

AGREEMENT

I. INTRODUCTION

THIS AGREEMENT is entered into as of _____, between the COUNTY OF TULARE, referred to as COUNTY, and NORTHPOINTE INC. a Delaware Corporation, referred to as CONTRACTOR, with reference to the following:

II. RECITALS

A. Contractor markets and owns certain software and related services and third party products;

B. County is licensing and using Contractor's proprietary software known as COMPAS for a period of June 30, 2013 to June 29, 2014, pursuant to agreement dated May 1, 2012 between the parties and County's PO SC-090-1309001019 dated July 24, 2012;

C. County wishes to extend the license for another year and Contractor wishes to provide that license and related services.

ACCORDINGLY, IT IS AGREED:

III. SPECIFIC TERMS

1. **TERM:** This Agreement shall become effective as of June 30, 2013 and shall expire at 11:59 PM on June 29, 2014 unless otherwise terminated as provided in this Agreement.

2. **SOFTWARE LICENSE AND MAINTENANCE SERVICES TO BE PERFORMED:** See attached **EXHIBIT A**

3. **PAYMENT FOR LICENSE AND MAINTENANCE SERVICES:** See attached **EXHIBIT B**.

IV. GENERAL TERMS

4. **INDEPENDENT CONTRACTOR STATUS:**

(a) This Agreement is entered into by both parties with the express understanding that CONTRACTOR will perform all services required under this Agreement as an independent contractor. Nothing in this Agreement shall be construed to constitute the CONTRACTOR or any of its agents, employees or officers as an agent, employee or officer of COUNTY.

(b) CONTRACTOR agrees to advise everyone it assigns or hires to perform any duty under this agreement that they are not employees of COUNTY. Subject to any performance criteria contained in this Agreement, CONTRACTOR shall be solely responsible for determining the means and methods of performing the specified services and COUNTY shall have no right to control or exercise any supervision over CONTRACTOR as to how the services will be performed. As CONTRACTOR is not COUNTY'S employee, CONTRACTOR is responsible for paying all required state and federal taxes. In particular, COUNTY will not:

1. Withhold FICA (Social Security) from CONTRACTOR'S payments.
2. Make state or federal unemployment insurance contributions on CONTRACTOR'S behalf.
3. Withhold state or federal income tax from payments to CONTRACTOR.
4. Make disability insurance contributions on behalf of CONTRACTOR.
5. Obtain unemployment compensation insurance on behalf of CONTRACTOR.

(c) Notwithstanding this independent contractor relationship, COUNTY shall have the right to monitor and evaluate the performance of CONTRACTOR to assure compliance with this Agreement.

5. **COMPLIANCE WITH LAW:** CONTRACTOR shall provide services in accordance with applicable Federal, State, and local laws, regulations and directives. With respect to CONTRACTOR'S employees, CONTRACTOR shall comply with all laws and regulations pertaining to wages and hours, state and federal income tax, unemployment insurance, Social Security, disability insurance, workers' compensation insurance, and discrimination in employment.

6. **GOVERNING LAW:** This Agreement shall be interpreted and governed under the laws of the State of California without reference to California conflicts of law principles. The parties agree that this contract is made in Tulare County, California.

7. **RECORDS AND AUDIT:** CONTRACTOR shall maintain complete and accurate records with respect to the services rendered and the costs incurred under this Agreement. In addition, CONTRACTOR shall maintain complete and accurate records with respect to any payments to employees or subcontractors. All such records shall be prepared in accordance with generally accepted accounting procedures, shall be clearly identified, and shall be kept readily accessible. Upon request, CONTRACTOR shall make such records available within Tulare County to the Auditor of Tulare County and to his agents and representatives, for the purpose of auditing and/or copying such records

for a period of five (5) years from the date of final payment under this Agreement.

8. CONFLICT OF INTEREST:

(a) CONTRACTOR agrees to, at all times during the performance of this Agreement, comply with the law of the State of California regarding conflicts of interests and appearance of conflicts of interests, including, but not limited to Government Code Section 1090 et seq., and the Political Reform Act, Government Code Section 81000 et seq. and regulations promulgated pursuant thereto by the California Fair Political Practices Commission. The statutes, regulations and laws previously referenced include, but are not limited to, prohibitions against any public officer or employee, including CONTRACTOR for this purpose, from making any decision on behalf of COUNTY in which such officer, employee or consultant/contractor has a direct or indirect financial interest. A violation can occur if the public officer, employee or consultant/contractor participates in or influences any COUNTY decision which has the potential to confer any pecuniary benefit on CONTRACTOR or any business firm in which CONTRACTOR has an interest, with certain narrow exceptions.

(b) CONTRACTOR agrees that if any facts come to its attention which raise any questions as to the applicability of conflicts of interests laws, it will immediately inform the COUNTY designated representative and provide all information needed for resolution of this question.

9. INSURANCE:

Prior to approval of this Agreement by COUNTY, CONTRACTOR shall file with the submitting department evidence of required insurance as set forth in **EXHIBIT C** attached. Insurance policies shall not be used to limit CONTRACTOR'S liability or to limit the indemnification provisions and requirements of this contract or act in any way to reduce the policy coverage and limits available from the insurer(s).

10. INDEMNIFICATION: CONTRACTOR shall hold harmless, defend and indemnify COUNTY, its agents, officers and employees from and against any liability, claims, actions, costs, damages or losses of any kind, including death or injury to any person and/or damage to property, including COUNTY property, arising from, or in connection with, the performance by CONTRACTOR or its agents, officers and employees under this Agreement. This indemnification specifically includes any claims that may be made against COUNTY by any taxing authority asserting that an employer-employee relationship exists by reason of this Agreement, and any claims made against COUNTY alleging civil rights violations by CONTRACTOR under Government Code sections 12920 et seq. (California Fair Employment and Housing Act), and any fines or penalties imposed on COUNTY for CONTRACTORS failure to provide form DE-542, when applicable. This indemnification obligation shall continue beyond the term of this Agreement as to any acts or omissions occurring under this Agreement or any extension of this Agreement.

11. LIMITATION OF LIABILITY:

Except for indemnity claims by County against Contractor, in the event of any claim brought by one party against another hereunder, a party will be liable only for actual, direct losses or damages incurred, limited to the amount of fees paid to Contractor under this contract. Except as provided in this section, neither party will be liable for any special, punitive, exemplary, indirect, incidental or consequential damages of any kind, including, without limitation, lost profits or loss of data, even if it has been advised of the possibility of such damages.

12. TERMINATION:

(a) Without Cause: County will have the right to terminate this Agreement without cause by giving thirty (30) days prior written notice of intention to terminate pursuant to this provision, specifying the date of termination. County will pay to the CONTRACTOR the compensation earned for work performed and not previously paid for to the date of termination. County will not pay lost anticipated profits or other economic loss. The payment of such compensation is subject to the restrictions on payment of compensation otherwise provided in this Agreement, and is conditioned upon receipt from CONTRACTOR of any and all plans, specifications and estimates, and other documents prepared by CONTRACTOR in accordance with this Agreement. No sanctions will be imposed.

(b) With Cause: This Agreement may be terminated by either party should the other party:

- (1) be adjudged a bankrupt, or
- (2) become insolvent or have a receiver appointed, or
- (3) make a general assignment for the benefit of creditors, or
- (4) suffer any judgment which remains unsatisfied for 30 days, and which would substantively impair the ability of the judgment debtor to perform under this Agreement, or
- (5) materially breach this Agreement.

In addition, COUNTY may terminate this Agreement based on:

- (6) material misrepresentation, either by CONTRACTOR or anyone acting on CONTRACTOR's behalf, as to any matter related in any way to COUNTY's retention of CONTRACTOR, or
- (7) other misconduct or circumstances which, in the sole discretion of the COUNTY, either impair the ability of CONTRACTOR to competently provide the services under this Agreement, or expose the COUNTY to an unreasonable risk of liability.

County will pay to the CONTRACTOR the compensation earned for work performed and not previously paid for to the date of termination. The payment of such compensation is subject to the restrictions on payment of compensation otherwise

provided in this Agreement, and is conditioned upon receipt from CONTRACTOR of any and all plans, specifications and estimates, and other documents prepared by CONTRACTOR by the date of termination in accordance with this Agreement. County will not pay lost anticipated profits or other economic loss, nor will the County pay compensation or make reimbursement to cure a breach arising out of or resulting from such termination. If this Agreement is terminated and the expense of finishing the CONTRACTOR's scope of work exceeds the unpaid balance of the agreement, the CONTRACTOR must pay the difference to the County. Sanctions taken will be possible rejection of future proposals based on specific causes of non performance.

(c) **Effects of Termination:** Expiration or termination of this Agreement shall not terminate any obligations to indemnify, to maintain and make available any records pertaining to the Agreement, to cooperate with any audit, to be subject to offset, or to make any reports of pre-termination contract activities. Where CONTRACTOR's services have been terminated by the County, said termination will not affect any rights of the County to recover damages against the CONTRACTOR.

(d) **Suspension of Performance:** Independent of any right to terminate this Agreement, the authorized representative of COUNTY for which CONTRACTOR's services are to be performed, may immediately suspend performance by CONTRACTOR, in whole or in part, in response to health, safety or financial emergency, or a failure or refusal by CONTRACTOR to comply with the provisions of this Agreement, until such time as the cause for suspension is resolved, or a notice of termination becomes effective.

13. **LOSS OF FUNDING:** It is understood and agreed that if the funding is either discontinued or reduced for this project for the COUNTY, that the COUNTY shall have the right to terminate this Agreement. In such event, the affected party shall provide the other party with at least thirty (30) days prior written notice of such termination.

14. **NOTICES:**

(a) Except as may be otherwise required by law, any notice to be given shall be written and shall be either personally delivered, sent by facsimile transmission or sent by first class mail, postage prepaid and addressed as follows:

COUNTY: Tulare County Information
& Communications Technology
Attn: Logistics
221 S. Mooney Blvd Rm 9E
Visalia, CA 93291
Phone No.:(559) 636-4800

Fax No.:(559) 730-2568
With A Copy To: Tulare County
Auditor/Controller
221 S. Mooney Blvd
County Civic Center, 101E
Visalia, CA 93291

CONTRACTOR: Northpointe, Inc.
1764 Forest Ridge Drive, Suite A
Traverse City, MI 49686

Phone No.: (231) 938-5959
Fax No.: (231) 938-5995

(b) Notice personally delivered is effective when delivered. Notice sent by facsimile transmission is deemed to be received upon successful transmission. Notice sent by first class mail shall be deemed received on the fifth day after the date of mailing. Either party may change the above address by giving written notice pursuant to this paragraph.

15. **ASSIGNMENT/SUBCONTRACTING:** Unless otherwise provided in this Agreement, COUNTY is relying on the personal skill, expertise, training and experience of CONTRACTOR and CONTRACTOR'S employees and no part of this Agreement may be assigned or subcontracted by CONTRACTOR without the prior written consent of COUNTY.

16. **DISPUTE RESOLUTION:** If a dispute arises out of or relating to this Agreement, or the breach thereof, and if said dispute cannot be settled through negotiation, the parties agree first to try in good faith to settle the dispute by non-binding mediation before resorting to litigation or some other dispute resolution procedure, unless the parties mutually agree otherwise. The mediator shall be mutually selected by the parties, but in case of disagreement, the mediator shall be selected by lot from among two nominations provided by each party. All costs and fees required by the mediator shall be split equally by the parties, otherwise each party shall bear its own costs of mediation. If mediation fails to resolve the dispute within 30 days, either party may pursue litigation to resolve the dispute.

17. **FURTHER ASSURANCES:** Each party will execute any additional documents and perform any further acts that may be reasonably required to effect the purposes of this Agreement.

18. **CONSTRUCTION:** This Agreement reflects the contributions of all undersigned parties and accordingly the provisions of Civil Code section 1654 shall not apply to address and interpret any alleged uncertainty or ambiguity.

19. **HEADINGS:** Section headings are provided for organizational purposes only and do not in any manner affect the scope, meaning or intent of the provisions under the headings.

20. **NO THIRD-PARTY BENEFICIARIES INTENDED:** Unless specifically set forth, the parties to this Agreement do not intend to provide any other party with any benefit or enforceable legal or equitable right or remedy.

21. **WAIVERS:** The failure of either party to insist on strict compliance with any provision of this Agreement shall not be considered a waiver of any right to do so, whether for that breach or any subsequent breach. The acceptance by either party of

either performance or payment shall not be considered to be a waiver of any preceding breach of the Agreement by the other party.

22. **EXHIBITS AND RECITALS:** The recitals and the exhibits to this Agreement are fully incorporated into and are integral parts of this Agreement.

23. **CONFLICT WITH LAWS OR REGULATIONS/SEVERABILITY:** This Agreement is subject to all applicable laws and regulations. If any provision of this Agreement is found by any court or other legal authority, or is agreed by the parties to be, in conflict with any code or regulation governing its subject matter, only the conflicting provision shall be considered null and void. If the effect of nullifying any conflicting provision is such that a material benefit of the Agreement to either party is lost, the Agreement may be terminated at the option of the affected party. In all other cases the remainder of the Agreement shall continue in full force and effect.

24. **ENTIRE AGREEMENT REPRESENTED:** This Agreement represents the entire agreement between CONTRACTOR and COUNTY as to its subject matter and no prior oral or written understanding shall be of any force or effect. No part of this Agreement may be modified without the written consent of both parties.

25. **ASSURANCES OF NON-DISCRIMINATION:** CONTRACTOR shall not discriminate in employment or in the provision of services on the basis of any characteristic or condition upon which discrimination is prohibited by state or federal law or regulation.

(a) It is recognized that both the Contractor and the County have the responsibility to protect County employees and clients from unlawful activities, including discrimination and sexual harassment in the workplace. Accordingly, Contractor agrees to provide appropriate training to its employees regarding discrimination and sexual harassment issues, and to promptly and appropriately investigate any allegations that any of its employees may have engaged in improper discrimination or harassment activities. The County, in its sole discretion, has the right to require Contractor to replace any employee who provides services of any kind to County pursuant to this Agreement with other employees where County is concerned that its employees or clients may have been or may be the subjects of discrimination or harassment by such employees. The right to require replacement of employees as aforesaid shall not preclude County from terminating this Agreement with or without cause as provided for herein.

THE PARTIES, having read and considered the above provisions, indicate their agreement by their authorized signatures below.

COUNTY OF TULARE

Date: _____ BY _____
Chairman, Board of Supervisors

ATTEST: JEAN M. ROUSSEAU
County Administrative Officer/Clerk of the Board
of Supervisors of the County of Tulare

By _____
Deputy Clerk

CONTRACTOR

Date: _____ By _____
TITLE _____

Date: _____ By _____
TITLE _____

Corporations Code section 313 requires that contracts with a corporation be signed by both (1) the chairman of the Board of Directors, the president or any vice-president, and (2) the secretary, any assistant secretary, the chief financial officer, or any assistant treasurer, unless the contract is accompanied by a certified copy of the corporation's Board of Directors' resolution authorizing the execution of the contract.

Approved as to Form

County Counsel

By _____
Deputy

Date _____

EXHIBIT A

Pursuant to this Agreement, Contractor is licensing its COMPAS system (hereafter "COMPAS" or "COMPAS System") and providing related services to the County under the terms and conditions of this Agreement;

LICENSE AND USE

- 1.1 **License.** Subject to the terms and conditions of this Agreement, including without limitation the COUNTY's payment of all applicable annual License Fees (as set forth in Exhibit B), CONTRACTOR hereby grants to the COUNTY and the COUNTY hereby accepts from CONTRACTOR a nonexclusive, nontransferable license, without the right to grant sublicenses, to use the COMPAS System, in executable code form only, for the number of users for which the COUNTY has paid the applicable License Fees as set forth in Exhibit B, in accordance with this Agreement, the user manuals provided to the COUNTY with the COMPAS System in either electronic, online help files or hard copy format and solely for the COUNTY's internal business purposes.
- 1.2 **Restrictions.** The COUNTY acknowledges that the COMPAS System and the structure, organization, and source code thereof constitute valuable trade secrets of CONTRACTOR. Accordingly, except as expressly permitted in Section 1.1 or as otherwise authorized by CONTRACTOR in writing, the COUNTY will not, and will not permit any third party to (a) modify, adapt, alter, translate, or create derivative works from the COMPAS System; (b) sublicense, lease, rent, loan, sell, distribute, make available or otherwise transfer the COMPAS System to any third party, (c) reverse engineer, decompile, disassemble, or otherwise attempt to derive the source code for the COMPAS System; or (d) otherwise use or copy the COMPAS System except as expressly allowed under Section 1.1 above. The COUNTY may make one (1) copy of the COMPAS System solely as necessary for archival or backup purposes.
- 1.3 **Additional Materials.** Unless otherwise expressly agreed to by the parties, the COUNTY shall provide and obtain for itself all hardware, software, services and technology necessary to operate the COMPAS System not owned or provided by CONTRACTOR.

Maintenance and Support Services

- 1.1 CONTRACTOR, or its agents, shall provide support and maintenance services as described in this *Exhibit A* ("Maintenance and Support Services") for the COMPAS System. In consideration of the Maintenance and Support Services provided for in this *Exhibit A*, the

COUNTY shall pay to CONTRACTOR the Maintenance and Support Fees as set forth on *Exhibit B*. The Maintenance and Support Fees shall allow the COUNTY to access CONTRACTOR's telephone services and support during normal business hours (8:00 A.M. - 5:00 P.M., E.S.T.) on a 5 day per week basis excluding major holidays ("Maintenance and Support Hours"). Emergency maintenance may be accessed after normal business hours through CONTRACTOR's established paging service available by dialing CONTRACTOR's main office number. The initial term for the provision of Maintenance and Support Services will begin on June 30, 2013 and continue for a period of one (1) year, unless the Agreement is terminated in accordance with its terms. Upon expiration of the initial term, the provision of Maintenance and Support Services will continue on the same terms on a month-to-month basis, pending completion of the parties' negotiations for the Maintenance and Support Services for the next year or years, which renewal may include an increase in price retroactive to the effective date of the renewal.

- 1.2 CONTRACTOR will provide the following Maintenance and Support Services to the COUNTY:
 - 1.2.1 Technical services for the correction of any errors or malfunctions of the COMPAS System and interfaces;
 - 1.2.2 Support of COMPAS System upgrades
 - 1.2.3 Maintain the operational quality of the COMPAS System, and supply customization as agreed upon from time to time for the additional fees agreed upon by the parties;
 - 1.2.4 Provide assistance to the COUNTY in solving immediate problems, and to provide ongoing program support; and
 - 1.2.5 Provide user guidance based upon updates to the COMPAS System provided by CONTRACTOR.
- 1.3 Additional services may be provided in CONTRACTOR's reasonable discretion, at CONTRACTOR's then-current time and material rates, and shall also be subject to the terms of this Agreement. No such services shall be provided nor shall the COUNTY be liable for the cost of any such additional services without prior written authorization from the COUNTY. Such services may also include but are not limited to:
 - 1.3.1 Necessary or requested on-site special services needs; these services may be provided when service can be scheduled at the COUNTY's site by CONTRACTOR personnel. These services will be on a chargeable basis to the COUNTY for actual time, plus travel expense as follows: Lodging, Airfare and other Transportation at actual cost with receipts submitted. Meals at Per Diem rate, no receipts are submitted. (Current Per Diem rate is \$50 per day.) . Actual cancellation or change fees in connection with travel will be billed if COUNTY cancels or reschedules services after travel has been booked by CONTRACTOR. All costs shall be reasonable. Reasonableness shall mean the limits provided in the County's travel policy, a copy of which is attached.
 - 1.3.2 Additional training of the COUNTY's personnel.

- 1.3.3 Maintenance and Support Services beyond the scope of this Agreement, including services outside of the Maintenance and Support Hours.

- 1.4 Exceptions.
 - 1.4.1 Inquiries related to its interpretation of results or configuration decisions based on COUNTY policies and or procedures are NOT included in the Maintenance and Support Services. Additional consulting and or training services can be provided at additional cost to cover these discussions.

 - 1.4.2 CONTRACTOR will provide the Maintenance and Support Services only for the most current release and the immediately preceding major release of the COMPAS System. CONTRACTOR may elect to cease supporting a platform upon twelve (12) months notice to the COUNTY. CONTRACTOR shall have no responsibility under this Agreement to fix any errors in the COMPAS System arising out of or related to the following causes: (a) the COUNTY's modification or combination of the COMPAS System (in whole or in part), (b) use of the COMPAS System in an environment other than any hardware and operating system platform which CONTRACTOR supports for use with the COMPAS System ("Supported Environment"); or (c) hardware problems. Any corrections performed by CONTRACTOR for such errors shall be made, in CONTRACTOR's reasonable discretion, at CONTRACTOR's then-current time and material rates.

- 1.5 CONTRACTOR will provide updates for the COMPAS System as and when developed for general release in CONTRACTOR's sole discretion. Each update will consist of a set of programs and files made available on machine-readable media and will be accompanied by Documentation adequate to inform the COUNTY of the problems resolved and any significant operational differences resulting there from.

- 1.6 The COUNTY is responsible for undertaking the proper supervision, control and management of its use of the COMPAS System, including, but not limited to: (a) assuring proper Supported Environment configuration, COMPAS System installation and operating methods; and (b) following industry standard procedures for the security of data, accuracy of input and output, and back-up plans, including restart and recovery in the event of hardware or software error or malfunction.

EXHIBIT B

COMPAS System—License, Maintenance and Support Fees

COMPAS System: The COUNTY shall be entitled to use the COMPAS System set forth below in accordance with the terms and conditions of the Agreement, including without limitation, the restrictions indicated in this Exhibit.

License Fees: The License Fees for the COMPAS System as of the June 30, 2013 are listed below. The License Fees will be negotiated each year based on the number of concurrent users and the package of product modules provided.

Maintenance and Support Fees: The Maintenance and Support Fees are annual fees that are payable in advance for each contract year in which Maintenance and Support Services are to be provided in accordance with the payment terms set forth in the Agreement. The Maintenance and Support Fees for each contract year are based on a percentage of the License Fees as listed below.

Additional Services: Additional Services are billed upon completion unless otherwise agreed. Expenses are billed at actual cost on completion of services.

ANNUAL SOFTWARE LICENSE FEE (June 30, 2013-June 29, 2014):

COMPAS Core and Northpointe Case Plan	48 Licenses	@\$300 each	\$14,400
Northpointe AdHoc Report Generator	3 Licenses	@\$150 each	450

ANNUAL MAINTENANCE AND SUPPORT (June 30, 2013-June 29, 2014)

Maintenance and Support	\$ 2,970
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TOTAL	\$17,820
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Exhibit C
INSURANCE REQUIREMENTS

CONTRACTOR shall provide and maintain insurance for the duration of this Agreement against claims for injuries to persons and damage to property, which may arise from, or in connection with, performance under the Agreement by the CONTRACTOR, his agents, representatives, employees or subcontractors, if applicable.

A. Minimum Scope & Limits of Insurance

1. Coverage at least as broad as Commercial General Liability Insurance of \$1,000,000 combined single limit per occurrence. If the annual aggregate applies it must be no less than \$2,000,000.
2. Comprehensive Automobile Liability Insurance (if applicable) of \$1,000,000 per occurrence.
3. Workers' Compensation and Employer's Liability Insurance as required by law.
4. Professional Errors and Omissions Insurance of \$1,000,000.

B. Specific Provisions of the Certificate

1. The Certificate of Insurance for General Liability, Comprehensive Automobile Liability Insurance and Professional Errors and Omissions Insurance have to meet the following requirements:
 - a. *Name the COUNTY, Its officers, agents, employees and volunteers, individually and collectively, as additional insured by endorsement to the policy.*
 - b. *State that such Insurance for additional insureds shall apply as primary insurance and any other insurance maintained by COUNTY shall be excess.*
 - c. *Provide that coverage shall not be suspended, voided, canceled, reduced in coverage, or otherwise materially changed except after thirty (30) days prior written notice by certified mail, return receipt requested, has been given to the County.*
2. The Certificate of Insurance for Workers Compensation, should include the following:
 - a. *Waiver of Subrogation. Contractor waives all rights against the County and its agents, officers, and employees for recovery of damages to the extent these damages are covered by the workers compensation and employers liability by endorsement to the policy.*

C. Deductibles and Self-Insured Retentions

The COUNTY Risk Manager must approve any deductible or self-insured retention that exceeds \$100,000.

D. Acceptability of Insurance

Insurance must be placed with insurers with a current rating given by A.M. Best and Company of no less than A (-) from a company admitted to do business in California, any waiver of these standards are subject to approval by the County Risk Manager or County Risk Manager's designee.

E. Verification of Coverage

Prior to approval of this Agreement by the COUNTY, the CONTRACTOR shall file with the submitting department, certificates of insurance with original endorsements effecting coverage in a form acceptable to the COUNTY. The COUNTY reserves the right to require certified copies of all required insurance policies at any time.