

**SUBMITTAL TO THE BOARD OF SUPERVISORS
COUNTY OF RIVERSIDE, STATE OF CALIFORNIA**

327

FROM: Probation Department

SUBMITTAL DATE:
October 7, 2013

SUBJECT: Acceptance and Approval of Grant Award Agreement with the Superior Court of California and Amend Ordinance No. 440 pursuant to Resolution 440-8952 submitted herewith. [Districts: All] [\$101,116 - Federal]

RECOMMENDED MOTION: That the Board of Supervisors:

1. Accept the award of \$101,116 and Authorize the Grant Agreement between the Probation Department and the Superior Court of California to participate in the implementation of a Veterans Court drug program;
2. Authorize the Chief Probation Officer, or designee, to execute future ministerial amendments to this Grant Agreement;
3. Approve and direct the Auditor-Controller to make budget adjustments as outlined in the attached Schedule A for Fiscal Year 2013/14; and
4. Amend Ordinance No. 440 pursuant to Resolution 440-8952 submitted herewith.

BACKGROUND:

Summary

The Superior Court of California, Riverside County applied for and successfully received funds from the Bureau of Justice through the Drug Court Discretionary Program fund in the amount of \$350,000 to implement a Veterans Court program. *(continued on page 2)*

FISCAL PROCEDURES APPROVED
PAUL ANGULO, CPA, AUDITOR-CONTROLLER
BY Tanya S. Harris
TANYA S. HARRIS, CPA 10/29/13

Mark A. Hake
Mark A. Hake
Chief Probation Officer

FINANCIAL DATA	Current Fiscal Year:	Next Fiscal Year:	Total Cost:	Ongoing Cost:	POLICY/CONSENT (per Exec. Office)
COST	\$ 37,556	\$ 50,558	\$ 101,116	\$	Consent <input type="checkbox"/> Policy <input checked="" type="checkbox"/>
NET COUNTY COST	\$ 0	\$ 0	\$ 0	\$	

SOURCE OF FUNDS: Courts	Budget Adjustment: Yes
	For Fiscal Year: 13/14

C.E.O. RECOMMENDATION:

APPROVE

County Executive Office Signature BY: Elizabeth J. Olson

MINUTES OF THE BOARD OF SUPERVISORS

On motion of Supervisor Jeffries, seconded by Supervisor Ashley and duly carried, IT WAS ORDERED that the above matter is approved as recommended and that Resolution 440-8952 is adopted as recommended.

Ayes: Jeffries, Tavaglione, Stone and Ashley
Nays: None
Absent: Benoit
Date: November 5, 2013
xc: Probation, Purchasing, EO, Auditor, HR

Kecia Harper-Ihem
Clerk of the Board
By: [Signature]
Deputy

Prev. Agn. Ref.: | **District:** | **Agenda Number:**

3-30

Approved by Barbara A. Olivier,
Asst. County Executive Officer/
Departmental Chief Human Resources Director

 FORM APPROVED COUNTY COUNSEL
BY: [Signature] DATE: 10/29/13
NEAL R. KIPNIS

A-30 Positions Added
 4/5 Vote Change Order

SUBMITTAL TO THE BOARD OF SUPERVISORS, COUNTY OF RIVERSIDE, STATE OF CALIFORNIA

FORM 11: Acceptance and Approval of Grant Award Agreement with the Superior Court of California and Amend Ordinance No. 440 pursuant to Resolution 440- 8952 submitted herewith.

DATE: October 7, 2013

PAGE: Page 2 of 3

BACKGROUND:

Summary (continued)

The Loma Linda Veterans Administration indicates that the veteran population in Riverside County as of 2010 was 127,000 in a fast growing county of 2,100,516 people. As soldiers return home from the Middle East, the county anticipates that many will choose to live in Riverside due to lower housing costs and the close proximity to veterans services. The demographics of the veteran population seeking treatment in Riverside are: Gender: Male 94.8%, Female 5.2%; Race: White 60.4%, African American 15.6%, Latino 20.3%, other 3.7%; Age: 18-25 4.3%, 26-35 12.2%, 36-45 20.3%, 46-55 43.4%, over 55 19.8%. Additionally, a large percentage of the veteran population also need mental health services for post-traumatic stress disorder, psychological issues, and/or traumatic brain injury. Of the veterans referred to the pilot Veterans Court program, 87% of those assessed required treatment for some or all of the above mental health disorders.

The pilot Veterans Court program is to assist nonviolent veteran offenders with successful rehabilitation for the use of drugs and/or alcohol. The population to be served is high-risk/high-need felons and the Court intends to service 60 new clients during the grant period. The overall goal of the program is to provide treatment services to reduce crime and substance abuse among high-risk/high-need veteran offenders. The primary objectives include: 1) Building a program to ensure that veterans are identified and assessed for risk and need; 2) ensuring all clients receive evidenced based and data driven services; 3) providing ancillary services that prevent recidivism and achieve long term recovery; 4) lowering costs associated with this population of focus by reducing recidivism; and 5) tracking performance through an automated data system.

The program is a partnership among the Superior Court, the Department of Mental Health, and the Probation Department. As part of the grant proposal, the Superior Court will be providing funding for a Probation Specialist position to support the Probation Department's involvement in the program. The position is 100% grant funded. No additional net county cost will be required and there is no county match requirement. In accordance with Policy A-30, all positions in the attached resolution will be deleted upon termination of the funding. The current fiscal year budget adjustments for the Probation Department of \$37,556 are outlined in the attached Schedule A.

Impact on Citizens and Businesses

Substance abuse use is a countywide challenge that requires a countywide response. Veteran offenders suffering from substance abuse in conjunction with mental health concerns is an area that county agencies have been working collaboratively to address. The receipt of these funds will assist with providing needed rehabilitation to reduce crime and substance abuse among high risk/high need veteran offenders; helping to improve success rates, and resulting in less crime and increased community safety.

ATTACHMENTS (if needed, in this order):

- A. BUDGET ADJUSTMENT: Schedule A attached**
- B. PERSONNEL CHANGE and ORDINANCE 440 REPORT: Attached**

Attachment A

**Riverside County Probation Department
Veterans Affairs Court Grant
Fiscal Year 2013/14
Schedule A**

Increase Appropriations:

10000-2600200000-510040
10000-2600200000-518100

Regular Salaries
Budgeted Benefits
Total

\$ 23,775
13,781

\$ 37,556

Increase Estimated Revenue:

10000-2600200000-767220

Fed-Other Operating Grants
Total

\$ 37,556

\$ 37,556

RESOLUTION NO. 440-8952

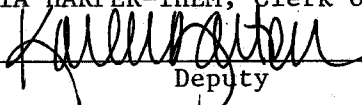
BE IT RESOLVED by the Board of Supervisors of the County of Riverside, State of California, in regular session assembled on November 5, 2013, that pursuant to Section 4(a)(ii) of Ordinance No. 440, the Chief Probation Officer is authorized to make the following listed change(s), operative on the date of approval, as follows:

<u>Job Code</u>	<u>+/-</u>	<u>Department ID</u>	<u>Class Title</u>
79530	+ 1	2600202000	Probation Specialist

ROLL CALL:

Ayes: Jeffries, Tavaglione, Stone and Ashley
 Nays: None
 Absent: Benoit

The foregoing is certified to be a true copy of a resolution duly adopted by said Board of Supervisors on the date therein set forth.

KECIA HARPER-IHEM, Clerk of said Board
 By 
 Deputy



AGREEMENT FOR PROBATION SPECIALIST FOR VETERANS' COURT

BETWEEN

THE SUPERIOR COURT OF CALIFORNIA, COUNTY OF RIVERSIDE

AND

THE RIVERSIDE COUNTY PROBATION DEPARTMENT

AGREEMENT #: CJ-10078-0-9-15

COMMENCES: October 1, 2013

TERMINATES: September 30, 2015

DOLLAR AMOUNT: Shall Not Exceed \$101,116 for Two-Year Term,
or \$50,558 Annually

NOV 05 2013 3-30

**SUPERIOR COURT OF CALIFORNIA, COUNTY OF RIVERSIDE
STANDARD AGREEMENT**

1. In this Agreement, the term "Contractor" refers to the Riverside County Probation Department, and the term "Court" refers to the Superior Court of California, County of Riverside.

2. This Agreement is effective October 1, 2013 ("Effective Date") through September 30, 2015 ("Expiration Date").

3. The maximum amount Court shall pay Contractor under this Agreement shall not exceed \$101,116 for the two-year term, or \$50,558 annually. Funding for this Agreement is from the Bureau of Justice Assistance Grant.

4. The purpose of this Agreement is for Contractor to provide a Probation Specialist to assist with Veterans' Court.
(The purpose listed above is for administrative reference only and does not define or limit the scope or extent of this Agreement.)

5. The parties agree that this Agreement, made up of this Standard Agreement Coversheet and the Exhibits listed below and any referenced attachments ("Contract Documents"), contains the parties' entire understanding related to the subject matter of this Agreement and is mutually binding on the parties in accordance with its terms.

- Exhibit A – Statement of Work
- Exhibit B – Payment Provisions and Invoicing Procedures
- Exhibit C – Additional Terms and Conditions

It is the intention of both parties that all Contract Documents be read and construed as a unified whole whenever possible. However, in the event of a conflict between the terms of the Contract Documents, the following order of precedence shall govern and determine which terms prevail:

1. Standard Agreement Cover Sheets
2. Exhibit A – Statement of Work
3. Exhibit B – Payment Provisions and Invoicing Procedures
4. Exhibit C – Additional Terms and Conditions

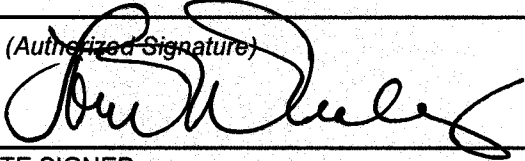
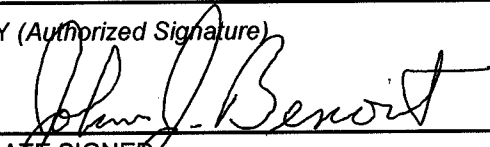
Any Amendments to this Agreement, starting with the most recent, shall take precedence over existing Contract Documents. In the event of a conflict between an Amendment and the terms of any other Contract Document, the terms of the Amendment shall prevail.

6. Project Managers: Correspondence concerning Project-specific matters will be provided to the following:

COURT:	CONTRACTOR:
Kathleen Randolph, Principal Management Analyst	Julie Nischwitz, Division Director
4050 Main Street	3021 Franklin Avenue
Riverside, CA 92501	Riverside, CA 92507
(951) 777-3160	(951) 358-7578
kathleen.randolph@riverside.courts.ca.gov	jnischw@rcprob.us

7. Contract Administrators: Correspondence concerning Contract-specific matters will be provided to the following:

COURT:	CONTRACTOR:
Patrick Barney, Contracts Attorney	Julie L. Terrell, Sr. Administrative Analyst
4050 Main Street	3960 Orange Street, Suite 600
Riverside, CA 92501	Riverside, CA 92501
(951) 777-3151	(951) 955-0905
patrick.barney@riverside.courts.ca.gov	jterrell@rcprob.us

COURT'S SIGNATURE	CONTRACTOR'S SIGNATURE
COURT'S LEGAL NAME: SUPERIOR COURT OF CALIFORNIA, COUNTY OF RIVERSIDE	CONTRACTOR'S LEGAL NAME: RIVERSIDE COUNTY PROBATION DEPARTMENT
BY (Authorized Signature) 	BY (Authorized Signature) 
DATE SIGNED 10/28/13	DATE SIGNED 11/5/13
PRINTED NAME AND TITLE OF PERSON AUTHORIZED TO BIND THE COURT TO THIS AGREEMENT Lori Whaley Interim Court Executive Officer	PRINTED NAME AND TITLE OF PERSON AUTHORIZED TO BIND CONTRACTOR TO THIS AGREEMENT John J. Benoit, Chairman Riverside County Board of Supervisors

ATTEST:

KECIA HARPER-IHEM, Clerk

By 

DEPUTY

FORM APPROVED COUNTY COUNSEL

BY: 

NEAL R. KIPNIS

DATE **10/29/13**

EXHIBIT A - STATEMENT OF WORK

1. **GENERALLY.** The Probation Specialist (PS) for Veterans' Court shall be the opposite gender of the assigned Probation Officer (PO). Under general supervision, PS shall perform the more complex, non-sworn support functions for the PO, conduct evaluative and advisory services for clients, and perform other related duties as required. PS shall work with minimal supervision with a high level of accountability, organizational ability and problem solving skills. PS is responsible for significant interaction with clients to conduct general inquiries, provide information and follow-up as needed, assist the PO in representing the Probation Department in court, and monitor, evaluate and advise the PO of clients' progress and adherence to the requirements and terms of their probation.
2. **CASE MANAGEMENT.** The PS shall:
 - (a) Serve as liaison to collateral agencies including, but not limited to, the courts, schools, social services, mental health, and other treatment providers and local law enforcement agencies;
 - (b) Initiate and maintain contact with clients by telephone, program visits, office interviews, and school and home visits; interview clients to obtain factual information required for the preparation of court reports; advise clients of available services; provide assistance in obtaining appropriate services; instruct and review documents regarding procedures with clients and family members and refer complex questions to the PO; refer clients to psychological, health, medical and social services providers;
 - (c) Monitor and evaluate clients' progress and adherence to rules of established agreements and provide verbal reports regarding the same to the Veterans' Court Team; log appropriate case related information, such as contacts, services provided, and resources used; and
 - (d) Assess the needs of clients at the direction of the Veterans' Court Team; research local resources to assist clients in locating employment, housing and community services to help maintain them successfully within the community.
3. **TRANSPORTATION.** The PS shall monitor and transport non-custody clients from court/jail to treatment, sober living, residential treatment, and various appointments.
4. **SUPPORT.** The PS shall sit in on Veterans' Court case staffing when asked to provide information about specific situations/clients. The PS shall also assist the team by processing post-court referrals to programs and by monitoring compliance with attendance, participation and/or adherence to program expectations. The PS shall also refer clients to services, monitor compliance and progress of the clients, and prepares related statistical reports.
5. **DRUG TESTING.** The PS will assist the PO in conducting drug testing of clients five days a week. Tests will be administered in conjunction with counseling staff and/or with the PO in the treatment facility or in the field. All urine tests will be closely monitored for accuracy with temperature/adulteration strips, and all tests will be observed by the PS. The observing staff must see the path from where the urine exits the body and into the specimen container. Clients will remove coats/sweaters and leave purses/packages under the supervision of the observer. Clients will wash and dry their hands thoroughly. Males will bring pants down to their ankles and females will be required to use a wand or keep one hand on the wall during urination. The observer will take the urine sample and check the temperature on the container and test for adulterants. Testing logs shall be provided to the Court's Project Manager on a monthly basis.
6. **DATA REPORTING.** Contractor will continue to provide data elements tracking those clients referred to the program as requested for the bi-annual reports each year.
7. **OTHER CLASSIFICATION.** Contractor may utilize an employee with an employment classification lower than Probation Specialist so long as such employee satisfactorily performs the required duties of the position. Such utilization of a lower employment classification is subject to Court's approval.

END OF STATEMENT OF WORK

EXHIBIT B
PAYMENT PROVISIONS AND INVOICING PROCEDURES

1. Compensation.

Court shall pay Contractor \$50,558 annually (\$32,911 salary + \$17,647 benefits) for the services of a Probation Specialist. If Contractor utilizes an employee with a lower employment classification than Probation Specialist, Court will only pay Contractor the salary and benefits of the lower employment classification. Contractor is to bill Court monthly.

2. Invoicing and Payment.

- A. The Court shall have no obligations to pay for any Work until an original, correct, itemized invoice for the item is received by the Court's Project Manager. Contractor shall submit monthly invoices to the Court no later than the 15th day following the month for which Work was performed. Contractor shall adhere to reasonable billing guidelines issued by the Court from time to time.
- B. The Court shall endeavor to remit payment within thirty (30) days from the Court's approval of a correct, itemized invoice. Each invoice shall be printed on Contractor's standard printed bill form, and shall include: (i) the Agreement and Purchase Order number, (ii) Contractor's name and address, (iii) the nature of the invoiced charge, (iv) the total invoiced amount, and (v) such detail as is reasonably necessary to permit the Court to evaluate the Work performed, including the number of hours worked and the applicable hourly rate. Upon request by the Court, Contractor shall promptly correct any inaccuracy and resubmit the invoice.
- C. Progress Payments, Retentions, Withholdings. Only if this Agreement specifically provides for the making of progress payments to Contractor, the Court shall make the progress payments in arrears not more frequently than monthly and at the successful completion of the clearly identifiable project milestones, which Contractor must successfully achieve as indicated in the Agreement. An amount no less than 10 percent of the amount of each installment may be withheld from each progress payment pending final completion of the Work, or, if the Agreement consists of the performance of separate and distinct tasks as distinct from milestones, upon completion of that task.

END OF PAYMENT PROVISIONS AND INVOICING PROCEDURES

EXHIBIT C
ADDITIONAL TERMS AND CONDITIONS

1. Amendment
2. Audit; Ownership of Results; Retention of Records
3. Change Orders; Additional Goods and/or Services
4. Choice of Law; Jurisdiction and Venue
5. Confidential Information
6. Consideration
7. Contractor Status
8. Counterparts; Signatures
9. Default and Remedies
10. Dispute Resolution
11. Entire Agreement
12. Force Majeure
13. Indemnification
14. Limitation of Liability
15. Notices
16. Prior Work
17. Scope of Work; Acceptance; Rejection
18. Standard of Performance; Warranties; Personnel Requirements; Background Checks
19. Stop Work
20. Survival
21. Termination
22. Waiver; Severability
23. Work Site

1. **Amendment.** No modifications, alterations, changes, or waiver to the Agreement or any of its terms shall be valid or binding unless accomplished by a written amendment, signed by both parties, that specifically references and incorporates the terms of the Agreement into the written amendment.

2. **Audit; Ownership of Results; Retention of Records.**

A. **Audit.** Upon reasonable notice, Contractor will provide to the Court, to any federal or state entity with monitoring or reviewing authority, or to the Court's authorized representatives, access to and the right to examine and audit all records and documents relating to performance and billing under the Agreement, and, as necessary, to determine compliance with relevant federal, state, and local statutes, rules, and regulations, subject only to a lawyer's duty of confidentiality owed to a represented party. Contractor agrees to provide the Court with all relevant information requested, and will permit access to its premises at reasonable times, for the purpose of interviewing employees and inspecting and copying any relevant records. Unless otherwise agreed upon, Contractor shall correct errors and deficiencies by the 20th day of the month following the review or audit.

B. **Ownership.** Unless otherwise provided in the Agreement, the Court is the exclusive owner of all Materials collected and produced in connection with the Work. Upon the Termination Date (subject to any mutually agreed period of continuation of Work), or upon the Court's notice at any time, and subject only to the duty of confidentiality owed to a represented party, Contractor shall give original materials to the Court or to another party at the Court's direction.

C. **Copies.** Contractor may retain copies of any original documents Contractor provides to the Court.

D. **Retention of Records.** Contractor will maintain all financial data, supporting documents, and all other records relating to performance and billing under the Agreement for a period in accordance with state and federal law. The minimum retention period will be four (4) years from the date of the submission of the final payment request or until audit findings are resolved, whichever is later.

3. **Change Orders; Additional Goods and/or Services.**

A. **Change Orders.**

(1) Due to the nature of the work to be accomplished by the Agreement, the specific goods, services, and timing needed may not be known until performance is underway. Therefore, the Court reserves the right to require Contractor to make changes in the Work that are within the scope of the Agreement without an Amendment by way of a Change Order issued by the Court's Project Manager. Such changes may include modifications to the Work, or changes in the timing or level of effort for the Work, as delineated in the Statement of Work.

(2) The Change Order documents the changes to be made, which may include: a) a description of the proposed change and the reasons for the change; b) a summary of the total compensation to be paid Contractor with a breakdown of tasks and costs, including any reduction in work or costs resulting from the change; and c) statement of the expected impact on the Work.

(3) Contractor should not proceed with any change until Contractor receives a Change Order from the Court's Project Manager. All costs for changes performed by Contractor without the Court's prior written approval will be at Contractor's sole risk and expense.

B. **Additional Goods and/or Services.** Although the Court has exercised diligence in providing a full list of Goods, Services, and/or specifications contained in the Statement of Work, the Court reserves the right to require Contractor to provide additional Goods and/or Services up to ten percent (10%) in quantity or ten percent (10%) of the value of the Agreement Amount, with payment to Contractor commensurate with the rates established in the Statement of Work, or if none, as mutually agreed upon.

4. **Choice of Law; Jurisdiction and Venue.** California law, without regard to its choice-of-law provisions, governs the Agreement. Jurisdiction and venue for any legal action arising from the Agreement shall exclusively reside in Riverside, California, and the parties hereby consent to the jurisdiction and venue of such courts.

5. Confidential Information.

- A. Confidential Information. While performing Work under the Agreement, Contractor and its subcontractors may gain access to Confidential Information that, if disclosed to third parties, may be damaging to the Court, its personnel, court users, or other government entity. Neither Contractor nor its subcontractors acquires any right or title to the Confidential Information, and Contractor and its subcontractors agree not to disclose any Confidential Information to any third party. All Confidential Information disclosed to Contractor or its subcontractor will be held in strict confidence and used only in performance of Work under the Agreement. If the Court requests additional security measures to protect Confidential Information from disclosure, Contractor shall not unreasonably refuse or delay to adopt the same. In the event of any unauthorized disclosure or loss of Confidential Information, Contractor will immediately provide notice to the Court, with pertinent details of the unauthorized disclosure or loss, and any remedial measures taken.
- B. Permissible Disclosures. Contractor may disclose the Court's Confidential Information only on a "need to know" basis to Contractor's employees and subcontractors and any representatives of the Court who are working on the project and who have also executed confidentiality agreements that protect the Court's Confidential Information. Additionally, Contractor may disclose the Confidential Information, to the extent necessary to comply with any applicable law, rule, regulation, or ruling, provided Contractor gives advance notice to the Court.
- C. Publicity. Contractor shall not make any public announcement or press release about the Agreement without the prior written approval of the Court.
- D. Specific Performance. Contractor understands that a default under this section will result in irreparable damage for which no adequate remedy will be available. Accordingly, injunctive or other equitable relief is a remedy that the Court will be entitled to seek.

6. Consideration.

- A. The consideration paid to Contractor is the entire compensation for all Work performed under the Agreement, including all of Contractor's expenses incurred, such as travel and per diem expenses, unless otherwise expressly provided.
- B. Payment Does Not Imply Acceptance of Work. The Court's payment will not relieve Contractor from its obligation to replace unsatisfactory Work, even if the unsatisfactory character of such Work may have been apparent or detected at the time such payment was made. Work, Data, or components that do not conform to the requirements of the Agreement will be rejected, and will be replaced by Contractor, without delay or additional cost to the Court.
- C. Disallowance. If Contractor receives payment from the Court for a service or reimbursement that is later disallowed or rejected by the Court, Contractor will promptly refund the disallowed amount to the Court upon the Court's request. At its option, the Court may offset the amount disallowed from any payment due to Contractor, under the Agreement or any other agreement.
- D. Availability of Funds. The Court's obligation to compensate Contractor is subject to the availability of funds. The Court shall notify Contractor if funds become unavailable or limited during the term of the Agreement.

7. Contractor Status.

- A. Independent Contractor. Contractor is an independent contractor to the Court. No employer-employee, partnership, joint venture, or agency relationship exists between Contractor and the Court. Contractor has no authority to bind or incur any obligation on behalf of the Court. Except as expressly stated, Contractor has no authority or responsibility to exercise any rights or power vested in the Court. Contractor, its employees, or anyone working under Contractor, shall not qualify for workers' compensation or other fringe benefits of any kind through the Court. If any governmental entity concludes that Contractor is not an independent contractor, the Court may terminate the Agreement immediately upon notice. Alternatively, Contractor may agree to a reduction in the Court's financial liability, so that the Court's total costs under the Agreement do not exceed the Agreement Amount.

B. Exclusive Control of Means and Method of Performance.

- (1) Contractor's employees will be entirely and exclusively under the direction, supervision, and control of Contractor. All terms of employment including hours, wages, working conditions, discipline, hiring, and termination, or any other employment issues or requirements of law, will be determined by Contractor.
- (2) Contractor will issue W-2 forms or other forms as required by law for income and employment tax purposes for all of Contractor's employees, consultants, and independent contractors.
- (3) If the Internal Revenue Service or any other federal or state governmental entity should investigate or challenge Contractor's independent status with respect to the Court, the parties agree that (i) each will inform the other party of such investigation or challenge; and (ii) the Court will have the right, but not the obligation, to participate in any discussion or negotiation occurring with the federal or state entity, regardless who initiates such discussions or negotiations.
- (4) Contractor will indemnify, defend, and hold the Court harmless from all claims, costs, and liabilities resulting from third-party actions alleging an employment relationship between the Court and any Contractor or Subcontractor personnel.
- (5) Contractor will determine the method, details, and means of performing or supplying the Work under the Agreement. Contractor will be responsible to the Court only for the requirements and results specified in the Agreement, and will not be subjected to the Court's control with respect to the physical action or activities of Contractor in fulfillment of the Agreement. Contractor will have the "right to control" and bear the sole responsibility for the job site conditions and safety.

C. Permits, Laws, and Regulations.

- (1) Contractor must observe and comply with all applicable laws, rules, and regulations affecting the Work. During the term of the Agreement, Contractor will obtain and keep in full force and effect, all permits and licenses necessary to accomplish the Work, and ensure that all subcontractors performing Work under the Agreement comply with the same. Such permits and licenses will be made available to the Court, upon request.
- (2) Contractor will promptly provide Notice to the Court of any conflict discovered between the Agreement and any applicable laws, rules, regulations, and/or permits and licenses, and await resolution of the conflict. If Contractor proceeds with the Work in question without resolution of the conflict, Contractor will be solely liable for any costs, fines, penalties, or damages that accrue, including costs for remedial work required to comply with such requirements.

8. Counterparts; Signatures.

- A. Counterparts. The Agreement may be executed in counterparts, each of which is considered an original.
- B. Signatures. Unless otherwise provided, the signatures required for execution of the Agreement may be made by manual signature on an original document, photocopy, or facsimile copy, or by digital signature that conforms to California Government Code § 16.5 and all California regulations promulgated thereunder, including California Code of Regulations, title 2, division 7, chapter 10.

9. Default and Remedies.

- A. Default. Unless otherwise provided, a default exists under the Agreement if:
 - (1) Contractor fails or is unable to meet or perform any of Contractor's duties under the Agreement, or furnishes nonconforming Goods or Services, and this failure is not cured within ten (10) days' following notice of default or is not capable of being cured within this cure period;
 - (2) Contractor or Contractor's creditors file a petition as to Contractor's bankruptcy or insolvency, or Contractor is declared bankrupt, becomes insolvent, makes an assignment for the benefit

of creditors, goes into liquidation or receivership, or otherwise loses legal control of its business;

- (3) Contractor makes or has made under the Agreement any representation or warranty that is or was incorrect, inaccurate, or misleading; or
- (4) Any act, condition, or thing required to be fulfilled or performed by Contractor to (i) enable Contractor lawfully to enter into or perform its obligations under the Agreement, (ii) ensure that these obligations are legal, valid, and binding, or (iii) make the Agreement admissible when required is not fulfilled or performed.

B. **Notice of Default.** Contractor shall notify the Court immediately if Contractor defaults, or if a third party claim or dispute is brought or threatened that alleges facts that would constitute a default under the Agreement.

C. **Remedies following Contractor Default.**

(1) **Available Remedies.** The Court may do any of the following:

- (a) Withhold all or any portion of a payment otherwise due to Contractor, exercise any other rights of setoff as may be provided in the Agreement or any other agreement between a Court and Contractor, or charge to the Contractor any costs to the Court arising from Contractor's default, including costs to complete or correct the Work;
- (b) Require Contractor to enter into non-binding mediation;
- (c) Exercise, following notice, the Court's right of early termination of the Agreement as provided below; or
- (d) Seek any other remedy available at law or in equity.

(2) **Remedies Cumulative.** All remedies provided for in the Agreement may be exercised individually or in combination with any other available remedy.

10. Dispute Resolution. The Court and Contractor will attempt, in good faith, to resolve any disputes informally. Contractor will meet with the Court's Project Manager or other designated representative to discuss the matter and any actions necessary to resolve a dispute.

A. **Escalation**

- (1) If a dispute remains unresolved either party may give Notice requesting each party's Chief Executive Officer ("CEO") or designated representative to meet, exchange information and attempt resolution within fifteen days of the effective date of the Notice.
- (2) If the matter is not resolved as set forth above, the aggrieved party will submit a second Notice which will:
 - (a) provide detailed factual information;
 - (b) identify the specific provisions in the Agreement on which any demand is based;
 - (c) advise if the demand involves a cost adjustment and, if so, provide the exact amount, accompanied by all supporting records; and
 - (d) attach a declaration that the demand is made in good faith, the supporting data are accurate and complete, and the amount requested properly reflects the necessary adjustment. Notice will be signed by an authorized representative of the aggrieved party.
- (3) Each party will comply with reasonable requests for additional information. Any additional information will be provided within fifteen (15) days after receipt of a written request, unless otherwise agreed.

B. **Confidentiality During Dispute Resolution.** All dispute resolution negotiations are considered confidential, and will be treated as compromise and settlement negotiations, to which California Evidence Code § 1152 applies.

- C. Continued Performance of Work. Pending final resolution of any dispute, Contractor agrees to proceed diligently with the performance of the Work, including Work associated with the dispute, unless otherwise directed by the Court. Contractor's failure to diligently proceed in accordance with the Court's instructions will be considered a material breach of the Agreement.

11. Entire Agreement.

- A. Headings or captions to the provisions of the Agreement are solely for the convenience of the parties, are not part of the Agreement, and will not be used to interpret or determine the validity of the Agreement.
- B. The Agreement was negotiated between the parties, and neither party "prepared" the Agreement for purposes of California Civil Code § 1654. Any ambiguity will not be construed against the drafter, but rather the terms and provisions will be given a reasonable interpretation.
- C. The Agreement, including all documents incorporated by reference, constitutes the entire and final understanding of the parties regarding the matter, and supersedes and terminates any and all prior or contemporaneous negotiations, representations, understandings, discussions, offers, proposals, or agreements between the parties, whether written or oral, express or implied, relating in any way to this matter, and is mutually binding on the parties in accordance with its terms.
- D. No agent, representative, employee or officer of either the Court or the Contractor has the authority to make, or has made, any oral statement, agreement or representation, in connection with the Agreement, which in any way can be deemed to modify, add to and detract from, or otherwise change or alter its terms and conditions. No negotiations between the parties, nor any custom or usage, shall be permitted to modify or contradict any of the terms and conditions of the Agreement. No subsequent purchase order, invoice, click-through or shrink-wrap agreement, or similar document containing conflicting terms and conditions issued by Contractor in conjunction with the performance of any party's duties and/or obligations due under the Agreement, shall be permitted to modify or contradict any of the terms and conditions of the Agreement.

12. Force Majeure.

- A. Force Majeure events include, but are not limited to:
 - (1) catastrophic acts of nature, or public enemy;
 - (2) civil disorder;
 - (3) fire or other casualty for which a party is not responsible; and
 - (4) quarantine or epidemic.
- B. The party asserting a Force Majeure event will immediately provide Notice to the other party of the occurrence and nature of the Force Majeure event, and its expected impact on schedule. The party claiming Force Majeure will use commercially reasonable efforts to continue or resume performance, including alternate sources or means. Contractor will have no right to additional payment for costs incurred as a result of a Force Majeure event. Any assertion of a Force Majeure event by Subcontractors will be attributed to Contractor.

13. Indemnification.

- A. To the fullest extent permitted by law, Contractor shall indemnify, hold harmless, and defend (with counsel satisfactory to the JBE Office of the General Counsel), the Judicial Branch Entities and Judicial Branch Personnel from and against any and all claims, damages, losses, judgments, liabilities, expenses, and other costs (including court fees, litigation or settlement costs, attorneys' fees, and attorneys' fees incurred in enforcing this indemnification clause) arising or resulting from, or in connection with, Contractor's performance of, or failure to perform, Work or Contractor's other duties under the Agreement, or any breach of the Agreement by Contractor or its officers, employees, agents, representatives, or Subcontractors. Contractor's duties of indemnification exclude indemnifying a party for that portion of losses and expenses that are finally determined by a reviewing court to have arisen out of the sole negligence or willful misconduct of the indemnified party.
- B. Contractor's obligation to defend, indemnify, and hold the Judicial Branch Entities and Judicial Branch Personnel harmless is not limited to, or restricted by, any requirement in the Agreement that Contractor procure and maintain insurance policies.

14. Limitation of Liability. The Court will not be liable to Contractor, its officers, employees, Subcontractors, or Third Parties for any indirect, special, or consequential damages, including lost profits or revenue, arising from or relating to the Agreement, regardless whether the Court was advised of the possibility of such loss or damage. In no event will the Court's liability for direct damages arising from or related to the Agreement, for any cause whatsoever, and regardless of the form of action, whether in contract or in tort, exceed the amounts paid to Contractor by the Court under the Agreement. Neither the Court nor Court Personnel will be personally responsible for liabilities arising under the Agreement.

15. Notices. Notices under the Agreement must be in writing. Notices may be delivered in person, via a reputable express carrier, or by registered or certified mail (postage pre-paid). Notice is effective on receipt; however, any correctly addressed notice that is refused, unclaimed, or undeliverable because of an act or omission of the party to be notified will be treated as effective on the first day that the notice was refused, unclaimed, or deemed undeliverable. Notices must be addressed to the other Party's Contract Representative as designated in the Standard Agreement Cover Sheet. Either party may change its address for receipt of notice by entering a different recipient and address below or by giving notice at any time to the other party in the manner permitted by this paragraph.

16. Prior Work. Prior work, performed by Contractor pursuant to the Court's authorization, but before execution of the Agreement, will be considered as having been performed subject to the provisions of the Agreement.

17. Scope of Work; Acceptance; Rejection.

A. **Scope of Work.** Contractor will perform and complete all Work in compliance with the requirements of the Agreement, and to the satisfaction of the Court. Contractor shall strictly adhere to the delivery and completion schedules specified in the Statement of Work. Time, if stated as a number of days, shall mean calendar days unless otherwise specified.

B. **Acceptance.** Notwithstanding any prior inspection or payments, all Goods and Services delivered hereunder shall be subject to final inspection and acceptance or rejection by the Court within a reasonable time after delivery to the Court. Until Work is completed and accepted by the Court, the risk of loss or damage to the Work shall remain with Contractor. All items which are not in compliance with the specifications hereof, which are not as warranted or which are shipped late, shipped in excess or insufficient quantities, or substituted for items ordered hereunder may be rejected by the Court and returned or held at Contractor's expense and risk. No damages or extras will be allowed for unforeseen difficulties or obstructions. Payment shall not constitute an acceptance of the Goods, Services, or Work nor impair the Court's right to inspect or any of its remedies. Contractor shall immediately refund any payment made in error.

C. **Rejection.** The Court may reject any Goods, Services, or deliverables that: (i) fail to meet applicable requirements or acceptance criteria; (ii) are not as warranted; or (iii) are performed or delivered late. The Court's Project Manager may apply any acceptance criteria set forth in the Agreement (including timeliness, completeness, technical accuracy, and conformance to statistical, industry or marketplace standards) to determine acceptance or non-acceptance of the Work.

(1) If the Work is not acceptable, the Court's Project Manager shall detail Contractor's failure to meet the acceptance criteria. Contractor shall have ten (10) business days from receipt of the Court's notification of non-acceptance to correct the failure(s) to conform to the acceptance criteria. Contractor will re-submit the Work and the Court's Project Manager shall re-apply the acceptance criteria to determine its acceptance or non-acceptance. Thereafter, the parties shall repeat the process set forth in this section until Contractor's receipt of the Court's written acceptance of such corrected Work; provided, however, that if the Court rejects any Work on at least two (2) occasions, the Court may terminate that portion of the Agreement which relates to the rejected Work at no expense to the Court.

(2) If the Court rejects any Goods, Services, or other deliverables after payment to Contractor, the Court may exercise all contractual and other legal remedies, including: (i) setting off the overpayment against future invoices payable by the Court; (ii) setting off the overpayment against any other amount payable for the benefit of Contractor pursuant to the Agreement or otherwise; and (iii) requiring Contractor to refund the overpayment within thirty (30) days of the Court's request.

18. Standard of Performance; Warranties; Personnel Requirements; Background Checks.

- A. Standard of Performance. Contractor will perform all Work with the requisite skill and diligence consistent with professional standards for the industry and type of work performed under the Agreement, and pursuant to the governing rules and regulations of the industry. Contractor acknowledges that the Court relies on the accuracy, competence, and completeness of Contractor's services.
- B. Warranties.
- (1) For a period of one (1) year, unless the Agreement or the warranties provided by a third party for Goods or Services procured by Contractor provide for a longer warranty period, Contractor expressly warrants that the Goods and Services covered by the Agreement are: (1) free of liens or encumbrances; (2) merchantable and good for the ordinary purposes for which they are used; and (3) fit for the particular purpose for which they are intended; (4) free from all defects in materials and workmanship; (5) to the extent not manufactured pursuant to detailed designs furnished by the Court, free from defects in design; and (6) conform to the requirements of the Agreement. The Court's approval of designs or specifications furnished by Contractor will not relieve Contractor of its obligations under this warranty.
 - (2) Contractor agrees to indemnify, defend, and hold the Court and Court Personnel harmless from liability, loss, damage and expense, including reasonable attorney's fees, incurred or sustained by the Court by reason for the failure of the Goods or Services to conform to such warranties, faulty work performance, negligent or unlawful acts, and non-compliance with any applicable state or federal codes, ordinances, orders, or statutes, including the Occupational Safety and Health Act (OSHA) and the California Industry Safety Act. Such remedies shall be in addition to any other remedies provided by law.
 - (3) Contractor represents and warrants to the Court that it owns, will own, is authorized, or will be authorized to use for its own and the Court's benefit, all intellectual property rights used and to be used in connection with providing and/or performing the Work.
 - (4) All warranties will inure to the Court, its successors, assigns, customer agencies, and users of the Work provided hereunder. Contractor shall not take any action, or fail to perform any act that results in a warranty or representation becoming untrue. Contractor shall promptly notify the Court if any warranty or representation becomes untrue.
 - (5) Unless otherwise specified, the warranties set forth in this Section commence after Work has been accepted by the Court.
- C. Personnel Requirements.
- (1) Contractor shall use adequate numbers of qualified individuals with sufficient training, education, experience, and skill to successfully perform the Work.
 - (2) If the Court is dissatisfied with any of Contractor's personnel for any reason, Contractor shall replace them with qualified personnel as soon as is feasible. Otherwise, Contractor shall endeavor to minimize turnover of personnel Contractor assigned to perform the Work under the Agreement. Contractor will be responsible for all costs associated with replacing personnel, including additional costs to familiarize replacement personnel with the Work. If Contractor does not promptly furnish replacement personnel acceptable to the Court, the Court may terminate the Agreement for cause.
- D. Background Checks.
- (1) The Court shall have the right, but not the obligation, to request or conduct background checks on any of Contractor's personnel, its subcontractors' personnel, or agents performing Work under the Agreement.
 - (2) Contractor shall cooperate with the Court if the Court decides to perform background checks by obtaining, at no additional cost, all releases, waivers, and permissions the Court requires. Contractor shall provide prompt Notice to the Court of: (i) any person refusing to undergo any such background checks; and (ii) the results of any background checks as requested by the Court. Contractor may not assign to perform Work under the Agreement any personnel or

any subcontractor's personnel who refuse to undergo a background check, and shall immediately remove such personnel from performing Work under the Agreement.

- (3) The Court, in its sole discretion, shall determine whether Contractor's or its subcontractors' personnel or agents have passed the backgrounds checks required by the Court. No background information will be released to the Contractor or its subcontractors.

19. Stop Work.

- A. The Court may, at any time, by delivery of a written Stop Work Order to Contractor, require Contractor to stop any or all of the Work, for ninety days after the Stop Work Order is delivered to Contractor, and for any further period to which the Parties may agree.
- B. Upon receipt of the Stop Work Order, Contractor will immediately comply with its terms and take all reasonable steps to minimize the costs incurred to the Court during the applicable Stop Work period. Within ninety days after a Stop Work Order is delivered to Contractor, or within any mutually agreed extension of that period, the Court will either cancel the Stop Work Order or terminate the Work, as provided in the Termination provisions.
- C. If a Stop Work Order is cancelled, or the period of the Stop Work Order or any extension thereof expires, Contractor will resume Work. The Court may make an equitable adjustment in the delivery schedule, the Agreement Amount, or both, if (i) the Stop Work Order increases Contractor's costs or the time required for performance; and (ii) Contractor asserts its right to an equitable adjustment within thirty days after the end of the applicable Stop Work period.
- D. If a Stop Work Order is not canceled and the Work covered by the Stop Work Order is terminated other than for cause, the Court may allow reasonable costs resulting from the Stop Work Order.
- E. The Court will not be liable to Contractor for loss of profits because of any Stop Work Order.

20. Survival. Terms that will survive termination or expiration of the Agreement include those relating to, but are not limited to: assignment, audit rights and retention of records, confidentiality, indemnification, limitation of liability, and warranties.

21. Termination.

- A. Termination for Cause. Either party may terminate the Agreement, in whole or in part, for cause, upon thirty (30) days written notice. The Court shall be relieved of any payments, if Contractor fails to perform the requirements of the Agreement at the time and in the manner agreed. The Court may also cancel delivery immediately of all or any portion of unshipped goods or limit Contractor's Work and, proportionately, Contractor's compensation. The Court may proceed with the Work in any manner deemed proper. All costs to the Court arising from Contractor's default, including costs to complete or correct the Work, will be deducted from any sum due to Contractor. Contractor will not be entitled to recover overhead or profit on the uncompleted portions of the Work.
- B. Termination for Convenience. Either party may terminate the Agreement, in whole or in part, at any time, for any or no reason, upon at least thirty (30) days written notice to Contractor. Upon receipt of notice of termination, Contractor will promptly discontinue Work as specified in the Notice. The Court will pay Contractor for the Work satisfactorily performed prior to the termination. Contractor will not recover overhead or profit on the uncompleted portions of the Work.
- C. Termination due to Fund Non-Appropriation and/or Availability.
 - (1) The Court's obligations under the Agreement are subject to the availability of funds authorized for this Work. Expected or actual funding may be withdrawn, reduced, or limited prior to the expiration or other termination of the Agreement. Funding beyond the current Appropriation Year is conditioned upon appropriation of sufficient funds to support the activities described in the Agreement.
 - (2) Upon Notice, the Court may terminate the Agreement in whole or in part, without prejudice to any right or remedy of the Court, for lack of appropriation of funds. Upon termination, the

Court will pay Contractor for the fair value of Work satisfactorily performed prior to the termination, not to exceed the total Agreement Amount.

D. Effect of Termination. Upon the Termination Date:

- (1) The Court shall be released from compensating Contractor for Work, other than those Contractor satisfactorily performed before the Termination Date, and for any indirect costs. Without prejudice to the Court, Contractor shall be released from performing Work.
- (2) If only a part of the Agreement is terminated by either party such that Contractor is released from performing a portion of the Work, the Court shall accordingly be released from compensating Contractor for that portion of Work.
- (3) Court will have the right to take possession of any materials, equipment, and other Work including partially completed Work. Contractor shall return to the Court any equipment purchased or built with Court funds, with costs incurred by Contractor being reimbursed by the Court. Unless otherwise provided in the Agreement, Contractor will immediately assign to the Court all of Contractor's right, title, and interest in and to such Work, related materials, work product, and any and all intellectual property rights.
- (4) Upon termination of any kind, the Court may withhold from payment any sum that the Court determines to be owed to the Court by Contractor, or as necessary to protect the Court against loss due to outstanding liens or claims of former lien holders. Unless otherwise specifically provided, any advance payments made by the Court to Contractor shall be refunded to the Court on a pro rata basis.

22. Waiver; Severability.

- A. Waiver of Rights. The Court's action, inaction, or failure to enforce any right or provision of the Agreement is not a waiver of its rights, and will not prevent the Court from enforcing such rights on any future occasion. A Court-specific waiver does not constitute a waiver by the Court of any earlier, concurrent, or later breach or default.
- B. Severability. The provisions of the Agreement are separate and severable. If any part of the Agreement is held invalid or unenforceable, all other parts remain valid or enforceable, unless prohibited by applicable state and federal law.
- C. Waiver of Jury Trial. To the extent enforceable under California law, each party acknowledges that it is aware of and has had the opportunity to seek advice of counsel of its choice with respect to its rights to trial by jury, and each party, for itself and its successors and assigns, does hereby expressly and knowingly waive and release all such rights to trial by jury in any action, proceeding, or counterclaim brought by any party hereto against the other (and/or against its judges, subordinate judicial officers, officers, administrators, agents, representatives, and employees) on or with regard to any matters whatsoever arising out of or in any way connected with the Agreement and/or any other claim of injury or damage.

- 23. Work Site.** With respect to Work delivered and/or performed on the Court's premises, Contractor has the responsibility to inform itself fully and shall assume the risk as to the physical conditions at the worksite, including as applicable: (1) the availability, location, and extent of construction and storage areas and other facilities or structures above and below ground, but not limited to gas, water, sewer, electrical, and communication utilities; (2) necessary safety precautions and safeguards; (3) work to be performed by Contractor or others; (4) rules, regulations, and requirements to be observed by Contractor in the conduct of the Work. Lack of knowledge of existing conditions will not be accepted as an excuse for failure to perform the specified Work, nor shall such excuse be accepted as a basis for claims or additional compensation. Contractor shall conform to any specific safety requirements as required by law or regulation. Contractor shall take any additional precautions as the Court may reasonably require for safety and accident prevention purposes. Any violation of such rules and requirements, unless promptly corrected, shall be grounds for termination of the Agreement.

END OF ADDITIONAL TERMS AND CONDITIONS