOLDT:

By: _____

Date: _____

[Name of Purchasing Agent]
Humboldt County Purchasing Agent

INSURANCE AND INDEMNIFICATION REQUIREMENTS APPROVED:

By: _____

Date: _____

Risk Management

GENERAL TERMS AND CONDITIONS

1. **INDEPENDENT CONTRACTOR:** No relationship of employer and employee is created by this Agreement; it being understood and agreed that CONTRACTOR is an Independent Contractor. CONTRACTOR is not the agent or employee of the COUNTY in any capacity whatsoever, and COUNTY shall not be liable for any acts or omissions by CONTRACTOR nor for any obligations or liabilities incurred by CONTRACTOR.

CONTRACTOR shall have no claim under this Agreement or otherwise, for seniority, vacation time, vacation pay, sick leave, personal time off, overtime, health insurance medical care, hospital care, retirement benefits, social security, disability, Workers' Compensation, or unemployment insurance benefits, civil service protection, or employee benefits of any kind.

CONTRACTOR shall be solely liable for and obligated to pay directly all applicable payroll taxes (including federal and state income taxes) or contributions for unemployment insurance or old age pensions or annuities which are imposed by any governmental entity in connection with the labor used or which are measured by wages, salaries or other remuneration paid to its officers, agents or employees and agrees to indemnify and hold County harmless from any and all liability which COUNTY may incur because of CONTRACTOR's failure to pay such amounts.

In carrying out the work contemplated herein, CONTRACTOR shall comply with all applicable federal and state workers' compensation and liability laws and regulations with respect to the officers, agents and/or employees conducting and participating in the work; and agrees that such officers, agents, and/or employees will be considered as Independent Contractors and shall not be treated or considered in any way as officers, agents and/or employees of COUNTY.

CONTRACTOR does, by this Agreement, agree to perform his/her said work and functions at all times in strict accordance with all applicable federal, state and County laws, including but not limited to prevailing wage laws, ordinances, regulations, titles, departmental procedures and currently approved methods and practices in his/her field and that the sole interest of COUNTY is to ensure that said service shall be performed and rendered in a competent, efficient, timely and satisfactory manner and in accordance with the standards required by the County agency concerned.

Notwithstanding the foregoing, if the COUNTY determines that pursuant to state and federal law CONTRACTOR is an employee for purposes of income tax withholding, COUNTY may upon two (2) week's written notice to CONTRACTOR, withhold from payments to CONTRACTOR hereunder federal and state income taxes and pay said sums to the federal and state governments.

2. **INDEMNIFICATION:** CONTRACTOR shall indemnify, defend, and hold harmless the 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, reasonable attorney's fees, expert fees and court costs occurring or resulting, or alleged to be occurring or resulting, to any and all persons, firms or corporations furnishing or supplying work, services, materials, or supplies in connections with the CONTRACTOR'S performance or its obligations under this AGREEMENT, and from any and all claims, liabilities, and losses occurring or resulting, or alleged to be occurring or resulting, to any person, firm, or corporation for damage, injury, or death arising out of or connected with the CONTRACTOR'S performance of its obligations under 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.
3. **INSURANCE AND BOND:** CONTRACTOR shall at all times during the term of the Agreement with the COUNTY maintain in force those insurance policies and bonds as designated in the attached Exhibit C, and will comply with all those requirements as stated therein.
4. **WORKERS' COMPENSATION:** CONTRACTOR shall provide Workers' Compensation insurance, as applicable, at CONTRACTOR's own cost and expense and further, neither the CONTRACTOR nor its carrier shall be entitled to recover from COUNTY any costs, settlements, or expenses of Workers' Compensation claims arising out of this Agreement.
5. **CONFORMITY WITH LAW AND SAFETY:**
 - a. In performing services under this Agreement, CONTRACTOR shall observe and comply with all applicable laws, ordinances, codes and regulations of governmental agencies, including federal, state, municipal, and local governing bodies, having jurisdiction over the scope of services, including all applicable provisions of the California Occupational Safety and Health Act. CONTRACTOR shall indemnify and hold COUNTY harmless from any and all liability, fines, penalties and consequences from any of CONTRACTOR's failures to comply with such laws, ordinances, codes and regulations.
 - b. **Accidents:** If a death, serious personal injury or substantial property damage occurs in connection with CONTRACTOR's performance of this Agreement, CONTRACTOR shall immediately notify Humboldt County Risk Manager's Office by telephone. CONTRACTOR shall promptly submit to COUNTY a written report, in such form as may be required by COUNTY of all accidents which occur in connection with this Agreement. This report must include the following information: (1) name and address

of the injured or deceased person(s); (2) name and address of CONTRACTOR's sub-contractor, if any; (3) name and address of CONTRACTOR's liability insurance carrier; and (4) a detailed description of the accident and whether any of COUNTY's equipment, tools, material, or staff were involved.

- c. CONTRACTOR further agrees to take all reasonable steps to preserve all physical evidence and information which may be relevant to the circumstances surrounding a potential claim, while maintaining public safety, and to grant to the COUNTY the opportunity to review and inspect such evidence, including the scene of the accident.
6. **PAYMENT:** For services performed in accordance with this Agreement, payment shall be made to CONTRACTOR as provided in Exhibit "B" hereto as funding permits.
7. **TAXES:** Payment of all applicable federal, state, and local taxes shall be the sole responsibility of the CONTRACTOR.
8. **OWNERSHIP OF DOCUMENTS:** CONTRACTOR hereby agrees to provide to a private, not-for-profit, successor and if there is none then assigns the COUNTY and its assignees all copyright and other use rights in any and all proposals, plans, specification, designs, drawings, sketches, renderings, models, reports and related documents (including computerized or electronic copies) respecting in any way the subject matter of this Agreement, whether prepared by the COUNTY, the CONTRACTOR, the CONTRACTOR's subcontractors or third parties at the request of the CONTRACTOR (collectively, "Documents and Materials"). This explicitly includes the electronic copies of all above stated documentation.

CONTRACTOR shall be permitted to retain copies, including reproducible copies and computerized copies, of said Documents and Materials. CONTRACTOR agrees to take such further steps as may be reasonably requested by COUNTY to implement the aforesaid assignment. If for any reason said assignment is not effective, CONTRACTOR hereby grants the COUNTY and any assignee of the COUNTY an express royalty – free license to retain and use said Documents and Materials. The COUNTY's rights under this paragraph shall apply regardless of the degree of completion of the Documents and Materials and whether or not CONTRACTOR's services as set forth in Exhibit "A" of this Agreement have been fully performed or paid for.

CONTRACTOR shall pay all royalties and license fees which may be due for any patented or copyrighted materials, methods or systems selected by the CONTRACTOR and incorporated into the work as set forth in Exhibit "A", and shall defend, indemnify and hold the COUNTY harmless from any claims for infringement of patent or copyright arising out of such selection.

The COUNTY's rights under this Paragraph 8 shall not extend to any computer software used to create such Documents and Materials.

9. **CONFLICT OF INTEREST:** The CONTRACTOR covenants that it presently has no interest, and shall not have any interest, direct or indirect, which would conflict in any manner with the performance of services required under this Agreement.
10. **NOTICES:** All notices, requests, demands, or other communications under this Agreement shall be in writing. Notices shall be given for all purposes as follows:

Personal delivery: When personally delivered to the recipient, notices are effective on delivery.

First Class Mail: When mailed first class to the last address of the recipient known to the party giving notice, notice is effective three (3) mail delivery days after deposit in a United States Postal Service office or mailbox. **Certified Mail:** When mailed certified mail, return receipt requested, notice is effective on receipt, if delivery is confirmed by a return receipt.

Overnight Delivery: When delivered by overnight delivery (Federal Express/Airborne/United Parcel Service/DHL WorldWide Express) with charges prepaid or charged to the sender's account, notice is effective on delivery, if delivery is confirmed by the delivery service.

Facsimile transmission: When sent by facsimile to the facsimile number of the recipient known to the party giving notice, notice is effective on receipt, provided that, (a) a duplicate copy of the notice is promptly given by first-class or certified mail or by overnight delivery, or (b) the receiving party delivers a written confirmation of receipt. Any notice given facsimile shall be deemed received on the next business day if it is received after 5:00 p.m. (recipient's time) or on a non-business day.

Addresses for purpose of giving notice are as follows:

To COUNTY: COUNTY OF HUMBOLDT
Agricultural Commissioner
Attention: Jeff Dolf
5360 S. Broadway
Eureka, CA 95503

To CONTRACTOR: SICPA Product Security, LLC
8000 Research Way
Springfield, VA 22153-3131
ATTN: Alex Spelman

Any correctly addressed notice that is refused, unclaimed, or undeliverable because of an act or omission of the party to be notified shall be deemed effective as of the first date that said notice was refused, unclaimed, or deemed undeliverable by the postal authorities, messenger, or overnight delivery service.

Any party may change its address or facsimile number by giving the other party notice of the change in any manner permitted by this Agreement.

11. **USE OF COUNTY PROPERTY:** CONTRACTOR shall not use County property (including equipment, instruments and supplies) or personnel for any purpose other than in the performance of his/her obligations under this Agreement.
12. **EQUAL EMPLOYMENT OPPORTUNITY PRACTICES PROVISIONS:** CONTRACTOR certifies that it will comply with all federal and state laws pertaining to equal employment opportunity and that it shall not engage in any unlawful discrimination.
 - a. CONTRACTOR shall, in all solicitations or advertisements for applicants for employment placed as a result of this Agreement, state that it is an "Equal Opportunity Employer" or that all qualified applicants will receive consideration for employment without regard to their race, creed, color, disability, sex, sexual orientation, national origin, age, religion, Veteran's status, political affiliation, or any other non-merit factor.
 - b. CONTRACTOR shall, if requested to so do by the COUNTY, certify that it has not, in the performance of this Agreement, engaged in any unlawful discrimination.
 - c. If requested to do so by the COUNTY, CONTRACTOR shall provide the COUNTY with access to copies of all of its records pertaining or relating to its employment practices, except to the extent such records or portions of such records are confidential or privileged under state or federal law.
 - d. Nothing contained in this Agreement shall be construed in any manner so as to require or permit any act which is prohibited by law.
 - e. The CONTRACTOR shall include the provisions set forth in this paragraph in each of its subcontracts.
13. **DRUG-FREE WORKPLACE:** CONTRACTOR and CONTRACTOR's employees shall comply with the COUNTY's policy of maintaining a drug-free workplace. Neither CONTRACTOR nor CONTRACTOR's employees shall unlawfully manufacture, distribute, dispense, possess or use controlled substances, as defined in 21 U.S. Code § 812, including, but not limited to, marijuana, heroin, cocaine, and amphetamines, at any COUNTY facility or work site. If

CONTRACTOR or any employee of CONTRACTOR is convicted or pleads *nolo contendere* to a criminal drug statute violation occurring at a County facility or work site, the CONTRACTOR, within five days thereafter, shall notify the head of the County department/agency for which the contract services are performed. Violation of this provision shall constitute a material breach of this Agreement.

14. **ENERGY CONSERVATION:** CONTRACTOR agrees to comply with the mandatory standards and policies relating to energy efficiency in the State of California Energy Conservation Plan, (Title 24, California Administrative Code).
15. **COMPLIANCE WITH LICENSING REQUIREMENTS:** CONTRACTOR shall comply with all necessary licensing requirements and shall obtain appropriate licenses and display the same in a location that is reasonably conspicuous, as well as file copies of same with the County Executive Office.
16. **AUDITS; ACCESS TO RECORDS:** The CONTRACTOR shall make available to the COUNTY, its authorized agents, officers, or employees, for examination any and all ledgers, books of accounts, invoices, vouchers, cancelled checks, and other records or documents evidencing or relating to the expenditures and disbursements charged to the COUNTY, and shall furnish to the COUNTY, within sixty (60) days after examination, its authorized agents, officers or employees such other evidence or information as the COUNTY may require with regard to any such expenditure or disbursement charged by the CONTRACTOR.

The CONTRACTOR shall maintain full and adequate records in accordance with County requirements to show the actual costs incurred by the CONTRACTOR in the performance of this Agreement. If such books and records are not kept and maintained by CONTRACTOR within the County of Humboldt, California, CONTRACTOR shall, upon request of the COUNTY, make such books and records available to the COUNTY for inspection at a location within County or CONTRACTOR shall pay to the COUNTY the reasonable, and necessary costs incurred by the COUNTY in inspecting CONTRACTOR's books and records, including, but not limited to, travel, lodging and subsistence costs. CONTRACTOR shall provide such assistance as may be reasonably required in the course of such inspection. The COUNTY further reserves the right to examine and reexamine said books, records and data during the four (4) year period following termination of this Agreement or completion of all work hereunder, as evidenced in writing by the COUNTY, and the CONTRACTOR shall in no event dispose of, destroy, alter, or mutilate said books, records, accounts, and data in any manner whatsoever for four (4) years after the COUNTY makes the final or last payment or within four (4) years after any pending issues between the COUNTY and CONTRACTOR with respect to this Agreement are closed, whichever is later.

17. **DOCUMENTS AND MATERIALS:** CONTRACTOR shall maintain and make available to COUNTY for its inspection and use during the term of this Agreement, all Documents and Materials, as defined in Paragraph 8 of this Agreement.

CONTRACTOR's obligations under the preceding sentence shall continue for four (4) years following termination or expiration of this Agreement or the completion of all work hereunder (as evidenced in writing by COUNTY), and CONTRACTOR shall in no event dispose of, destroy, alter or mutilate said Documents and Materials, for four (4) years following the COUNTY's last payment to CONTRACTOR under this Agreement.

18. **TIME OF ESSENCE:** Time is of the essence in respect to all provisions of this Agreement that specify a time for performance; provided, however, that the foregoing shall not be construed to limit or deprive a party of the benefits of any grace or use period allowed in this Agreement.
19. **TERMINATION:** The COUNTY has and reserves the right to suspend, terminate or abandon the execution of any work by the CONTRACTOR without cause at any time upon giving to the CONTRACTOR prior written notice. In the event that the COUNTY should abandon, terminate or suspend the CONTRACTOR's work, the CONTRACTOR shall be entitled to payment for services provided hereunder prior to the effective date of said suspension, termination or abandonment. Said payment shall be computed in accordance with Exhibit B hereto, provided that the maximum amount payable to CONTRACTOR for the use of its Cannabis Inventory Tracing Software Systems to collect data and produce reports shall not exceed \$23,000 payment for services provided hereunder prior to the effective date of said suspension, termination or abandonment or lack of funding.
20. **NON APPROPRIATION:** If COUNTY should not appropriate or otherwise make available funds sufficient to purchase, lease, operate or maintain the products set forth in this Agreement, or other means of performing the same functions of such products, COUNTY may unilaterally terminate this Agreement only upon thirty (30) days written notice to CONTRACTOR. Upon termination, COUNTY shall remit payment for all products and services delivered to COUNTY and all expenses incurred by CONTRACTOR prior to CONTRACTOR'S receipt of the termination notice.
21. **CHOICE OF LAW:** This Agreement, and any dispute arising from the relationship between the parties to this Agreement, shall be governed by the laws of the State of California, excluding any laws that direct the application of another jurisdiction's laws.
22. **VENUE:** All lawsuits relating to this contract must be filed in Humboldt County Superior Court, Humboldt County, California.
23. **WAIVER:** No waiver of a breach, failure of any condition, or any right or remedy contained in or granted by the provisions of this Agreement shall be effective unless it is in writing and signed by the party waiving the breach, failure, right or remedy. No waiver of any breach, failure, right or remedy shall be deemed a

waiver of any other breach, failure, right or remedy, whether or not similar, nor shall any waiver constitute a continuing waiver unless the writing so specifies.

24. **ADVERTISING OR PUBLICITY:** CONTRACTOR shall not use the name of County, its officers, directors, employees or agents, in advertising or publicity releases or otherwise without securing the prior written consent of COUNTY in each instance.
25. **ENTIRE AGREEMENT:** This Agreement, including all attachments, exhibits, and any other documents specifically incorporated into this Agreement, shall constitute the entire agreement between COUNTY and CONTRACTOR relating to the subject matter of this Agreement. As used herein, Agreement refers to and includes any documents incorporated herein by reference and any exhibits or attachments. This Agreement supersedes and merges all previous understandings, and all other agreements, written or oral, between the parties and sets forth the entire understanding of the parties regarding the subject matter thereof. This Agreement may not be modified except by a written document signed by both parties.
26. **HEADINGS:** Herein are for convenience of reference only and shall in no way affect interpretation of this Agreement.
27. **MODIFICATION OF AGREEMENT:** This Agreement may be supplemented, amended or modified only by the mutual agreement of the parties. No supplement, amendment or modification of this Agreement shall be binding unless it is in writing and signed by authorized representatives of both parties.
28. **ASSURANCE OF PERFORMANCE:** If at any time the COUNTY has good objective cause to believe CONTRACTOR may not be adequately performing its obligations under this Agreement or that CONTRACTOR may fail to complete the Services as required by this Agreement, COUNTY may request from CONTRACTOR prompt written assurances of performance and a written plan acceptable to COUNTY, to correct the observed deficiencies in CONTRACTOR's performance. CONTRACTOR shall provide such written assurances and written plan within thirty (30) calendar days of its receipt of COUNTY's request and shall thereafter diligently commence and fully perform such written plan. CONTRACTOR acknowledges and agrees that any failure to provide such written assurances and written plan within the required time is a material breach under this Agreement.
29. **SUBCONTRACTING/ASSIGNMENT:** CONTRACTOR shall not subcontract, assign or delegate any portion of this Agreement or any duties or obligations hereunder without the COUNTY's prior written approval.

- a. Neither party shall, on the basis of this Agreement, contract on behalf of or in the name of the other party. Any agreement that violates this Section shall confer no rights on any party and shall be null and void.
 - b. CONTRACTOR shall use subcontractors identified in Exhibit "A" and shall not substitute subcontractors without COUNTY's prior written approval.
 - c. CONTRACTOR shall remain fully responsible for compliance by its subcontractors with all the terms of this Agreement, regardless of the terms of any agreement between CONTRACTOR and its subcontractors.
30. **SURVIVAL:** The obligations of this Agreement, which by their nature would continue beyond the termination on expiration of the Agreement, including without limitation, the obligations regarding Indemnification (Paragraph 2), Ownership of Documents (Paragraph 8), and Conflict of Interest (Paragraph 9), shall survive termination or expiration for two (2) years.
31. **SEVERABILITY:** If a court of competent jurisdiction holds any provision of this Agreement to be illegal, unenforceable, or invalid in whole or in part for any reason, the validity and enforceability of the remaining provisions, or portions of them, will not be affected, unless an essential purpose of this Agreement would be defeated by the loss of the illegal, unenforceable, or invalid provision.
32. **PATENT AND COPYRIGHT INDEMNITY:** CONTRACTOR represents that it knows of no allegations, claims, or threatened claims that the materials, services, hardware or software ("CONTRACTOR Products") provided to COUNTY under this Agreement infringe any patent, copyright or other proprietary right. CONTRACTOR shall defend, indemnify and hold harmless COUNTY of, from and against all losses, claims, damages, liabilities, costs expenses and amounts (collectively, "Losses") arising out of or in connection with an assertion that any CONTRACTOR Products or the use thereof, infringe any patent, copyright or other proprietary right of any third party.
- a. COUNTY will: (1) notify CONTRACTOR promptly of such claim, suit or assertion; (2) permit CONTRACTOR to defend, compromise, or settle the claim; and, (3) provide, on a reasonable basis, information to enable CONTRACTOR to do so. CONTRACTOR shall not agree without COUNTY's prior written consent, to any settlement, which would require COUNTY to pay money or perform some affirmative act in order to continue using the CONTRACTOR Products.
 - b. If CONTRACTOR is obligated to defend COUNTY pursuant to this Section 32 and fails to do so after reasonable notice from COUNTY, COUNTY may defend itself and/or settle such proceeding, and CONTRACTOR shall pay to COUNTY any and all losses, damages and expenses (including attorney's fees and costs) incurred in relationship with COUNTY's defense

and/or settlement of such proceeding.

- c. In the case of any such claim of infringement, CONTRACTOR shall either, at its option, (1) procure for COUNTY the right to continue using the CONTRACTOR Products; or (2) replace or modify the CONTRACTOR Products so that that they become non-infringing, but equivalent in functionality and performance.
- d. Notwithstanding this Section 32, COUNTY retains the right and ability to defend itself, at its own expense, against any claims that CONTRACTOR Products infringe any patent, copyright, or other intellectual property right.

33. OTHER AGENCIES:

Other tax supported agencies within the State of California who have not contracted for their own requirements may desire to participate in this contract. The CONTRACTOR is requested to service these agencies and will be given the opportunity to accept or reject the additional requirements. If the CONTRACTOR elects to supply other agencies, orders will be placed directly by the agency and payments made directly by the agency.

[END OF GENERAL TERMS AND CONDITIONS]

EXHIBIT A

DEFINITION OF SERVICES

CONTRACTOR shall provide the following services:

1. Maintenance and Operations:

SICPA will provide maintenance and operations services to enable and support County use of the SICPA Inventory Tracking Software System (ITSS) for the term of the Agreement in accordance with the requirements set forth in Mendocino County's RFP 34-16, including the areas described below.

- **Software management:** the vendor shall regularly provide systems enhancements, systems maintenance, as well as, adaptive and preventive maintenance.
- **Help Desk Support:** the vendor shall maintain the systems help desk support. Help desk support is defined the Service Level Agreement (SLA) incorporated in to this agreement as Exhibit F.
- **System performance and maintenance:** the vendor shall monitor the system to make sure it is continually in operation and report problems to the Agricultural Commissioner as defined in Exhibit F.
- **Business continuity and disaster recovery:** The vendor shall ensure the system is protected against natural disasters, hardware and software failures, human error, and other contingencies that could interrupt services.

2. System Capabilities:

SICPA will provide the County with enablement and use of the SICPA ITSS for the term of the Agreement in accordance with the requirements set forth in Mendocino County's RFP 34-16, including the areas described below.

- **ITSS platform shall track cannabis through the entire plant/product lifecycle pursuant to MCRSA track and trace requirement's, from nursery to dispensary.**
- **The ITSS system will provide the County full visibility of every permitted entity's activities and balance of products and stamps including: the quantity of stamps ordered, used and on hand; production balance by product type and weight; disposed products and product transfer and products in transit.**
- **ITSS will produce chain of custody, shipping manifest and other required forms.**
- **ITSS will track transport of cannabis and manufactured cannabis products and means of transport.**

- ITSS ability to integrate with hardware, such as scales, barcode scanners, and cash registers.
- ITSS ability to interface with common commercial inventory tracking software system.
- Track the form of cannabis product produced, unique lot identifier, quantity, manufacture date and expiration date.
- ITSS ability to create user security groups and access privileges for permittees and County users.
- ITSS ability to produce reports electronically in a specified format (CSV, PDF, etc.) including but not limited to growing, manufacture, laboratory testing, distribution, dispensing history, patient dispensing history, transport, medical cannabis product availability, cannabis product utilization, destruction, and production statistics.
- ITSS ability to retain history of modifications to records, provide system backup and archiving.
- ITSS ability to set up and maintain multiple locations for a given User Account.
- ITSS ability to turn over data from User Account to other regulatory and enforcement agencies upon the County's request.
- ITSS ability to fully integrate with one of the County's current software systems, including but not limited to Accela, or in-house systems.

3. Training:

SICPA will provide training for use of the SICPA ITSS in accordance with the requirements set forth in Mendocino County's RFP 34-16, including the areas described below.

- The vendor shall provide training outlined in the proposal to train County users to effectively monitor the System after implementation, as well as provide each permittee – system administration and user account training.

4. Project Implementation Plan:

SICPA shall implement the ITSS project in accordance with the Implementation Timeframe.

5. Technology and Configuration Specifications:

SICPA will meet the technology and configuration specification requirements set forth in Mendocino County's RFP 34-16.

6. Collection of Fees for Services from Permittees:

- a. ITSS Account payment pages and reports

- i. ITSS page to collect account fee of \$90 per site per month, paid quarterly.
 - ii. Warning messages to ITSS users and alerts generated to County Administrative Users if account fees are overdue.
 - iii. Account fees report that displays fees paid.
 - iv. Disabling of overdue sites will be manual.
- b. Heartland Payment Systems, Inc. integration for Electronic Payments
- c. Cash or Money Order/Checks
- d. County will administer these Cash or Money Order/Checks payments.

7. System enhancements:

Enhancements and changes to the ITSS platform shall be made by SICPA to ensure the ITSS continues to accommodate changing local, state, and federal regulations and other conditions as necessary. These modifications shall be mutually agreeable for vendor and COUNTY.

- a. Any System enhancements or changes requested by COUNTY will be mutually reviewed between COUNTY and SICPA staff. COUNTY requested changes that require development of functionality that does not currently exist in ITSS or cannot be supported through current ITSS configurations will be subject to the following change order process:
 - i. SICPA will log all COUNTY requested enhancements or changes
 - ii. SICPA will review scope of COUNTY requested enhancement of change with appropriate COUNTY staff
 - iii. SICPA will provide a Change Order request to COUNTY detailing the functional requirement, proposed solution, level of development effort and associated cost estimate for COUNTY requested enhancements or changes based on priority identified by COUNTY.
 - iv. COUNTY will review and approve all Change Order requests prior to SICPA commencement of associated work.
- b. SICPA will submit an invoice for any work completed under Change Order the work upon completion. Invoices are subject to payment terms as detailed in Section XX of the Agreement

8. Deliverables:

- a. Maintenance and operations services for a track and trace system
- b. Training
- c. Appropriate equipment to be used by county and law enforcement for purposes of validating track and trace information

9. Acceptance Criteria:

- a. The list below highlights some of the capabilities that the plant to sale solution must provide.
- i. The ability to track cannabis, including weight and/or volume, at each stage of the process: growing, manufacturing, storage, laboratory testing, distribution, transporting, dispensing, delivery and destruction. This would include the amount of unused organic material produced by each plant at harvest.
 - ii. The ability to track the total amount of cannabis in possession of any County-permitted entity from either plant and products, including all plants that are derived from cuttings or cloning, until the cannabis, cannabis plants, or manufactured cannabis product is sold or destroyed;
 - iii. The ability to produce chain of custody, shipping manifests, and other forms that are typically required to track, monitor and enforce compliance during all stages of the process.
 - iv. The ability to track the transport of cannabis and manufactured cannabis products between cultivation/production centers and retail dispensing locations and the means of transport including the make, model, and vehicle identification number of the vehicle used for transport.
 - v. The ability for the system to integrate with hardware, such as scales, barcode scanners, and cash registers.
 - vi. The ability to interface with other common commercial inventory tracking software systems that permittees may be utilizing for their own internal purposes. SICPA shall provide a list of compatible software programs and hardware that may be typically utilized in conjunction with the proposed ITSS.
 - vii. The ability for the permittee and County to track the form of cannabis product produced, unique lot identifier (number or barcode), quantity, manufacture date, and expiration date.
 - viii. The ability for the system to create user security groups and for a security administrator to grant read-only access to some user security groups or to grant specific privileges to a user security group.
 - ix. The ability to produce reports electronically in a specified format (CSV, PDF, etc.) including but not limited to growing, manufacture, laboratory testing, distribution, dispensing history, patient dispensing history, transport, cannabis product availability, cannabis product utilization, destruction, and production statistics.
 - x. The ability to retain history of modifications to records, provide system backup and archiving.
 - xi. The ability to set up and maintain multiple locations for a given User Account.

- xii. The ability to turn over data from User Account to other regulatory and enforcement agencies upon the County's request.

Implementation Timeframe

ITSS implementation is subject to presentation and finalization of the project implementation and enablement plan and discussions between the SICPA Project Manager and the County. SICPA anticipates delivery of the ITSS for the use by the County during the term of the Agreement in two primary phases. Phase One is anticipated to go live in September 2017 with associated training to enable plant tagging and reporting. Phase Two will be scheduled for late fall 2017 to prepare cultivators and other licensees to utilize the solution for subsequent production activities from the plant harvests

EXHIBIT B

PAYMENT TERMS

COUNTY will pay a one-time time fee of twenty-three thousand dollars (\$23,000) for the integration and set up of the Medical Cannabis Inventory Tracking Software System program during the term of the Agreement. The price by unit billed to County permittees shall not exceed the cost below in Table 1.

Table1

Description	Unit of Measure	Price
Secure Unique identifier (stamp)	Each	\$.02
Industry Participant Account Fee	Per Month	\$90.00
Secure Unique Identifier Shipping and Handling	Per Order	\$25.00
Training free	Per Permittee (2 resources per permittee)	\$400.00

[END OF PAYMENT TERMS]