

THE BOARD OF SUPERVISORS OF THE COUNTY OF STANISLAUS
ACTION AGENDA SUMMARY

DEPT: Auditor-Controller SPK

BOARD AGENDA # *B-1

Urgent Routine

AGENDA DATE October 21, 2014

CEO Concur with Recommendation YES NO
(Information Attached)

4/5 Vote Required YES NO

SUBJECT:

Approval of an Agreement with MGT of America, Inc. to Provide Professional Services Relating to SB 90 Claims and A-87 Cost Allocation Plan

STAFF RECOMMENDATIONS:

1. Approve the award of an Agreement with MGT of America, Inc. for professional services relating to SB 90 claims and A-87 Cost Allocation Plan.
2. Authorize the Purchasing Agent to execute the agreement and any amendments thereto.

FISCAL IMPACT:

MGT of America, Inc. (MGT) has proposed professional services for the fiscal year ended June 30, 2015. The annual cost of the Senate Bill (SB) 90 services is \$26,505 and the annual cost of the Office of Management and Budget (OMB) A-87 Cost Allocation Plan services is \$8,500, with a combined annual cost of \$35,005.

(continued on page 2)

BOARD ACTION AS FOLLOWS:

No. 2014-520

On motion of Supervisor Chiesa, Seconded by Supervisor Withrow

and approved by the following vote,

Ayes: Supervisors: O'Brien, Chiesa, Withrow, Monteith, and Chairman De Martini

Noes: Supervisors: None

Excused or Absent: Supervisors: None

Abstaining: Supervisor: None

1) X Approved as recommended

2) _____ Denied

3) _____ Approved as amended

4) _____ Other:

MOTION:

Christine Ferraro

ATTEST: CHRISTINE FERRARO TALLMAN, Clerk

File No.

FISCAL IMPACT (continued):

Consistent with past practice, the annual cost of the SB 90 services (\$26,505) will be charged to the departments, based on percentage of the claim to the total amount claimed by the County. Once department's actual share of cost is determined, any necessary adjustments to department budgets will be submitted for Board approval.

The annual cost of the cost allocation plan services (\$8,500) will be charged to the Auditor-Controller's office. The Fiscal Year 2014-2015 budget includes \$6,000 of appropriations for the cost plan services. The balance of \$2,500 is anticipated to be absorbed within projected savings in the Fiscal Year 2014-2015 budget.

The proposed Agreement has a three-year term, with two optional one-year renewal terms. The total cost of the agreement for the three-year term is \$105,015. Should the County exercise the two optional one-year renewal terms, the total cost for the five year period is \$175,025. On an annual basis, the individual departments will be responsible for appropriating the SB 90 costs and the Auditor-Controller's department will be responsible for the budget related to the cost allocation plan charges.

DISCUSSION:

The State mandated cost reimbursement program involves preparation and filing of SB 90 claims. The County must follow the set of claiming instructions as established by the State Controller's Office (SCO). The most recent SB 90 claim filed on behalf of the County was approximately \$1.3 million. The County previously contracted with MGT of America, Inc. for these services, but this contract expired June 30, 2014.

The OMB establishes principles and standards for determining allowable costs for Federal awards carried out through grants, cost reimbursement contracts and other agreements. The principles and standards provide a uniform approach for determining costs and to promote effective program delivery and efficiency. The County's approved OMB A-87 Cost Allocation Plan for use in Fiscal Year 2014-2015 is reported at \$24 million. The County previously contracted with Maximus Consulting Services, Inc. for these services, but the contract expired June 30, 2014.

In anticipation of the expiration of both contracts, the General Services Agency Purchasing Division (GSA) issued Request for Proposal (RFP) 14-39 MP Professional Services Relating to SB 90 Claims and the A-87 Cost Allocation Plan. In the interest of efficiency, the scope of work set forth in the RFP included services relating to both the SB 90 and A-87 Cost Allocation Plan.

The RFP was issued on June 13, 2014 and sent out electronically. Eight vendors downloaded the RFP. The RFP closed on July 10, 2014 and GSA received complete responses from the two vendors, listed below.

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- Maximus Consulting Services, Inc., of Rancho Cordova, California; and
- MGT of America, Inc., of Sacramento, California.

Both of the proposers met the minimum qualifications set forth in Phase I of the Evaluation Phase, which included a financial review. A committee of three evaluators was selected to further evaluate the proposals. The Evaluation Committee was comprised of representatives from the Auditor-Controller's office.

Phases II and III were completed by the Evaluation Committee. Phase II consisted of a review and evaluation of each proposer's response, qualification and general understanding of the project with a total of 45 points possible. Proposers needed to score at least 35 of the 45 available points in order to pass on to Phase III. The scores of each member of the Evaluation Committee were averaged to determine the actual Phase II score for each finalist. Both proposers scored above 35 and passed on to Phase III. Interviews and oral presentations were conducted in Phase III, with a total of 35 points available. The scores of each member of the Evaluation Committee were averaged to determine the actual score for each finalist.

In Phase IV, the pricing proposals submitted by each proposer were evaluated by GSA. The pricing proposals, however, were unclear, and disparate in presentation, which did not allow for a direct comparison. For this reason, the Evaluation Committee elected to provide proposers with an opportunity to provide a "Best and Final Offer" (BAFO). This optional step in the procurement process is used in situations where no single proposal addresses all the specifications; when the costs submitted by all Proposers are too high or too disparate for comparison; when two or more Proposers are virtually tied after the evaluation process, when all Proposers submitted responses that are unclear or deficient in one or more areas; or when there are two equally attractive proposals that are difficult to differentiate.

GSA prepared the BAFO document which simply required annual pricing for the two services described in the RFP. Both proposers responded, and BAFO pricing was evaluated based upon a weighted average, with the lowest price assigned 100% of the 70 points possible.

The award of the contract was made to the vendor whose proposal best met the criteria set forth in the RFP and provides the best value to the County, with price and all other factors considered. The Evaluation Committee made this determination by adding the scores from Phases II through V for both proposers. The final scores are as follows:

Evaluation Phase	Total Points Available	MGT	Maximus
Phase I	Pass/Fail	Pass	Pass
*Phase II	45	41	42
Phase III	35	34	30

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Phase IV	70	41	70
Total Points	150	117	142

* Needed 35 of 45 points to pass

As shown above, Maximus Consulting Services, Inc. (Maximus) received the highest score of 142 of a possible 150 points. On August 7, 2014 GSA issued a Notice of Intended Award to Maximus Consulting Services, Inc. and Notices of Non-Award to the other proposer. No letter of protest was received during the five-day protest period of the RFP process.

The County then began negotiating with Maximus in regard to a contract resultant from the RFP process. These negotiations revolved around the many exceptions taken by Maximus to the terms and conditions of the County's standard contract, which was attached to the RFP. Of particular concern, Maximus' requested revisions to the County's standard indemnification provisions and the addition of a section which would limit Maximus' liability. While Maximus posed several questions regarding revisions to the contract prior to the question deadline, the questions posed were general in nature and did not outline the specific exceptions set forth later in its response to this RFP.

The contract revisions requested by Maximus, in its response to the RFP, were not approved by County Counsel. Purchasing relayed this information to Maximus both verbally and in writing. Purchasing also provided Maximus with an opportunity to waive all exceptions stated in its RFP response, and to proceed with a contract using the sample agreement provided with the RFP. Purchasing also reminded Maximus, both verbally and in writing, that failure to waive the exceptions could result in the County exercising its right to reject Maximus' proposal as non-conforming. This option is outlined in Section 3.11 of the RFP. Unfortunately, Maximus maintained an unwillingness to agree to the County's standard terms and conditions without exception. Recognizing and accepting Maximus' position, the County ended negotiations with Maximus both verbally and in writing on August 29, 2014. Maximus responded in writing acknowledging the end of negotiations and requesting to be considered for future opportunities. Purchasing then began negotiating with MGT the second highest scoring proposer. MGT did not take any exceptions to the sample agreement set forth in the RFP, and has executed a contract using that same format, which has been approved by County Counsel.

As shown in the chart above, MGT scored higher than Maximus in Phases I and II of the evaluation process, but pricing gave the highest score to Maximus. Final BAFO pricing submitted by Maximus was \$20,250 for the first year compared to \$35,005 submitted by MGT.

While MGT's proposed pricing is higher than Maximus, the first year cost for the both SB 90 and the cost allocation plan services is still \$15,495 less than the annual current cost of \$50,500.

MGT has been providing SB 90 services to the County since 2007. MGT has met the required deadlines. County staff has relied on MGT to provide legislative updates to ensure maximum SB 90 services are claimed. MGT staff has been available to answer questions and address inquiries as needed by County staff.

At least 41 of the 58 counties in California rely on MGT's expertise of SB 90 services. Statewide, MGT is considered to be a leader in SB 90 services. MGT's knowledge of County's financial and program data along with their working relationships with County staff is a benefit to the engagement.

POLICY ISSUES:

Approval of this contract to provide the SB 90 and cost allocation plan services for fiscal year ending June 30, 2014 through fiscal year ending June 30, 2016 supports the Board's priority of Efficient Delivery of Public Services and meets State and Federal compliance. Per County policy, Board of Supervisors' approval is required for contracts greater than \$100,000.

STAFFING IMPACTS:

MGT will work with County department staff and the Auditor-Controller's office to complete the SB 90 claims. The deadline to file the SB 90 claims for Fiscal Year 2013-2014 is February 15, 2015. The OMB A-87 Cost Allocation Plan for use in Fiscal Year 2015-2016 is due by December 31, 2014 and MGT will work with the Auditor-Controller's staff to complete the services.

CONTACT PERSON:

Kashmir Gill, Assistant Auditor-Controller

Telephone: (209) 525-6579

**AGREEMENT
FOR
PROFESSIONAL SERVICES**

This Agreement for Professional Services is made and entered into by and between the County of Stanislaus ("County") and MGT of America, Inc., a Florida corporation doing business in California as MGT Consultants, ("Consultant"), as of October 22, 2014 (the "Agreement").

Introduction

WHEREAS, the County has a need for professional services relating to the County's annual Cost Plan and SB 90 Claims;

WHEREAS, the Consultant is specially trained, experienced and competent to perform and has agreed to provide such services; and

NOW, THEREFORE, in consideration of the mutual promises, covenants, terms and conditions hereinafter contained, the parties hereby agree as follows:

Terms and Conditions

1. **Scope of Work**

1.1 The Consultant shall furnish to the County upon execution of this Agreement or receipt of the County's written authorization to proceed, those services and work set forth in **Exhibit A**, which is attached hereto and, by this reference, made a part hereof.

1.2 All documents, drawings and written work product prepared or produced by the Consultant under this Agreement, including without limitation electronic data files, are the property of the Consultant; provided, however, the County shall have the right to reproduce, publish and use all such work, or any part thereof, in any manner and for any purposes whatsoever and to authorize others to do so. If any such work is copyrightable, the Consultant may copyright the same, except that, as to any work which is copyrighted by the Consultant, the County reserves a royalty-free, non-exclusive, and irrevocable license to reproduce, publish, and use such work, or any part thereof, and to authorize others to do so. The County shall defend, indemnify and hold harmless the Consultant and its officers, employees, agents, representatives, subcontractors and consultants from and against all claims, damages, losses, judgments, liabilities, expenses and other costs, arising out of or resulting from the County's reuse of the documents and drawings prepared by the Consultant under this Agreement.

1.3 Services and work provided by the Consultant under this Agreement will be performed in a timely manner in accordance with a schedule of work set forth in Exhibit A. If there is no schedule, the hours and times for completion of said services and work are to be set by the Consultant; provided, however, that such schedule is subject to review by and concurrence of the County.

1.4 The Consultant shall provide services and work under this Agreement consistent with the requirements and standards established by applicable federal, state and County laws, ordinances, regulations and resolutions. The Consultant represents and warrants that it will perform its work in accordance with generally accepted industry standards and practices for the profession or professions that are used in performance of this Agreement and that are in effect at the time of performance of this Agreement. Except for that representation and any representations made or contained in any proposal submitted by the Consultant and any reports or opinions prepared or issued as part of the work performed by the Consultant under this Agreement, Consultant makes no other warranties, either express or implied, as part of this Agreement.

1.5 If the Consultant deems it appropriate to employ a consultant, expert or investigator in connection with the performance of the services under this Agreement, the Consultant will so advise the County and seek the County's prior approval of such employment. Any consultant, expert or investigator employed by the Consultant will be the agent of the Consultant not the County.

2. Consideration

2.1 The Consultant shall be compensated on either a time and materials basis or a lump sum basis, as provided in Exhibit A attached hereto.

2.2 Except as expressly provided in this Agreement, Consultant shall not be entitled to nor receive from County any additional consideration, compensation, salary, wages or other type of remuneration for services rendered under this Agreement, including, but not limited to, meals, lodging, transportation, drawings, renderings or mockups. Specifically, Consultant shall not be entitled by virtue of this Agreement to consideration in the form of overtime, health insurance benefits, retirement benefits, disability retirement benefits, sick leave, vacation time, paid holidays or other paid leaves of absence of any type or kind whatsoever.

2.3 The Consultant shall provide the County with a monthly or a quarterly statement, as services warrant, of fees earned and costs incurred for services provided during the billing period, which the County shall pay in full within 30 days of the date each invoice is approved by the County. The statement will generally describe the services performed, the applicable rate or rates, the basis for the calculation of fees, and a reasonable itemization of costs. All invoices for services provided shall be forwarded in the same manner and to the same person and address that is provided for service of notices herein.

2.4 County will not withhold any Federal or State income taxes or Social Security tax from any payments made by County to Consultant under the terms and conditions of this Agreement. Payment of all taxes and other assessments on such sums is the sole responsibility of Consultant. County has no responsibility or liability for payment of Consultant's taxes or assessments.

3. Term

3.1 The term of this Agreement shall be from the date of this Agreement until completion of the agreed upon services unless sooner terminated as provided below or unless some other method or time of termination is listed in Exhibit A.

3.2 Should either party default in the performance of this Agreement or materially breach any of its provisions, the other party, at that party's option, may terminate this Agreement by giving written notification to the other party.

3.3 The County may terminate this agreement upon 30 days prior written notice. Termination of this Agreement shall not affect the County's obligation to pay for all fees earned and reasonable costs necessarily incurred by the Consultant as provided in Paragraph 2 herein, subject to any applicable setoffs.

3.4 This Agreement shall terminate automatically on the occurrence of (a) bankruptcy or insolvency of either party, or (b) sale of Consultant's business.

4. Required Licenses, Certificates and Permits

Any licenses, certificates or permits required by the federal, state, county or municipal governments for Consultant to provide the services and work described in Exhibit A must be procured by Consultant and be valid at the time Consultant enters into this Agreement. Further, during the term of this Agreement, Consultant must maintain such licenses, certificates and permits in full force and effect. Licenses,

certificates and permits may include but are not limited to driver's licenses, professional licenses or certificates and business licenses. Such licenses, certificates and permits will be procured and maintained in force by Consultant at no expense to the County.

5. Office Space, Supplies, Equipment, Etc.

Unless otherwise provided in this Agreement, Consultant shall provide such office space, supplies, equipment, vehicles, reference materials and telephone service as is necessary for Consultant to provide the services under this Agreement. The Consultant--not the County--has the sole responsibility for payment of the costs and expenses incurred by Consultant in providing and maintaining such items.

6. Insurance

6.1 Consultant shall take out, and maintain during the life of this Agreement, insurance policies with coverage at least as broad as follows:

6.1.1 General Liability. Commercial general liability insurance covering bodily injury, personal injury, property damage, products and completed operations with limits of no less than One Million Dollars (\$1,000,000) per incident or occurrence. If Commercial General Liability Insurance or other form with a general aggregate limit is used, either the general aggregate limit shall apply separately to any act or omission by Consultant under this Agreement or the general aggregate limit shall be twice the required occurrence limit.

6.1.2 Professional Liability Insurance. Professional errors and omissions (malpractice) liability insurance with limits of no less than One Million Dollars (\$1,000,000) aggregate. Such professional liability insurance shall be continued for a period of no less than one year following completion of the Consultant's work under this Agreement.

6.1.3 Automobile Liability Insurance. If the Consultant or the Consultant's officers, employees, agents or representatives utilize a motor vehicle in performing any of the work or services under this Agreement, owned/non-owned automobile liability insurance providing combined single limits covering bodily injury and property damage liability with limits of no less than One Million Dollars (\$1,000,000) per incident or occurrence.

6.1.4 Workers' Compensation Insurance. Workers' Compensation insurance as required by the California Labor Code. In signing this contract, the Consultant certifies under section 1861 of the Labor Code that the Consultant is aware of the provisions of section 3700 of the Labor Code which requires every employer to be insured against liability for workmen's compensation or to undertake self-insurance in accordance with the provisions of that code, and that the Consultant will comply with such provisions before commencing the performance of the work of this Agreement.

6.2 Any deductibles, self-insured retentions or named insureds must be declared in writing and approved by County. At the option of the County, either: (a) the insurer shall reduce or eliminate such deductibles, self-insured retentions or named insureds, or (b) the Consultant shall provide a bond, cash, letter of credit, guaranty or other security satisfactory to the County guaranteeing payment of the self-insured retention or deductible and payment of any and all costs, losses, related investigations, claim administration and defense expenses. The County, in its sole discretion, may waive the requirement to reduce or eliminate deductibles or self-insured retentions, in which case, the Consultant agrees that it will be responsible for and pay any self-insured retention or deductible and will pay any and all costs, losses, related investigations, claim administration and defense expenses related to or arising out of the Consultant's defense and indemnification obligations as set forth in this Agreement.

6.3 The Consultant shall include County, its Officers, Directors, Officials, Agents, Employees and volunteers as Additional Insureds under the General Liability and Auto policy and shall supply specific endorsements for same. The Additional Insured endorsement under the General Liability policy will be the Additional Insured – Owners, Lessees or Contractors – Scheduled Person or Organization ISO Form CG2010 with the current applicable revision date. The Additional Insured endorsement under the Auto Liability will be “where required by written contract”. All Insurance policies will include a Waiver of Subrogation in favor of County.

6.4 The Consultant’s insurance coverage shall be primary insurance regarding County and County’s officers, officials and employees. Any insurance or self-insurance maintained by County or County’s officers, officials and employees shall be excess of Consultant’s insurance and shall not contribute with Consultant’s insurance. Any failure to comply with reporting provisions of the policies shall not affect coverage provided to County, its officers, directors, officials, agents, employees and volunteers. Consultant’s insurance shall apply separately to each insured against whom claim is made or suit is brought, except with respect to the limits of the insurer’s liability. Any available insurance proceeds in excess of the specified minimum limits required by this Agreement shall be available to County for defense and damages. The indemnity and insurance sections are stand alone and not dependent on each other for coverage limits

6.5 Any failure to comply with reporting provisions of the policies shall not affect coverage provided to the County or its officers, officials, employees or volunteers.

6.6 The Consultant’s insurance shall apply separately to each insured against whom claim is made or suit is brought, except with respect to the limits of the insurer’s liability.

6.7 Each insurance policy required by this section shall be endorsed to state that coverage shall not be suspended, voided, canceled by either party except after thirty (30) days’ prior written notice has been given to County. The Consultant shall promptly notify, or cause the insurance carrier to promptly notify, the County of any change in the insurance policy or policies required under this Agreement, including, without limitation, any reduction in coverage or in limits of the required policy or policies.

6.8 Insurance shall be placed with California admitted insurers (licensed to do business in California) with a current rating by Best’s Key Rating Guide acceptable to the County; provided, however, that if no California admitted insurance company provides the required insurance, it is acceptable to provide the required insurance through a United States domiciled carrier that meets the required Best’s rating and that is listed on the current List of Eligible Surplus Line Insurers maintained by the California Department of Insurance. A Best’s rating of at least A-:VII shall be acceptable to the County; lesser ratings must be approved in writing by the County.

6.9 Consultant shall require that all of its subcontractors are subject to the insurance and indemnity requirements stated herein, or shall include all subcontractors as additional insureds under its insurance policies.

6.10 At least ten (10) days prior to the date the Consultant begins performance of its obligations under this Agreement, Consultant shall furnish County with certificates of insurance, and with original endorsements, showing coverage required by this Agreement, including, without limitation, those that verify coverage for subcontractors of the Consultant. The certificates and endorsements for each insurance policy are to be signed by a person authorized by that insurer to bind coverage on its behalf. All certificates and endorsements shall be received and, in County’s sole and absolute discretion, approved by County. County reserves the right to require complete copies of all required insurance policies and endorsements, at any time.

6.11 The limits of insurance described herein shall not limit the liability of the Consultant and Consultant’s officers, employees, agents, representatives or subcontractors.

7. Defense and Indemnification

7.1 To the fullest extent permitted by law, Consultant shall indemnify, hold harmless and defend the County and its agents, officers and employees from and against all claims, damages, losses, judgments, liabilities, expenses and other costs, including litigation costs and attorneys' fees, arising out of, resulting from, or in connection with the performance of this Agreement by the Consultant or Consultant's officers, employees, agents, representatives or subcontractors and resulting in or attributable to personal injury, death, or damage or destruction to tangible or intangible property, including the loss of use. Notwithstanding the foregoing, Consultant's obligation to indemnify the County and its agents, officers and employees for any judgment, decree or arbitration award shall extend only to the percentage of negligence or responsibility of the Consultant in contributing to such claim, damage, loss and expense.

7.2 Consultant's obligation to defend, indemnify and hold the County and its agents, officers and employees harmless under the provisions of this paragraph is not limited to or restricted by any requirement in this Agreement for Consultant to procure and maintain a policy of insurance.

7.3 To the fullest extent permitted by law, the County shall indemnify, hold harmless and defend the Consultant and its officers, employees, agents, representatives or subcontractors from and against all claims, damages, losses, judgments, liabilities, expenses and other costs, including litigation costs and attorney's fees, arising out of or resulting from the negligence or wrongful acts of County and its officers or employees.

7.4 Subject to the limitations in 42 United States Code section 9607 (e), and unless otherwise provided in a Scope of Services approved by the parties:

(a) Consultant shall not be responsible for liability caused by the presence or release of hazardous substances or contaminants at the site, unless the release results from the negligence of Consultant or its subcontractors;

(b) No provision of this Agreement shall be interpreted to permit or obligate Consultant to assume the status of "generator," "owner," "operator," "arranger," or "transporter" under state or federal law; and

(c) At no time, shall title to hazardous substances, solid wastes, petroleum contaminated soils or other regulated substances pass to Consultant.

8. Status of Consultant

8.1 All acts of Consultant and its officers, employees, agents, representatives, subcontractors and all others acting on behalf of Consultant relating to the performance of this Agreement, shall be performed as independent contractors and not as agents, officers or employees of County. Consultant, by virtue of this Agreement, has no authority to bind or incur any obligation on behalf of County. Except as expressly provided in Exhibit A, Consultant has no authority or responsibility to exercise any rights or power vested in the County. No agent, officer or employee of the County is to be considered an employee of Consultant. It is understood by both Consultant and County that this Agreement shall not be construed or considered under any circumstances to create an employer-employee relationship or a joint venture.

8.2 At all times during the term of this Agreement, the Consultant and its officers, employees, agents, representatives or subcontractors are, and shall represent and conduct themselves as, independent contractors and not employees of County.

8.3 Consultant shall determine the method, details and means of performing the work and services to be provided by Consultant under this Agreement. Consultant shall be responsible to County only for the requirements and results specified in this Agreement and, except as expressly provided in this Agreement,

shall not be subjected to County's control with respect to the physical action or activities of Consultant in fulfillment of this Agreement. Consultant has control over the manner and means of performing the services under this Agreement. If necessary, Consultant has the responsibility for employing other persons or firms to assist Consultant in fulfilling the terms and obligations under this Agreement.

8.4 Consultant is permitted to provide services to others during the same period service is provided to County under this Agreement; provided, however, such services do not conflict directly or indirectly with the performance of the Consultant's obligations under this Agreement.

8.5 If in the performance of this Agreement any third persons are employed by Consultant, such persons shall be entirely and exclusively under the direction, supervision and control of Consultant. All terms of employment including hours, wages, working conditions, discipline, hiring and discharging or any other term of employment or requirements of law shall be determined by the Consultant.

8.6 It is understood and agreed that as an independent contractor and not an employee of County, the Consultant and the Consultant's officers, employees, agents, representatives or subcontractors do not have any entitlement as a County employee, and, except as expressly provided for in any Scope of Services made a part hereof, do not have the right to act on behalf of the County in any capacity whatsoever as an agent, or to bind the County to any obligation whatsoever.

8.7 It is further understood and agreed that Consultant must issue W-2 forms or other forms as required by law for income and employment tax purposes for all of Consultant's assigned personnel under the terms and conditions of this Agreement.

8.8 As an independent contractor, Consultant hereby indemnifies and holds County harmless from any and all claims that may be made against County based upon any contention by any third party that an employer-employee relationship exists by reason of this Agreement.

9. Records and Audit

9.1 Consultant shall prepare and maintain all writings, documents and records prepared or compiled in connection with the performance of this Agreement for a minimum of four (4) years from the termination or completion of this Agreement. This includes any handwriting, typewriting, printing, photostatic, photographing and every other means of recording upon any tangible thing, any form of communication or representation including letters, words, pictures, sounds or symbols or any combination thereof.

9.2 Any authorized representative of County shall have access to any writings as defined above for the purposes of making audit, evaluation, examination, excerpts and transcripts during the period such records are to be maintained by Consultant. Further, County has the right at all reasonable times to audit, inspect or otherwise evaluate the work performed or being performed under this Agreement.

10. Confidentiality

The Consultant agrees to keep confidential all information obtained or learned during the course of furnishing services under this Agreement and to not disclose or reveal such information for any purpose not directly connected with the matter for which services are provided.

11. Nondiscrimination

11.1. During the performance of this Agreement, Consultant and its officers, employees, agents, representatives or subcontractors shall not unlawfully discriminate in violation of any Federal, State or local law, rule or regulation against any employee, applicant for employment or person receiving services under this Agreement because of race, religious creed, color, national origin, ancestry, physical or mental disability, medical condition, genetic information, pregnancy related condition, marital status, gender/sex, sexual

orientation, gender identity, gender expression, age (over 40), political affiliation or belief, or military and veteran status. Consultant and its officers, employees, agents, representatives or subcontractors shall comply with all applicable Federal, State and local laws and regulations related to non-discrimination and equal opportunity, including without limitation the County's non-discrimination policy; the Fair Employment and Housing Act (Government Code sections 12900 et seq.); California Labor Code sections 1101, 1102 and 1102.1; the Federal Civil Rights Act of 1964 (P.L. 88-352), as amended; and all applicable regulations promulgated in the California Code of Regulations or the Code of Federal Regulations.

11.2 Consultant shall include the non-discrimination and compliance provisions of this clause in all subcontracts to perform work under this Agreement.

11.3 Consultant shall provide a system by which recipients of service shall have the opportunity to express and have considered their views, grievances, and complaints regarding Consultant's delivery of services.

12. Assignment

This is an agreement for the services of Consultant. County has relied upon the skills, knowledge, experience and training of Consultant and the Consultant's firm, associates and employees as an inducement to enter into this Agreement. Consultant shall not assign or subcontract this Agreement without the express written consent of County. Further, Consultant shall not assign any monies due or to become due under this Agreement without the prior written consent of County.

13. Waiver of Default

Waiver of any default by either party to this Agreement shall not be deemed to be waiver of any subsequent default. Waiver or breach of any provision of this Agreement shall not be deemed to be a waiver of any other or subsequent breach, and shall not be construed to be a modification of the terms of this Agreement unless this Agreement is modified as provided below.

14. Notice

Any notice, communication, amendment, addition or deletion to this Agreement, including change of address of either party during the term of this Agreement, which Consultant or County shall be required or may desire to make shall be in writing and may be personally served or, alternatively, sent by prepaid first class mail to the respective parties as follows:

<u>To County:</u> Stanislaus County Purchasing Agent 1010 10 th Street, Suite 5400 Modesto, CA 95353	<u>To Consultant:</u> MGT of America, Inc. 2001 P Street, Suite 200 Sacramento, CA 95811
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15. Conflicts

Consultant agrees that it has no interest and shall not acquire any interest direct or indirect which would conflict in any manner or degree with the performance of the work and services under this Agreement.

16. Severability

If any portion of this Agreement or application thereof to any person or circumstance shall be declared invalid by a court of competent jurisdiction or if it is found in contravention of any federal, state or county statute, ordinance or regulation the remaining provisions of this Agreement or the application thereof shall not be invalidated thereby and shall remain in full force and effect to the extent that the provisions of this Agreement are severable.

17. Amendment

This Agreement may be modified, amended, changed, added to or subtracted from by the mutual consent of the parties hereto if such amendment or change is in written form and executed with the same formalities as this Agreement and attached to the original Agreement to maintain continuity.

18. Entire Agreement

This Agreement supersedes any and all other agreements, either oral or in writing, between any of the parties herein with respect to the subject matter hereof and contains all the agreements between the parties with respect to such matter. Each party acknowledges that no representations, inducements, promises or agreements, oral or otherwise, have been made by any party, or anyone acting on behalf of any party, which are not embodied herein, and that no other agreement, statement or promise not contained in this Agreement shall be valid or binding.

19. Advice of Attorney

Each party warrants and represents that in executing this Agreement, it has received independent legal advice from its attorneys or the opportunity to seek such advice.

20. Construction

Headings or captions to the provisions of this Agreement are solely for the convenience of the parties, are not part of this Agreement, and shall not be used to interpret or determine the validity of this Agreement. Any ambiguity in this Agreement shall not be construed against the drafter, but rather the terms and provisions hereof shall be given a reasonable interpretation as if both parties had in fact drafted this Agreement.

21. Governing Law and Venue

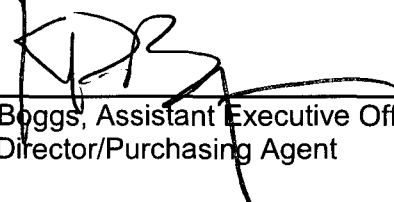
This Agreement shall be deemed to be made under, and shall be governed by and construed in accordance with, the laws of the State of California. Any action brought to enforce the terms or provisions of this Agreement shall have venue in the County of Stanislaus, State of California.


[SIGNATURES SET FORTH ON FOLLOWING PAGE]

IN WITNESS WHEREOF, the parties or their duly authorized representatives have executed this Agreement on the day and year first hereinabove written.

COUNTY OF STANISLAUS

MGT OF AMERICA, INC.

By: 
Keith D. Boggs, Assistant Executive Officer,
GSA Director/Purchasing Agent
"County"


By: 
J. Bradley Burgess, Vice President
"Consultant"

Approved: BOS Resolution # _____

APPROVED AS TO CONTENT:
Department of Auditor-Controller

By: 
Lauren Klein, Auditor

APPROVED AS TO FORM:
John P. Doering, County Counsel

By: 
Deirdre E. McGrath, Deputy County Counsel

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EXHIBIT A

A. SCOPE OF WORK

The Consultant shall provide the following services under this Agreement:

1. **Project A – Annual Cost Plan**

Each year the County will provide relevant data to the successful proposer per supplied sheets for preparation of the following fiscal year Cost Allocation Plan based on the most recent completed year of actual costs. The Consultant shall assist County staff during the preparation of data sheets. The Consultant shall provide a draft Cost Allocation Plan to the County for review. The Consultant shall make changes as needed and file the final copy with the State Controller's Office (SCO). A copy of the final Plan submitted to the SCO will be provided to the County. Such services shall include:

Work Performed During Fiscal Year	Cost Plan Year	Actual Costs
2014-2015	2015-2016	2013-2014
2015-2016	2016-2017	2014-2015
2016-2017	2017-2018	2015-2016

2. **Project B – SB 90 Claims**

The Consultant shall prepare and file eligible annual SB 90 claims due on February 15th of each year. Claims must be at least \$1,000 to be eligible to file with the State. Specifically, Consultant shall:

- a. Prepare and file eligible SB 90 claims for annual claims due on February 15, 2014. Claims must be at least \$1,000 to be eligible to file with the State.
- b. Prepare and file eligible SB 90 claims for all new, or first-time mandates, which have claiming instructions issued by the State Controller's Office during the State's 2013-2014 fiscal year. Claims must be at least \$1,000 to be eligible to file with the State.
- c. Prepare indirect cost rate proposals to accompany all claims if the resulting rate is above 10 percent.
- d. Provide information to the County about new claiming opportunities in a timely manner.
- e. Provide liaison services between the County and the State Controller for all claims filed by the Consultant that are contested by the State Controller either through desk review or field audit.
- f. Assist with payment tracking and SB 90 claim tracking and coordination.
- g. Services shall include:

Work Performed During Fiscal Year	Claims Issued During Fiscal Year
2014-2015	2013-2014
2015-2016	2014-2015
2016-2017	2015-2016

3. All services provided by Consultant and the manner in which services are to be provided are more particularly set forth in County's Request for Proposal #14-39 MP; the Consultant's responding proposal, as well as any plans, specifications, addenda, and any documents particularly required or provided (as may be applicable), all of which are incorporated herein by reference and made a part hereof (collectively, the "RFP"). All of the foregoing

documents, as may be applicable, together with this Agreement, comprise the contract and all services provided hereunder shall be performed in accordance therewith. In the event there is a conflict between the terms and conditions set forth in this Agreement, those set forth in the RFP, and those set forth in Exhibit A, then in such case, the terms and conditions shall control in this order: 1st, Exhibit A, 2nd, this Agreement, and 3rd the RFP.

B. COMPENSATION

1. The Consultant shall be compensated for the services provided under this Agreement :

	Year 1	Year 2	Year 3	Total
Project A (Annual Cost Plan)	\$8,500	\$8,500	\$8,500	\$25,500
Project B (SB 90 Claims)	\$26,505	\$26,505	\$26,505	\$79,515
TOTAL:	\$35,005	\$35,005	\$35,005	\$105,015

County shall submit payment to Consultant in full upon completion and final acceptance of each project.

2. The parties hereto acknowledge the maximum amount to be paid by the County for services provided shall not exceed \$105,015 including, without limitation, the cost of any subcontractors, consultants, experts or investigators retained by the Consultant to perform or to assist in the performance of its work under this Agreement.

C. TERM

Paragraph 3.1 of the body of this Agreement is amended to read as follows:

“3.1 The term of this Agreement shall be from October 22, 2014 through June 30, 2017 unless otherwise terminated as provided below. This Agreement will not automatically renew but may be renewed for two (2) additional one-year terms by mutual, written agreement of the parties. Such renewal shall be in the form of an amendment to the Agreement.”

D. REPRESENTATIVES

The parties' respective Project Managers shall be:

For County:

Kashmir Gill (or designee)
 Stanislaus County Auditor-Controller's Office
 1010 10th Street, Suite 5100
 Modesto, CA 95354
GillK@stancounty.com
 (209) 525-6579

For Consultant:

J. Bradley Burgess (or designee)
 MGT of America, Inc.
 201 P Street, Suite 200
 Sacramento, CA 95811
Bburgess@mgtamer.com
 (916) 595-2646