

C O U N T Y A D M I N I S T R A T O R

SUSAN S. MURANISHI
COUNTY ADMINISTRATOR

June 2, 2009

DONNA LINTON
ASSISTANT COUNTY ADMINISTRATOR

Honorable Board of Supervisors
Administration Building
Oakland, California 94612

Dear Board Members:

SUBJECT: EXECUTE A FIRST AMENDMENT TO CONTRACT #2962 WITH MERRIWETHER AND WILLIAMS INSURANCE SERVICES FOR THE CONTRACTOR BONDING ASSISTANCE PROGRAM, TO ALLOW REIMBURSEMENT OF THIRD PARTY FUNDS ADMINISTRATION FEES, INCREASING THE CONTRACT AMOUNT BY \$120,000, FROM \$1,227,188 TO \$1,347,188, WITH NO CHANGE IN CONTRACT TERM

RECOMMENDATION:

Execute an amendment to procurement contract #2962 with Merriwether and Williams Insurance Services, (Principal: Ingrid Merriwether, President and CEO; Location: Oakland, CA) for the period of July 1, 2009 through June 30, 2011, by \$120,000, from \$1,227,188 to \$1,347,188, with no change in contract term, to allow MWIS to pay and seek reimbursement from the County for third party funds administration fees associated with the Contractor Bonding Assistance Program, that would otherwise be paid directly by the County.

SUMMARY/DISCUSSION:

On July 22, 2008, your Board approved a three year contract with Merriwether and Williams Insurance Services (MWIS) to develop and administer the County's Contractor Bonding Assistance Program, with the understanding that we would return to your Board for approval of collateral funding agreements. At that time, the County was engaged in discussions with internal stakeholders and financial institutions regarding an appropriate funding mechanism and amount for the bond guarantee component of the program; additional variable costs for the program were estimated at \$50,000 - \$225,000 per year, inclusive of \$30,000 to \$125,000 per year for third party funds administration, depending on the amount of bonding collateralized and level of utilization of the program.

On March 3, 2009, your Board approved the County establishing a \$5 million letter of credit with Union Bank as collateral for the program. Based on the approved level of collateral support, TPFA administration fees are estimated at \$50,000 per full fiscal year, or \$120,000 over the remaining life of the contract. Because the surety companies working with the CBAP Administrator, MWIS, partner with specific TPFA's, it is administratively efficient for the TPFA's to bill and be paid directly by MWIS, with the County reimbursing MWIS for these costs. There will be no additional cost to the County for MWIS to manage this process. A line item amount for these reimbursable TPFA fees was not included in the original contract with MWIS because the amount of the LOC, and hence the volume of the services, was still being negotiated at that time

Third party funds administration is designed to ensure that all funds paid to a contractor for a given County project are used only for project-related expenses, and do not subsidize costs associated with other projects on which a contractor may be simultaneously engaged. Under the Contractor Bonding Assistance Program, third party funds administration services are required whenever the County guarantees any portion of a bond issued by the surety. In some cases, a surety may require third party funds administration for a program participant, if the County is not collateralizing the transaction.

FUNDING:

Funding for the reimbursement of TPFA fees is included in the FY 2008-09 Risk Management budget, requested in the FY 2009-10 Risk Management budget, and will be requested in subsequent years. There is no increase in net County cost as a result of this action.

Very truly yours,



Susan S. Muranishi
County Administrator

SSM:BL:ed
V:/RMU Meriwether and Williams
Attachment

cc: Patrick O'Connell, Auditor-Controller
Richard E. Winnie, County Counsel
Barbara Lubben, Director of Risk Management

FIRST AMENDMENT TO AGREEMENT

This First Amendment to Agreement ("First Amendment") is made by the County of Alameda (County") and Merriwether and Williams Insurance Services ("**Contractor**") with respect to that certain agreement entered by them on July 1, 2008 (the "**Agreement**") pursuant to which Contractor provides contractor bonding assistance and small business outreach services for the County's Contractor Bonding Assistance Program.

County and Contract agrees as follows:

- 1) For valuable consideration, the receipt of sufficiency of which are hereby acknowledged, County and Contractor agree to amend the Agreement in the following respects:
- 2) Except as otherwise stated in this First Amendment, the terms and provisions of this Amendment will be considered to be effective as of the date this First Amendment is executed by the County ("Effective Date").
- 3) The Exhibit A-1, contained in the Standard Service Agreement, will be replaced in whole with Exhibit A-1 attached.
- 4) The Exhibit B, contained in the Standard Service Agreement, will be replaced in whole with Exhibit B attached.
- 5) In consideration for Contractor's administration of Third party Funds Administration (TPFA), the County shall reimburse Contractor \$120,000.
- 6) Except as expressly modified by this First Amendment, all of the terms and conditions of the Agreement are and remain in full force and effect.

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

COUNTY OF ALAMEDA

MERRIWETHER AND WILLIAMS
INSURANCE SERVICES

By: _____
Signature

By: 
Signature

Name: _____
(Printed)

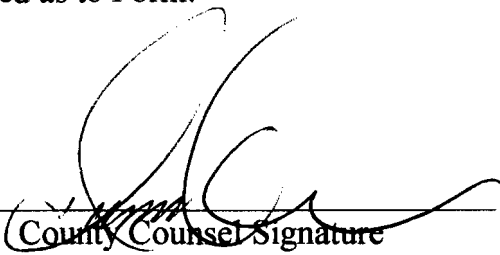
Name: Ingrid Merriwether

Title: President of the Board of Supervisors

Title: President and CEO

Date: June 1, 2009

Approved as to Form:

By: 
County Counsel Signature

By signing above, signatory warrants and represents that he/she executed this Agreement in his/her authorized capacity and that by his/her signature on this Agreement, he/she or the entity upon behalf of which he/she acted, executed this Agreement

**EXHIBIT A-1
SCOPE OF SERVICE**

- 1) The Contractor Assistance Program is designed to enhance the bonding capacity of small businesses and complement existing County programs in GSA and CAO-Risk Management for business outreach services. The Contractor Assistance Program contractor will report to the Risk Management Unit. Contractor shall assist County with:
 - a. Assisting the County in developing relationships with reputable and financially sound lending institutions and surety underwriting entities that are committed to working with the County to provide bonds to qualified SLEBs. If necessary and appropriate, assist the County in negotiating and developing written agreements with these entities on behalf of the County of Alameda.
 - b. Working with selected lenders and sureties to develop underwriting criteria that will protect the County of Alameda resources but will allow maximum participation by SLEB contractors requiring bonding assistance consistent with statutory requirements. If statutory changes seem appropriate, identify and propose to County for consideration and possible adoption.
 - c. Establishing a referral network of advisors and service providers (qualified bankers, accountants, insurance brokers, business consultants, economic development advisers, etc), that can assist contractors in obtaining surety bonds.
 - d. Working collaboratively with the County of Alameda to integrate the Contractor Assistance Program with existing SLEB program resources.
 - e. Developing necessary forms, instruction documents, procedure manuals and other written control mechanisms for operation of the program.
 - f. Providing basic guidance and counseling to contractors on the surety bonding process and on the necessary steps to qualify for bond, including such items as preparation of financial reports and business plans, selection of insurance/surety brokers, and establishment of assets or credit resources for operating capital.
 - g. Paying invoices for third party funds administration fees associated with the program and submitting the invoices for approval and reimbursement by the County.

- h. Establishing accounting controls for the County of Alameda funds used in the program and overseeing the administration of funds.
- i. Providing quarterly reports to the County of Alameda's Risk Management Unit documenting the level of consulting services provided in terms of number of contractors counseled and bonded. Identify benefits to the County and SLEB contractors resulting from program-qualified contractors winning bids
- j. For major projects with hard costs in excess of an amount to be determined by the County's Risk Management Unit, preparing a closeout report documenting the bonding successes of the targeted SLEB businesses; related costs of bonding and program administration; and the ability of SLEB contractors to apply their success to other bid/bonding opportunities.
- k. Implementation Deadline: The program must be implemented within three (3) months of award of contract.

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**EXHIBIT B
PAYMENT TERMS**

1) **Compensation:** Contractor shall be paid the following for services rendered under this agreement:

Cost component	Year 1	Year 2	Year 3	Total 3-year Contract
Program administration fee	375,000	393,750	413,438	1,182,188
Reimbursable expenses*	15,000	15,000	15,000	45,000
Reimbursable Third Party Funds Administration fees*	20,000	50,000	50,000	120,000
Total contract	410,000	458,750	478,438	1,347,188
*Allocation of reimbursable expenses and fees to each year is approximate. The total amounts may be paid over any combination of contract years.				

2) **Invoices:** Contractor shall submit monthly invoices, or as otherwise directed by County, describing the Services and Reimbursable Expenses and Reimbursable TPFAs fees for which payment is sought. Invoices shall be in a form acceptable to the County and include the following:

- a) Documentation of Services:
 - i) Contractor shall invoice the Risk Management Unit, unless otherwise advised, upon satisfactory receipt of product and/or performance of service
 - ii) Payment will be made within thirty (30) days following receipt of invoice and upon complete satisfactory receipt of product and performance of services
 - iii) County shall notify Contractor of any adjustments required to invoice.
 - iv) Invoices shall contain County Purchase Order (PO) number, invoice number, remit to address and itemized products and/or services description and price as quoted and shall be accompanied by acceptable proof of delivery.
 - v) Contractor shall utilize standardized invoice upon request.
 - vi) Invoices shall only be issued by the Contractor who is awarded a contract.
 - vii) Payments will be issued to and invoices must be received from the same Contractor whose name is specified on the Purchase Orders.
 - viii) The County will pay Contractor monthly or as agreed upon, not to exceed the total lump sum price quoted in the bid response.
 - ix) Requests for reimbursement of expenses and TPFAs fees shall be noted as a line item on the monthly program administration fee invoice submitted by the Contractor and copies of paid invoices for the expenses and TPFAs fees attached.
 - x) Invoices will be approved by the County's Director of Risk Management / designee.

- xi) Invoice Address: Unless otherwise agreed by the Parties, all invoices shall be sent to the County at the address specified below:

Alameda County
Risk Management Unit
125 12th Street 3rd Floor
Oakland, CA 94607
Attn: Karen Caoile

- 3) **Reimbursable Expenses:** In accordance with Section 8 of the Agreement, Contractor shall follow the Alameda County Auditor-Controller Agency's Manual of Accounting Policies and Procedures (MAPP) for Disbursements: Section B-1, "Overall Governing Rules, and Specific Expenditures" (including Prohibited and Restricted Expenditures)

Maximum Amount Payable for Reimbursable Expenses: The maximum amount payable for all reimbursable expenses under this Agreement shall not exceed Forty-Five Thousand Dollars (\$45,000) over the three-year contract term.

- 4) Maximum Amount Payable for TPFA fees: The maximum amount payable for all reimbursable TPFA fees under this Agreement shall not exceed One-Hundred Twenty Thousand Dollars (\$120,000) over the three-year contract term.

- 5) **Implementation Plan and Schedule of Activities:** Upon notice to proceed from County, Contractor shall perform in accordance with the following schedule governing the timely performance of Contractor's services hereunder. Contractor shall not be entitled to payment under this Agreement until the completion of a schedule acceptable to the County Risk Management.

1st Quarter – beginning July 1, 2008

- a) Program Development
- i) Establish Program Services
 - ii) Establish Collateral Thresholds
 - iii) Establish Eligibility Requirements
 - iv) Approval of Program Forms / Signatories
 - v) Establish Line of Credit / Guarantee
 - vi) Completion of Program Development September 30, 2008
- b) Program Implementation
- i) Informational Workshops for County Personnel – as needed
 - ii) Program Marketing & Recruitment of Program Partners
 - iii) Complete Program Procedures – Completion Date: October 31, 2008

- c) Marketing / Outreach
 - i) Brochure Development – Completion Date: October 31, 2008
 - ii) Outreach to Contractors

2nd Quarter – beginning October 1, 2008

- a) Program Implementation
 - i) Program Kick Off: October 1, 2008
 - ii) Inclusion in County Bid Announcements
 - iii) Inclusion on County Website & Other Mediums
 - iv) Procedures Manual – Completion Date: October 31, 2008
- b) Marketing / Outreach
 - i) Ads with Trade Sector / Trade Publications
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- d) Program Partner Service Provider Referrals
 - i) Accounting Referrals
 - ii) Business Consulting Referrals
 - iii) Broker Referrals
 - iv) Coordination of Support Activities
- e) Risk Management
 - i) Monitor Contractor's Performance
 - ii) Funds Administration
 - iii) Collateral Management
 - iv) Conflict Resolution as needed
 - v) Transaction Closeout

3rd Quarter – beginning January 1, 2009

a) Reporting

Quarterly Report on Program Activities Report to provide detailed analysis & accounting of Services provided and Contractors assisted. Reports can be generated on a more frequent basis at the County's request.

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By: _____
Signature

By: 
Signature

Name: _____
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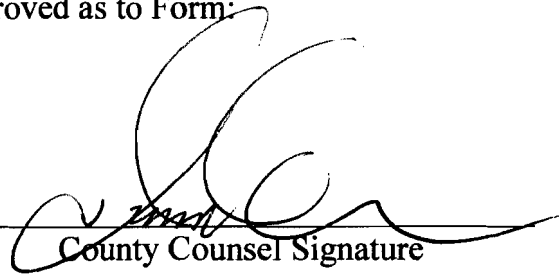
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