



CONTRACT NUMBER MA-017-22010943
BETWEEN
COUNTY OF ORANGE, COUNTY PROCUREMENT OFFICE
AND
WOODRUFF, SPRADLIN & SMART
FOR
LIABILITY DEFENSE LITIGATION SERVICES

This Contract MA-017-22010943 hereinafter "Contract" is made and entered into as of the date fully executed by and between the County of Orange, a political subdivision of the State of California, hereinafter "County" and Woodruff, Spradlin & Smart, with a place of business at 555 Anton Blvd., Ste 1200, Costa Mesa, CA 92626, hereinafter "Contractor", which are sometimes individually referred to as "Party" or collectively as "Parties".

ATTACHMENTS

This Contract is comprised of this document and the following Attachments, which are incorporated by reference into this Contract:

Attachment A – Scope of Work
 Attachment B – Pricing and Compensation
 Attachment C – Business Associate Terms and Conditions

RECITALS

WHEREAS, County solicited via a Request for Proposal ("RFP") for Liability Defense Litigation Services; and

WHEREAS, Contractor responded to RFP and represented that Contractor is qualified to provide Liability Defense Litigation Services; and

WHEREAS, Contractor agrees to provide Liability Defense Litigation Services to County as further set forth in the Scope of Work, attached hereto as Attachment A and incorporated herein; and

WHEREAS, Contractor agrees to accept payment based on the Pricing and Compensation, attached hereto as Attachment B and incorporated herein; and

WHEREAS, County of Orange Board of Supervisors has authorized the County Procurement Officer or his designee to enter into a Contract to obtain Liability Defense Litigation Services; and

NOW THEREFORE, the Parties mutually agree as follows:

ARTICLES

GENERAL TERMS AND CONDITIONS:

- A. **Governing Law and Venue:** This Contract has been negotiated and executed in the state of California and shall be governed by and construed under the laws of the state of California. In the event of any legal action to enforce or interpret this Contract, the sole and exclusive venue shall be a court of competent jurisdiction located in Orange County, California, and the Parties hereto agree to and do hereby submit to the jurisdiction of such court, notwithstanding Code of Civil Procedure Section 394. Furthermore, the Parties specifically agree to waive any and all rights to request that an action be transferred for adjudication to another county.
- B. **Entire Contract:** This Contract, including Attachments which are attached hereto and incorporated herein by this reference, contains the entire contract between the Parties with respect

to the matters herein, and there are no restrictions, promises, warranties or undertakings other than those set forth herein or referred to herein. Electronic acceptance of any additional terms, conditions or supplemental contracts by any County employee or agent, including but not limited to installers of software, shall not be valid or binding on County unless accepted in writing by County's Procurement Officer or designee.

- C. **Amendments:** No alteration or variation of the terms of this Contract shall be valid unless made in writing and signed by the Parties; no oral understanding or agreement not incorporated herein shall be binding on either of the Parties; and no exceptions, alternatives, substitutes or revisions are valid or binding on County unless authorized by County in writing.
- D. **Taxes:** Unless otherwise provided herein or by law, the price stated in Attachment B does not include California state sales or use tax. Out-of-state Contractors shall indicate California Board of Equalization permit number and sales permit number on invoices, if California sales tax is added and collectable. If no permit numbers are shown, sales tax will be deducted from payment. The Auditor-Controller will then pay use tax directly to the State of California in lieu of payment of sales tax to Contractor.
- E. **Delivery:** Time of delivery of goods or services is of the essence in this Contract. County reserves the right to refuse any goods or services and to cancel all or any part of the goods not conforming to applicable specifications, drawings, samples or descriptions or services that do not conform to the prescribed scope of work. Acceptance of any part of the order for goods shall not bind County to accept future shipments nor deprive it of the right to return goods already accepted at Contractor's expense. Over shipments and under shipments of goods shall be only as agreed to in writing by County. Delivery shall not be deemed to be complete until all goods or services have actually been received and accepted in writing by County.
- F. **Acceptance/Payment:** Unless otherwise agreed to in writing by County: 1) acceptance shall not be deemed complete unless in writing and until all the goods/services have been received, inspected, and tested to the satisfaction of County, and 2) payment shall be made pursuant to Attachment B after County's satisfactory acceptance of an invoice.
- G. **Warranty:** Contractor expressly warrants that the goods covered by this Contract 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. Acceptance of this order shall constitute an agreement upon Contractor's part to indemnify, defend and hold County and County Indemnitees, as more fully described in Paragraph Z, harmless from liability, loss, damage and expense, including reasonable counsel fees, incurred or sustained by County by reason of the failure of the goods/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 Industrial Safety Act. Such remedies shall be in addition to any other remedies provided by law.
- H. **Patent/Copyright Materials/Proprietary Infringement:** Unless otherwise expressly provided in this Contract, Contractor shall be solely responsible for clearing the right to use any patented or copyrighted materials in the performance of this Contract. Contractor warrants that any software as modified through services provided hereunder will not infringe upon or violate any patent, proprietary right, or trade secret right of any third party. Contractor agrees that, in accordance with the more specific requirement contained in Paragraph Z, it shall indemnify, defend and hold County and County Indemnitees harmless from any and all such claims and be responsible for payment of all costs, damages, penalties and expenses related to or arising from such claim(s), including, costs and expenses and attorney's fees.
- I. **Assignment:** The terms, covenants, and conditions contained herein shall apply to and bind the heirs, successors, executors, administrators and assigns of the Parties. Furthermore, neither the

performance of this Contract nor any portion thereof may be assigned by Contractor without the express prior written consent of County. Contractor shall provide County no less than sixty (60) calendar days' written notification of its intent to assign, sell, delegate or otherwise dispose of the rights and obligations of this Contract. Any attempt by Contractor to assign the performance or any portion thereof of this Contract without the express prior written consent of County shall be void and invalid and shall constitute a material breach of this Contract.

- J. **Non-Discrimination:** In the performance of this Contract, Contractor must comply with the requirements of Section 1735 of the California Labor Code and not engage nor permit any subcontractors to engage in discrimination in employment of persons because of the race, religious creed, color, national origin, ancestry, physical disability, mental disability, medical condition, marital status, or sex of such persons. Contractor acknowledges that a violation of this provision shall subject Contractor to penalties pursuant to Section 1741 of the California Labor Code.
- K. **Termination:** In addition to any other remedies or rights it may have by law and those set forth in this Contract, County has the right to immediately terminate this Contract without penalty for cause or after thirty (30) calendar days' written notice without cause, unless otherwise specified. Cause shall include, but not be limited to, any material breach of contract, any misrepresentation or fraud on the part of Contractor, and any assignment, subcontracting or change of ownership without County's express prior written consent. County's decision to exercise the right to terminate the Contract shall relieve County of all further obligations under this Contract. The Parties may mutually terminate this Contract by written agreement at any time. The rights, obligation, and conditions, that by their express terms or nature and context are intended to survive the termination or expiration of this Contract, survive any termination or expiration of this Contract.
- L. **Consent to Breach Not Waiver:** Any action or inaction by County or failure of County in any one or more instances to insist upon strict performance of any of the terms of this Contract or to enforce any right or provision contained herein shall not be construed as a waiver or relinquishment by County of its rights hereunder and shall not prevent County from enforcing such provision or right on any future occasion. Further, no term or provision of this Contract shall be deemed waived and no breach excused, unless such waiver or consent is in writing and signed by the Party claimed to have waived or consented. Any consent by any Party to, or waiver of, a breach by the other, whether express or implied, shall not constitute consent to, waiver of, or excuse for any other different or subsequent breach.
- M. **Independent Contractor:** Contractor shall be considered an independent contractor and neither Contractor, its employees, nor anyone working under Contractor shall be considered an agent or an employee of County. Neither Contractor, its employees nor anyone working under Contractor shall qualify for workers' compensation or other fringe benefits of any kind through County.
- N. **Performance:** Contractor shall warrant all work under this Contract, taking necessary steps and precautions to perform the work to County's satisfaction. Contractor shall be responsible for the professional quality, technical assurance, timely completion and coordination of all documentation and other goods/services furnished by Contractor under this Contract. Contractor shall perform all work diligently, carefully, and in a good and workmanlike manner; shall furnish all necessary labor, supervision, machinery, equipment, materials, and supplies, shall at its sole expense obtain and maintain all permits and licenses required by public authorities, including those of County required in its governmental capacity, in connection with performance of the work. If permitted to subcontract, Contractor shall be fully responsible for all work performed by subcontractors.
- O. **Insurance Provision:** Prior to the provision of services under this Contract, Contractor agrees to purchase all required insurance at Contractor's expense, including all endorsements required herein, necessary to satisfy County that the insurance provisions of this Contract have been

complied with. Contractor agrees to keep such insurance coverage, Certificates of Insurance, and endorsements on deposit with County during the entire term of this Contract.

Contractor shall ensure that all subcontractors performing work on behalf of Contractor pursuant to this Contract shall be covered under Contractor's insurance as an Additional Insured or maintain insurance subject to the same terms and conditions as set forth herein for Contractor. Contractor shall not allow subcontractors to work if subcontractors have less than the level of coverage required by County from Contractor under this Contract. It is the obligation of Contractor to provide notice of the insurance requirements to every subcontractor and to receive proof of insurance prior to allowing any subcontractor to begin work. Such proof of insurance must be maintained by Contractor through the entirety of this Contract for inspection by County representative(s) at any reasonable time.

All self-insured retentions (SIRs) shall be clearly stated on the Certificate of Insurance. Any SIR in an amount in excess of Fifty Thousand Dollars (\$50,000) shall specifically be approved by County's Risk Manager, or designee, upon review of Contractor's current audited financial report. If Contractor's SIR is approved, Contractor, in addition to, and without limitation of, any other indemnity provision(s) in this Contract, agrees to all of the following:

1. In addition to the duty to indemnify and hold County harmless against any and all liability, claim, demand or suit resulting from Contractor's, its agents, employee's or subcontractor's performance of this Contract, Contractor shall defend County at its sole cost and expense with counsel approved by Board of Supervisors against same; and
2. Contractor's duty to defend, as stated above, shall be absolute and irrespective of any duty to indemnify or hold harmless; and
3. The provisions of California Civil Code Section 2860 shall apply to any and all actions to which the duty to defend stated above applies, and Contractor's SIR provision shall be interpreted as though Contractor was an insurer and County was the insured.

If Contractor fails to maintain insurance acceptable to County for the full term of this Contract, County may terminate this Contract.

Qualified Insurer

The policy or policies of insurance must be issued by an insurer with a minimum rating of A- (Secure A.M. Best's Rating) and VIII (Financial Size Category as determined by the most current edition of the **Best's Key Rating Guide/Property-Casualty/United States or ambest.com**). It is preferred, but not mandatory, that the insurer be licensed to do business in the state of California (California Admitted Carrier).

If the insurance carrier does not have an A.M. Best Rating of A-/VIII, the CEO/Office of Risk Management retains the right to approve or reject a carrier after a review of the company's performance and financial ratings.

The policy or policies of insurance maintained by Contractor shall provide the minimum limits and coverage as set forth below:

Coverage	Minimum Limits
Commercial General Liability	\$1,000,000 per occurrence \$2,000,000 aggregate
Automobile Liability including coverage for owned, non-owned and hired vehicles	\$1,000,000 per occurrence
Workers' Compensation	Statutory
Employers' Liability Insurance	\$1,000,000 per occurrence

Professional Liability Insurance	\$1,000,000 per claims made \$2,000,000 per occurrence
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Required Coverage Forms

The Commercial General Liability coverage shall be written on Insurance Services Office (ISO) form CG 00 01, or a substitute form providing liability coverage at least as broad.

The Business Auto Liability coverage shall be written on ISO form CA 00 01, CA 00 05, CA 0012, CA 00 20, or a substitute form providing coverage at least as broad.

Required Endorsements

The Commercial General Liability policy shall contain the following endorsements, which shall accompany the Certificate of Insurance:

1. An Additional Insured endorsement using ISO form CG 20 26 04 13 or a form at least as broad naming the ***County of Orange, its elected and appointed officials, officers, agents and employees*** as Additional Insureds, or provide blanket coverage, which will state ***AS REQUIRED BY WRITTEN CONTRACT.***
2. A primary non-contributing endorsement using ISO form CG 20 01 04 13, or a form at least as broad evidencing that Contractor's insurance is primary, and any insurance or self-insurance maintained by the County of Orange shall be excess and non-contributing.

The Workers' Compensation policy shall contain a waiver of subrogation endorsement waiving all rights of subrogation against the ***County of Orange, its elected and appointed officials, officers, agents and employees*** or provide blanket coverage, which will state ***AS REQUIRED BY WRITTEN CONTRACT.***

All insurance policies required by this Contract shall waive all rights of subrogation against the County of Orange, its elected and appointed officials, officers, agents and employees when acting within the scope of their appointment or employment.

Contractor shall notify County in writing within thirty (30) calendar days of any policy cancellation and ten (10) calendar days for non-payment of premium and provide a copy of the cancellation notice to County. Failure to provide written notice of cancellation may constitute a material breach of the Contract, upon which County may suspend or terminate this Contract.

If Contractor's Professional Liability is a "Claims-Made" policy(ies), Contractor shall agree to maintain coverage for two (2) years following the completion of the Contract.

The Commercial General Liability policy shall contain a severability of interest clause also known as a "separation of insureds" clause (standard in the ISO CG 0001 Policy).

Insurance certificates should be emailed to CEOCPOInsurance@ocgov.com.

Certificate Holder must state:

County of Orange
c/o: CEO/County Procurement Office
Attn: Insurance
1300 S. Grand Ave., Ste. A, 2nd Floor
Santa Ana, CA 92705-4434

County expressly retains the right to require Contractor to increase or decrease insurance of any of the above insurance types throughout the term of this Contract. Any increase or decrease in insurance will be as deemed by County of Orange Risk Manager as appropriate to adequately protect County.

County shall notify Contractor in writing of changes in the insurance requirements. If Contractor does not deposit copies of acceptable Certificates of Insurance and endorsements with County incorporating such changes within thirty (30) calendar days of receipt of such notice, this Contract may be in breach without further notice to Contractor, and County shall be entitled to all legal remedies.

The procuring of such required policy or policies of insurance shall not be construed to limit Contractor's liability hereunder nor to fulfill the indemnification provisions and requirements of this Contract, nor act in any way to reduce the policy coverage and limits available from the insurer.

P. **Changes:** Contractor shall make no changes in the work or perform any additional work without County's express prior written consent.

Q. **Change of Ownership/Name, Litigation Status, Conflicts with County Interests:** Contractor agrees that if there is a change or transfer in ownership of Contractor's business prior to completion of this Contract, and County agrees to an assignment of the Contract, the new owners shall be required under terms of sale or other transfer to assume Contractor's duties and obligations contained in this Contract and complete them to the satisfaction of County.

County reserves the right to immediately terminate the Contract in the event County determines that the assignee is not qualified or is otherwise unacceptable to County for the provision of services under the Contract.

In addition, Contractor must notify County in writing of any change in Contractor's status with respect to name changes that do not require an assignment of the Contract. Contractor also must notify County in writing if Contractor becomes a party to any litigation against County, or a party to litigation that may reasonably affect Contractor's performance under the Contract, as well as any potential conflicts of interest between Contractor and County that may arise prior to or during the period of Contract performance. While Contractor must provide this information without prompting from County any time there is a change in Contractor's name, conflict of interest or litigation status, Contractor must also provide an update to County of its status in these areas whenever requested by County.

Contractor shall exercise reasonable care and diligence to prevent any actions or conditions that could result in a conflict with County interests. In addition to Contractor, this obligation applies to Contractor's employees, agents, and subcontractors associated with the provision of goods and services provided under this Contract. Contractor's efforts shall include, but not be limited to, establishing rules and procedures preventing its employees, agents, and subcontractors from providing or offering gifts, entertainment, payments, loans or other considerations which could be deemed to influence or appear to influence County staff or elected officers in the performance of their duties.

R. **Force Majeure:** Contractor shall not be assessed with liquidated damages or unsatisfactory performance penalties during any delay beyond the time named for the performance of this Contract to the extent such delay is caused by any act of God, war, civil disorder, employment strike or other cause beyond Contractor's reasonable control, provided Contractor gives written notice of the cause of the delay to County within thirty-six (36) hours of the start of the delay and Contractor avails itself of any available remedies to end the delay and minimize the effects of such delay. County may terminate this Contract by written notice to Contractor if the delay continues substantially uninterrupted for a period of five (5) business days or more.

S. **Confidentiality:** All County Data shall be deemed confidential. Contractor must hold County Data in strict confidence and maintain the confidentiality of County Data pursuant to all statutory laws relating to privacy and confidentiality that currently exist or may exist at any time during the term of this Contract. Contractor must protect County Data from unauthorized access, use, disclosure and loss through the observance of the same or more effective procedural requirements

as used by County. In addition, Contractor must not use, modify, merge with other data, commercially exploit, make available or make any other use of County Data or take, or refrain from taking, any other action that might, in any manner or form, adversely affect or jeopardize the integrity, security, or confidentiality of County Data, except as expressly permitted herein or as expressly directed by County in writing. Contractor also must not copy, reproduce, sell, transfer, or otherwise dispose of, give or disclose, such County Data to third parties other than employees, agents, or subcontractors who require the County Data for performance of this Contract. The obligation in this Paragraph S applies to Contractor's employees, agents, and subcontractors.

Contractor must immediately report to County any and all unauthorized disclosures or uses of County Data or suspected or threatened unauthorized disclosures or uses of County Data of which Contractor or Contractor's employees, agents and/or subcontractors are aware or have knowledge or reasonable belief. Contractor acknowledges that any unauthorized publication or disclosure of County Data to others or unauthorized use of County Data may cause immediate and irreparable harm to County. If Contractor should publish, disclose, or use such County Data without authorization, or threaten such action, County is immediately entitled to injunctive relief and any other remedies to which it is entitled under law or equity, without requiring a cure period. Contractor must, in accordance with the more specific requirements contained in Paragraph Z, indemnify, defend, and hold County and County Indemnitees harmless from and against any and all damages, costs, liabilities, and expenses (including without limitation attorneys' fees) relating to or arising from Contractor's unauthorized publication, use, or disclosure of County Data.

- T. **Compliance with Laws:** Contractor represents and warrants that services to be provided under this Contract shall fully comply, at Contractor's expense, with all standards, laws, statutes, restrictions, ordinances, requirements, and regulations (collectively "laws"), including, but not limited to those issued by County in its governmental capacity and all other laws applicable to the services at the time services are provided to and accepted by County. Contractor acknowledges that County is relying on Contractor to ensure such compliance, and pursuant to the requirements of Paragraph Z, Contractor agrees that it shall defend, indemnify and hold County and County Indemnitees harmless from all liability, damages, costs and expenses arising from or related to a violation of such laws.
- U. **Freight:** Intentionally Omitted.
- V. **Severability:** If any term, covenant, condition or provision of this Contract is held by a court of competent jurisdiction to be invalid, void, or unenforceable, the remainder of the provisions hereof shall remain in full force and effect and shall in no way be affected, impaired or invalidated thereby.
- W. **Attorney Fees:** In any action or proceeding to enforce or interpret any provision of this Contract, each Party shall bear its own attorney's fees, costs and expenses.
- X. **Interpretation:** This Contract has been negotiated at arm's length and between persons sophisticated and knowledgeable in the matters dealt with in this Contract. In addition, each Party has been represented by experienced and knowledgeable independent legal counsel of its own choosing or has knowingly declined to seek such counsel despite being encouraged and given the opportunity to do so. Each Party further acknowledges that it has not been influenced to any extent whatsoever in executing this Contract by any other party hereto or by any person representing them, or both. Accordingly, any rule or law (including California Civil Code Section 1654) or legal decision that would require interpretation of any ambiguities in this Contract against the party that has drafted it is not applicable and is waived. The provisions of this Contract shall be interpreted in a reasonable manner to affect the purpose of the Parties and this Contract.
- Y. **Employee Eligibility Verification:** Contractor warrants that it is and will remain in full compliance with all Federal and State statutes and regulations regarding the employment of aliens

and others and that all its employees performing work under this Contract meet the citizenship or alien status requirement set forth in Federal statutes and regulations. Contractor shall obtain, from all employees performing work hereunder, all verification and other documentation of employment eligibility status required by Federal or State statutes and regulations including, but not limited to, the Immigration Reform and Control Act of 1986, 8 U.S.C. §1324 et seq., as they currently exist and as they may be hereafter amended. Contractor shall retain all such documentation for all covered employees for the period prescribed by the law. Contractor shall indemnify, defend with counsel approved in writing by County, and hold harmless, County, its agents, officers, and employees from employer sanctions and any other liability which may be assessed against Contractor or County or both in connection with any alleged violation of any Federal or State statutes or regulations pertaining to the eligibility for employment of any persons performing work under this Contract.

- Z. **Indemnification:** Contractor agrees to indemnify, defend with counsel approved in writing by County, and hold County, its elected and appointed officials, officers, employees, agents and those special districts and agencies which County's Board of Supervisors acts as the governing Board ("County Indemnitees") harmless from any claims, demands or liability of any kind or nature, including but not limited to personal injury or property damage, arising from or related to the services, products or other performance provided by Contractor pursuant to this Contract. If judgment is entered against Contractor and County by a court of competent jurisdiction because of the concurrent active negligence of County or County Indemnitees, Contractor and County agree that liability will be apportioned as determined by the court. Neither party shall request a jury apportionment.
- AA. **Audits/Inspections:** Contractor agrees to permit the County's Auditor-Controller or the Auditor-Controller's authorized representative (including auditors from a private auditing firm hired by County) access during normal working hours to all books, accounts, records, reports, files, financial records, supporting documentation, including payroll and accounts payable/receivable records, and other papers or property of Contractor for the purpose of auditing or inspecting any aspect of performance under this Contract. The inspection and/or audit will be confined to those matters connected with the performance of the Contract including, but not limited to, the costs of administering the Contract. County will provide reasonable notice of such an audit or inspection.
- County reserves the right to audit and verify Contractor's records before final payment is made.
- Contractor must maintain such records for possible audit for a minimum of three (3) years after final payment, unless a longer period of records retention is stipulated under this Contract or by law. Contractor agrees to allow interviews of any employees or others who might reasonably have information related to such records. Further, Contractor must include in each subcontract a similar right to County to audit records and interview staff of any subcontractor related to performance of this Contract.
- Should Contractor cease to exist as a legal entity, Contractor's records pertaining to this Contract shall be forwarded to County's project manager.
- BB. **Contingency of Funds:** Contractor acknowledges that funding or portions of funding for this Contract may be contingent upon state budget approval; receipt of funds from, and/or obligation of funds by, the state of California to County; and inclusion of sufficient funding for the services hereunder in the budget approved by County's Board of Supervisors for each fiscal year covered by this Contract. If such approval, funding or appropriations are not forthcoming, or are otherwise limited, County may immediately terminate or modify this Contract without penalty.
- CC. **Expenditure Limit:** Contractor shall notify the County of Orange assigned Deputy Purchasing Agent in writing when the expenditures against the Contract reach seventy-five percent (75%) of the dollar limit on the Contract. County is not responsible for any expenditure overruns and will not pay for work exceeding the dollar limit on the Contract unless a change order to cover those costs has been issued.

ADDITIONAL TERMS AND CONDITIONS:

1. **Scope of Contract:** This Contract, including the attachment(s) all of which constitute a part of this Contract, specifies the contractual terms and conditions by which Contractor will provide Liability Defense Litigation Services as described in Attachment A, Scope of Work.
2. **Term of Contract:** This Contract shall commence upon approval by County and execution of all necessary signatures and continue for five years, through July 31, 2027, unless terminated by County.
3. **Renewal:** This Contract may be renewed by mutual written agreement of both Parties for a single, two (2) year term. Renewal periods may be subject to approval by County of Orange Board of Supervisors. County does not have to give any reason should it elect not to renew the Contract.
4. **Breach of Contract:** The failure of Contractor to comply with any of the provisions, covenants or conditions of this Contract, shall constitute a material breach of this Contract. In such event, County may, and in addition to any other remedies available at law, in equity, or otherwise specified in this Contract, do any of the following:
 - a. Afford Contractor written notice of the breach and ten (10) calendar days or such shorter time that may be specified in this Contract within which to cure the breach.
 - b. Discontinue payment to Contractor for and during the period in which Contractor is in breach and offset against any monies billed by Contractor but yet unpaid by County those monies disallowed pursuant to the breach.
 - c. Terminate the Contract for cause immediately without penalty pursuant to Paragraph K, Termination.
5. **California Public Records Act:** Contractor and County agree and acknowledge that all information and documents related to the award and performance of this Contract may be subject to disclosure pursuant to the California Public Records Act, California Government Code Section 6250 et seq. Contractor shall not respond to any California Public Records Act request directed at County; all responses shall be handled by County.
6. **Civil Rights:** Contractor attests that services provided shall be in accordance with the provisions of Title VI and Title VII of the Civil Rights Act of 1964, as amended; Section 504 of the Rehabilitation Act of 1973, as amended; the Age Discrimination Act of 1975, as amended; Title II of the Americans with Disabilities Act of 1990; and other applicable State and federal laws and regulations prohibiting discrimination on the basis of race, color, national origin, ethnic group identification, age, religion, marital status, sex or disability.
7. **Conflict of Interest:** The County of Orange Board of Supervisors policy prohibits its employees from engaging in activities involving a conflict of interest. Contractor shall not, during the period of this Contract, employ any County employee for any purpose.
8. **Conditions Affecting Work:** Contractor is responsible for taking all steps reasonably necessary to ascertain the nature and location of the work to be performed under this Contract and to know the general conditions which can affect the work or the cost thereof. Any failure by Contractor to do so will not relieve Contractor from responsibility for successfully performing the work without additional cost to County. County assumes no responsibility for any understanding or representations concerning the nature, location(s) or general conditions made by any of its officers or agents during or prior to the execution of this Contract, unless such understanding or representations by County are expressly stated in the Contract and the Contract expressly provides that County assumes the responsibility.
9. **Contingent Fees:** Contractor warrants that no person or selling agency has been employed or retained to solicit or secure this Contract upon an agreement or understanding for a commission,

percentage, brokerage, or contingent fee, except bona fide employees of Contractor or bona fide established commercial or selling agencies maintained by Contractor for the purpose of securing business.

For breach or violation of this warranty, County has the right to immediately terminate this Contract for cause in accordance with Paragraph K, Termination, and, at its sole discretion, to deduct from the Contract price or consideration, or otherwise recover, the full amount of such commission, percentage, brokerage, or contingent fee from Contractor.

10. **Contractor's Expense:** Contractor is responsible for all costs related to photo copying, telephone communications, fax communications, and parking while on County sites during the performance of work and services under this Contract. County will not provide free parking for any service in the County Civic Center.
11. **Contractor Personnel – Reference Checks:** Contractor warrants that all persons employed to provide service under this Contract have satisfactory past work records indicating their ability to adequately perform the work under this Contract. Contractor's employees assigned to this project must meet character standards as demonstrated by background investigation and reference checks, coordinated by the agency/department issuing this Contract.
12. **Contractor's Project Manager and Key Personnel:** Contractor shall appoint a Project Manager to direct Contractor's efforts in fulfilling Contractor's obligations under this Contract. This Project Manager shall be subject to approval by County and shall not be changed without the written consent of County's Project Manager, which consent shall not be unreasonably withheld. Contractor's Project Manager and key personnel shall be assigned for the duration of the Contract and shall diligently pursue all work and services to meet the project time lines.
13. **Contractor's Records:** Contractor shall keep true and accurate accounts, records, books and data which shall correctly reflect the business transacted by Contractor in accordance with generally accepted accounting principles. These records shall be stored in Orange County for a period of three (3) years after final payment is received from County. Storage of records in another county will require written consent from the County of Orange DPA.
14. **Contractor Personnel – Uniform/Badges/Identification:** All Contractor's employees must wear uniforms, badges, or other means of identification which are to be furnished by Contractor and must be worn at all times while working on County property. The assigned Deputy Purchasing Agent must be notified in writing, within seven (7) calendar days of notification of award of Contract of the uniform and/or badges and/or other identification to be worn by employees prior to beginning work and notified in writing seven (7) calendar days prior to any changes in this procedure.
15. **Contractor Work Hours and Safety Standards:** Contractor shall ensure compliance with all safety and hourly requirements for employees in accordance with federal, state and County safety regulations and laws.
16. **County of Orange Disabled Veteran Business Enterprise Preference Requirements:** Contractor certifies it is in compliance, and will remain in compliance, with County of Orange Disabled Veteran Business Enterprise Preference requirements at the time this Contract is executed.
17. **County of Orange Local Small Business Preference Requirements:** Contractor certifies it is in compliance, and will remain in compliance, with County of Orange Local Small Business Preference requirements at the time this Contract is executed.
18. **County's Project Manager:** County shall appoint a project manager to act as liaison between County and Contractor during the term of this Contract.

County's Project Manager has the right, in its sole discretion, to require the removal and replacement of Contractor's Project Manager and Contractor personnel from providing services to County under this Contract. County's Project Manager shall notify Contractor in writing of such action. Contractor shall accomplish the removal of Contractor's Project Manager and Contractor personnel within three (3) calendar days after written notice by County's Project Manager. County's Project Manager shall review and approve the appointment of the replacement for Contractor's Project Manager and Contractor personnel. Said approval shall not be unreasonably withheld. County is not required to provide any information, reason or rationale in the event it requires the removal of Contractor's Project Manager or Contractor personnel.

19. **Data – Title To:** All materials, documents, data, reports, information or other materials obtained from County data files or any County medium or furnished by or on behalf of County to Contractor in the performance of this Contract or created, generated or modified by County or by Contractor through the performance of this Contract, including all intellectual property rights in or pertaining to the same, ("County Data") shall be owned solely and exclusively by and will at all times remain the property of County. To the extent there is any uncertainty as to whether data constitutes County Data, the data in question shall be treated as County Data. Contractor acknowledges and agrees that, as between the Parties, County owns all right, title, and interest in, and all intellectual property rights in and to, all County Data. Within forty-eight (48) hours of County's request, Contractor shall provide County a copy of any County Data, reports and other documents or materials created by or obtained from County being stored by Contractor under this Contract. All County Data, including copies, must be promptly returned to County upon expiration or earlier termination of this Contract.
20. **Debarment:** Contractor certifies that neither Contractor nor its principles are presently debarred, proposed for debarment, declared ineligible or voluntarily excluded from participation in the transaction by any Federal department or agency. County has the right to terminate this Contract for cause pursuant to Paragraph K, Termination, if Contractor is or becomes the subject of any debarment or pending debarment, declared ineligible or any voluntary exclusion from participation by any state or federal department of agency.
21. **Default – Reprocurement Costs:** In case of Contract breach by Contractor, resulting in termination by County, County may procure the goods and/or services from other sources. If the cost for those goods and/or services is higher than under this Contract, Contractor will be responsible for paying County the difference between the Contract cost and the price paid, and County may deduct this cost from any unpaid balance due Contractor. The price paid by County shall be the prevailing market price at the time such purchase is made. This is in addition to any other remedies available under this Contract and under law.
22. **Drug-Free Workplace:** Contractor hereby certifies compliance with Government Code Section 8355 in matters relating to providing a drug-free workplace. Contractor must:
 - a. Publish a statement notifying employees that unlawful manufacture, distribution, dispensation, possession, or use of a controlled substance is prohibited and specifying actions to be taken against employees for violations, as required by Government Code Section 8355(a)(1).
 - b. Establish a drug-free awareness program as required by Government Code Section 8355(a)(2) to inform employees about all of the following:
 1. The dangers of drug abuse in the workplace;
 2. The organization's policy of maintaining a drug-free workplace;
 3. Any available counseling, rehabilitation and employee assistance programs; and
 4. Penalties that may be imposed upon employees for drug abuse violations.

- a. Provide as required by Government Code Section 8355(a)(3) that every employee who works under this Contract:
 - 1. Will receive a copy of the company's drug-free policy statement; and
 - 2. Will agree to abide by the terms of the company's statement as a condition of employment under this Contract.

Failure to comply with these requirements may result in suspension of payments under the Contract or termination of the Contract or both, and Contractor may be ineligible for award of any future County contracts if County determines that any of the following has occurred:

- b. Contractor has made false certification, or
- c. Contractor violates the certification by failing to carry out the requirements as noted above.

23. Disputes – Contract:

- a. The Parties shall deal in good faith and attempt to resolve potential disputes informally. If the dispute concerning a question of fact arising under the terms of this Contract is not disposed of in a reasonable period of time by Contractor's Project Manager and County's Project Manager, such matter shall be brought to the attention of the County Purchasing Agent by way of the following process:
 - 1. Contractor shall submit to the agency/department assigned DPA a written demand for a final decision regarding the disposition of any dispute between the Parties arising under, related to, or involving this Contract, unless County, on its own initiative, has already rendered such a final decision.
 - 2. Contractor's written demand shall be fully supported by factual information, and, if such demand involves a cost adjustment to the Contract, Contractor shall include with the demand a written statement signed by a senior official indicating that the demand is made in good faith, that the supporting data are accurate and complete, and that the amount requested accurately reflects the Contract adjustment for which Contractor believes County is liable.
- b. Pending the final resolution of any dispute arising under, related to, or involving this Contract, Contractor must diligently proceed with the provision of services under this Contract. Contractor's failure to diligently proceed shall be considered a material breach of this Contract.

Any final decision of County shall be expressly identified as such, shall be in writing, and shall be signed by the County Purchasing Agent or his designee. If County fails to render a decision within ninety (90) calendar days after receipt of Contractor's demand, it shall be deemed a final decision adverse to Contractor's contentions. Nothing in this paragraph shall be construed as affecting County's right to terminate the Contract for cause or for convenience as provided in Paragraph K, Termination.

- 24. Emergency/Declared Disaster Requirements:** In the event of an emergency or if Orange County is declared a disaster area by County, state or federal government, this Contract may be subjected to unusual usage. Contractor shall service County during such an emergency or declared disaster under the same terms and conditions that apply during non-emergency/disaster conditions. The pricing in Attachment B shall apply to serving County's needs regardless of the circumstances. If Contractor is unable to supply the goods/services under the terms of the Contract, then Contractor shall provide proof of such disruption and a copy of the invoice for the goods/services from Contractor's supplier(s). Additional profit margin as a result of supplying goods/services during an emergency or a declared disaster shall not be permitted. In the event of an emergency or declared disaster, emergency purchase order numbers will be assigned. All

applicable invoices from Contractor shall show both the emergency purchase order number and the Contract number.

25. **Equal Employment Opportunity:** Contractor shall comply with U.S. Executive Order 11246 entitled, "Equal Employment Opportunity", as amended by Executive Order 11375 and as supplemented in Department of Labor regulations (41 CFR, Part 60) and applicable state of California regulations as may now exist or be amended in the future. Contractor shall not discriminate against any employee or applicant for employment on the basis of race, color, national origin, ancestry, religion, sex, marital status, political affiliation or physical or mental condition.

Regarding handicapped persons, Contractor will not discriminate against any employee or applicant for employment because of physical or mental handicap in regard to any position for which the employee or applicant for employment is qualified. Contractor agrees to provide equal opportunity to handicapped persons in employment or in advancement in employment or otherwise treat qualified handicapped individuals without discrimination based upon their physical or mental handicaps in all employment practices such as the following: employment, upgrading, promotions, transfers, recruitments, advertising, layoffs, terminations, rate of pay or other forms of compensation, and selection for training, including apprenticeship. Contractor agrees to comply with the provisions of Sections 503 and 504 of the Rehabilitation Act of 1973, as amended, pertaining to prohibition of discrimination against qualified handicapped persons in all programs and/or activities as detailed in regulations signed by the Secretary of the Department of Health and Human Services effective June 3, 1977, and found in the Federal Register, Volume 42, No. 68 dated May 4, 1977, as may now exist or be amended in the future.

Regarding Americans with disabilities, Contractor agrees to comply with applicable provisions of Title 1 of the Americans with Disabilities Act enacted in 1990 as may now exist or be amended in the future.

26. **Errors and Omissions:** All reports, files and other documents prepared and submitted by Contractor shall be complete and shall be carefully checked by the professional(s) identified by Contractor as Project Manager, prior to submission to County. Contractor agrees that County review is discretionary, and Contractor shall not assume that County will discover errors and/or omissions. If County discovers any errors or omissions prior to approving Contractor's reports, files and other written documents, the reports, files or documents will be returned to Contractor for correction. Should County or others discover errors or omissions in the reports, files or other written documents submitted by Contractor after County approval thereof, County approval of Contractor's reports, files or documents shall not be used as a defense by Contractor in any action between County and Contractor, and the reports, files or documents will be returned to Contractor for correction.
27. **Gratuities:** Contractor warrants that no gratuities, in the form of entertainment, gifts or otherwise, were offered or given by Contractor or any agent or representative of Contractor to any officer or employee of County with a view toward securing the Contract or securing favorable treatment with respect to any determinations concerning the performance of the Contract. For breach or violation of this warranty, County has the right to terminate the Contract, either in whole or in part, and any loss or damage sustained by County in procuring on the open market any services which Contractor agreed to supply shall be borne and paid for by Contractor. The rights and remedies of County provided in this paragraph are not exclusive and are in addition to any other rights and remedies provided by law or under the Contract.
28. **Licenses and Standards:** Contractor and Contractor's staff must possess all licenses, permits, and accreditations required by the laws of the United States, the State of California, and all other governmental agencies, and such licenses must be current, and in good standing. It is the responsibility, at the expense of Contractor and Contractor's staff, to procure and maintain all required licenses, permits, and accreditations throughout the term of the Contract.

29. **Lobbying:** On best information and belief, Contractor certifies no federal appropriated funds have been paid or will be paid by, or on behalf of, Contractor to any person for influencing or attempting to influence an officer or employee of Congress; or an employee of a member of Congress in connection with the awarding of any federal contract, continuation, renewal, amendment, or modification of any federal contract, grant, loan, or cooperative agreement.
30. **News/Information Release:** Contractor shall not issue any news releases or make any contact with the media in connection with either the award of this Contract or any subsequent amendment of, or effort under this Contract. Contractors must first obtain review and written consent of said news media contact from County through County DPA. Any requests for interviews or information received by the media should be referred directly to County. Contractors are not authorized to serve as a media spokesperson for County projects without first obtaining permission from County.
31. **Notices:** Any and all notices, request, demands and other communications contemplated, called for, permitted, or required to be given hereunder shall be in writing, except through the course of the Parties' project managers' routine exchange of information and cooperation during the terms of the work and services. Any written communications shall be deemed to have been duly given upon actual in-person delivery, if delivery is by direct hand, or upon delivery on the actual day of receipt or no greater than four (4) calendar days after being mailed by US certified or registered mail, return receipt requested, postage prepaid, whichever occurs first. The date of mailing shall count as the first day. All communications shall be addressed to the appropriate party at the address stated herein or such other address as the Parties hereto may designate by written notice from time to time in the manner aforesaid.

Contractor: Woodruff, Spradlin & Smart
 Attn: Daniel K. Spradlin, Project Manager
 555 Anton Blvd., Ste 1200
 Costa Mesa, CA 92626
 Phone: (714) 558-7000
 Email: dspradlin@wss-law.com

County: County of Orange/County Executive Office
 County Procurement Office
 Attn: Sapreena Leoso, Deputy Purchasing Agent
 400 W Civic Center Drive, 5th Floor
 Santa Ana CA 92701
 Phone: (714) 567-7363
 Email: Sapreena.Leoso@ocgov.com

cc: County of Orange/County Executive Office
 Office of Risk Management
 Attn: Gary Stopforth, Project Manager/Coordinator
 400 W Civic Center Drive, 5th Floor
 Santa Ana CA 92701
 Phone: (714) 285-5515
 Email: Gary.Stopforth@ocgov.com

32. **Ownership of Documents:** County has permanent ownership of all directly connected and derivative materials produced under this Contract by Contractor. All documents, reports and other incidental or derivative work or materials furnished hereunder shall become and remain the sole property of County and may be used by County as it may require without additional cost to County. None of the documents, reports and other incidental or derivative work or furnished materials shall be used by Contractor without the express prior written consent of County.

33. **Precedence:** The Contract documents consist of this Contract and its attachments. In the event of a conflict between or among the Contract documents, the order of precedence shall be the provisions of the main body of this Contract, i.e., those provisions set forth in the recitals and articles of this Contract, and then the attachments.
34. **Promotional/Advertisement:** County owns all rights to the name, trademarks, logos and symbols of County. The use and/or reproduction of County's name, trademark, logo and/or symbol for any purpose, including commercial advertisement, promotional purposes, announcements, displays or press releases, without County's express prior written consent is expressly prohibited. No use or reproduction may state or imply that County endorses Contractor's products or services.
35. **Publication:** No copies of sketches, schedules, written documents, computer-based data, photographs, maps or graphs, including graphic artwork, resulting from performance or prepared in connection with this Contract, are to be released by Contractor and/or anyone acting under the supervision of Contractor to any person, partnership, company, corporation, or agency, without County's express prior written consent, except as necessary for the performance of the services of this Contract. All press contacts, including graphic display information to be published in newspapers, magazines, etc., are to be administered by County or only after County approval.
36. **Reports/Meetings:** Contractor shall develop reports and any other relevant documents necessary to complete the services and requirements as set forth in this Contract. County's Project Manager and Contractor's Project Manager shall meet on reasonable notice to discuss Contractor's performance and progress under this Contract. If requested, Contractor's Project Manager and other project personnel shall attend all meetings. Contractor shall provide such information that is requested by County for the purpose of monitoring progress under this Contract.
37. **Subcontracting:** No performance of this Contract or any portion thereof may be subcontracted by Contractor without the express written consent of County. Any attempt by Contractor to subcontract any performance of this Contract without the express written consent of County shall be invalid and shall constitute a breach of this Contract.

In the event that Contractor is authorized by County to subcontract, this Contract shall take precedence over the terms of the Contract between Contractor and subcontractor and shall incorporate by reference the terms of this Contract. County shall look to Contractor for performance and indemnification and not deal directly with any subcontractor. All work performed by a subcontractor must meet the approval of the County of Orange.

38. **Security Requirements:** Upon request by a County department, Contractor shall with the respect to all employees of Contractor performing services hereunder:
 - a. Perform background checks as to past employment history (Contractor may not rely on any background security clearance performed by County).
 - b. Inquire as to past criminal felony convictions.
 - c. Ascertain that those employees who are required to drive in the course of performing services hereunder have a valid California driver's license and no DUI convictions within two (2) years prior to commencement of services hereunder.
 - d. (Secure Facilities Only) Within three (3) business days from County's request, provide name of employee who will be assigned to perform services under this Contract at a Secured Facility to the corresponding department Project Manager so the department can conduct a background investigation of the assigned employee (if applicable). While clearance may be denied for many reasons based on information obtained in a background investigation, an omission of false statement made by the employee, regardless of the nature of magnitude of the omission or false statement, may also be ground for denying clearance.

39. **Termination – Orderly:** If County terminates this Contract, Contractor may submit to County a termination claim, if applicable, after receipt of the termination notice. Contractor's claim must be submitted promptly, but in no event later than sixty (60) calendar days from the effective date of the termination, unless one or more extensions in writing are granted by County upon written request of Contractor. County agrees to pay Contractor for all services satisfactorily performed prior to the effective date of the termination that meet the requirements of the Contract according to the compensation provisions contained in this Contract; provided, however, that such compensation combined with previously paid compensation must not exceed the total compensation set forth in this Contract. Upon termination or other expiration of this Contract, each party must promptly return to the other party all papers, materials, and other properties of the other held by each for purposes of execution and performance of this Contract and the transfer of all assets, tangible and intangible, as may be necessary for the orderly, non-disruptive business continuation of each Party.
40. **Usage:** No guarantee is given by County to Contractor regarding usage of this Contract. Usage figures, if provided, are approximate, based upon past usage. Contractor agrees to supply services requested, as needed by County, at rates/prices listed in the Contract, regardless of quantity requested.
41. **Usage Reports:** Contractor shall submit usage reports on an annual basis to the assigned Deputy Purchasing Agent of the County of Orange user agency/department. The usage report shall be in a format specified by the user agency/department and shall be submitted ninety (90) calendar days prior to the expiration date of the contract term, or any subsequent renewal term, if applicable.
42. **Waivers:** Failure of County in any one or more instances to insist upon strict performance of any of the terms of this Contract or to exercise any option contained herein shall not be construed as a waiver or relinquishment to any extent of the right to assert or rely upon any such terms or options on any future occasion.
43. **Professional Conflict of Interest:** Without limitation as to, or alteration of, obligations otherwise imposed on Contractor with respect to County under the Rules of Professional Conduct or under law, and in addition to such obligations, Contractor agrees to comply with the following portion of the Conflicts of Interest Policy adopted by the County's Board of Supervisors on September 24, 1985:

"It is the policy of the Orange County Board of Supervisors, on behalf of County and all other governmental entities of which it is the governing board, to prohibit the employment by any law firm adverse to County while simultaneously being employed by County, unless the Board is advised of, and gives specific consent to, such adverse employment."

"Any law firm which has been retained by County which desires employment which is or may be adverse to County shall transmit a statement of such desire to the County Counsel prior to undertaking such employment. The statement shall include a description of the employment and the reasons, if any, why County should consent. The County Counsel will forward the request to the Board of Supervisors with recommendation for action."

If the Board of Supervisors declines to consent to the employment, Contractor shall decline any such employment. The Board's authority to give consent of County is not delegated to any officer or employee of County.

County recognizes that this policy may exceed the limitations set forth in the California Rules of Professional Conduct of the State Bar of California. Where applicable, Contractor shall comply with such rules in securing necessary consent from their other clients.

44. **Confidentiality and Communication with County:** Contractor shall maintain the confidentiality of all information which it may acquire arising out of or connected with activities

under this Contract in accordance with all applicable Federal, State and County laws, regulations, ordinances and directives relating to confidentiality, including the Code of Professional Responsibility. Contractor shall inform all of its principals, employees and agents providing services hereunder of the confidentiality provisions of this Contract.

Contractor recognizes that its relationship with County and its agents and employees, officers and/or representatives is subject to the attorney-client privilege and that any information acquired during the term of this Contract from or through County is confidential and privileged. Contractor warrants that it shall not disclose or use in any manner whatsoever any of the information from County's officers, employees, and agents in connection with said relationships or proceedings. Contractor understands that CEO/Risk Management is the legally empowered legal representative of County and its officers and employees and Contractor shall not communicate with, advise or represent County officers or employees without specific direction from CEO/Risk Management. This provision shall not apply to communications between Contractor and Board of Supervisors members. These confidentiality obligations shall survive this Contract's termination or expiration.

45. **Contractor Personnel:** Contractor warrants that all Contractor personnel engaged in the performance of work under this Contract shall possess sufficient experience and/or education and the required licenses set forth herein in good standing to perform the services requested by County.

Contractor's Supervising Attorney shall have full authority to act for Contractor on all daily operational matters under this Contract and shall serve as or designate lead counsel ("Lead Counsel") for all activities performed under the scope of services described in Attachment A. Designation of Lead Counsel shall be subject to County's approval. Any change in Contractor's Supervising Attorney shall be first authorized in writing by County.

46. **Termination for County's Convenience:** Services performed under this Contract may be terminated in whole or in part at any time County or its Board of Supervisors deems termination of this Contract to be in County's best interests. County shall terminate services by delivering to Contractor a written Termination Notice specifying the extent to which services are terminated and the effective termination date. After receiving this Termination Notice and unless otherwise directed by County, Contractor shall:



- a. Take all necessary steps to stop services on the date and to the extent specified in the Termination Notice.
- b. Complete services not terminated by the Termination Notice.
- c. Complete and submit a written Closing Report within thirty (30) calendar days after the termination date, including a brief description of any outstanding legal issues or matters which are pending with Contractor (including a discussion of applicable law) a list and description of all scheduled meetings, court appearances or matters which Contractor was to attend and an assessment of the accomplishments of Contractor's engagement.
- d. Submit final billing for terminated services no later than sixty (60) calendar days from the effective termination date. If Contractor fails to submit a final billing within the time allowed, County may determine, on the basis of information available to it, the amount, if any, due to Contractor. After County makes a determination, it shall pay Contractor that amount. The determination made by County shall be final.
- e. Provide County with copies (electronic and hard copies) of all files and attorney work product for any matters in which Contractor was retained by County. This includes any computerized index, computer programs and document retrieval systems created or used for the matters. When instructed by County, Contractor shall file with the court the appropriate substitution of counsel.

SIGNATURE PAGE

IN WITNESS WHEREOF, the Parties hereto have executed this Contract on the dates shown opposite their respective signatures below.

WOODRUFF, SPRADLIN & SMART

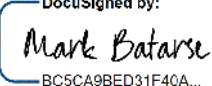
* If Contractor is a corporation, signatures of two (2) specific corporate officers are required as further set forth. The first corporate officer signature must be one of the following: 1) the Chairman of the Board, 2) the President or 3) any Vice President. The second corporate officer signature must be one of the following: 1) Secretary, 2) Assistant Secretary, 3) Chief Financial Officer or 4) Assistant Treasurer. The signature of one person alone is sufficient to bind a corporation, as long as he or she holds corporate offices in each of the two categories described above. For County purposes, proof of such dual office holding will be satisfied by having the individual sign the instrument twice, each time indicating his or her office that qualifies under the above described provision. In the alternative, a single corporate signature is acceptable when accompanied by a corporate resolution demonstrating the legal authority of the signator to bind the corporation.

Patrick Desmond	President
Print Name	Title
	7-6-22
Signature	Date
Barbara Raileanu	Secretary
Print Name	Title
	7/6/22
Signature	Date

COUNTY OF ORANGE A political subdivision of the State of California

Print Name	Title
Signature	Date

APPROVED AS TO FORM, Office of the County Counsel, County of Orange, California

Mark Batarse	Senior Deputy County Counsel
Print Name	Title
	7/12/2022
BCSCA9BED31F40A...	Date

ATTACHMENT A SCOPE OF WORK

I. INTRODUCTION AND BACKGROUND

The County of Orange (County) is comprised of 22 Departments and has approximately 17,500 employees located throughout the County. County's core businesses are public safety, public health, environmental protection, regional planning, public assistance, social services and aviation. The Office of Risk Management (Risk) preserves and protects the human and capital assets of the County and acts as the "insurance company" for the County.

County owns, operates and maintains approximately 3,500 vehicles, an airport, two (2) harbors, numerous buildings, parks, beaches, libraries, landfills, underground fuel storage tanks, a museum, a zoo and five (5) jail facilities.

County provides a full range of services including police protection, detention and correction, public assistance, health and sanitation, recreation, library services, flood control, waste management, airport management and general financial and administrative support. County does not provide fire or utility service to the community.

Commercial insurance is purchased for County property and for specialized liability exposures such as airport, helicopter, watercraft, business interruption, crime bonds and notary bonds. All other exposures, including general liability and auto liability, are self-insured up to \$5 million before purchased excess liability policies take over.

County has maintained a formal risk program since 1974. Functions include risk identification, measurement, avoidance, loss prevention and mitigation programs, liability transfer (by contract and commercial insurance), risk retention management of claims and litigation.

Risk, which is responsible for review and resolution of liability claims made against County, has an in-house claims staff of four individuals who oversee all of the claims and direct the litigation that arises from those claims. County receives approximately 600-700 claims and 80-90 new lawsuits per fiscal year. Risk established the Defense Liability Panel to provide expert legal defense of County and its employees when a claim cannot be resolved without litigation. Cases to be litigated are assigned to panel members depending on areas of expertise.

II. DEFINITIONS

- A. **General Torts:** Trip/falls, dangerous conditions, auto liability, property damages, etc.
- B. **Employment:** A lawsuit wherein a member of the staff sues their employer due to an issue that arises as a result of work or work-based activities.
- C. **Civil Rights:** An enforceable right or privilege, which inferred with by another gives rise to an action for injury. Focuses on cases involving issues such as, but not limited to, equality, human rights, social freedom, and/or discrimination. For County exposure, generally Civil Rights violations alleged in the process of "Child removal, use of force, Prosecution, Probation violations, Custodial Medical Services, Incarceration violations, Bane Act/State Civil Rights" and may be discussed with Claims Management.
- D. **Environmental:** Any claims, actions, suits, proceedings, or investigations related to Environmental Matters with respect to the ownership, use, condition, or operation of the Projects in any court or before or by any Federal, State, or other Governmental Agency or private arbitration tribunal.
- E. **Flood:** Overflow in a normal dry area that is temporary. It can be water or mud and it may be caused by overflow of water, buildup, runoff, erosion on a shoreline.

- F. **Litigation:** The action between opposing parties working in the interest of enforcing or defending a legal right. Litigation involves bringing forth and pursuing a lawsuit, not just the lawsuit itself.
- G. **Local Office:** Contractor's nearest office to Orange County Civic Area or zip code 92705, which is located inside Orange County.
- H. **Branch Offices:** Contractor's other office locations located outside Orange County, such as any other neighboring cities, counties, states.
- I. **Major Torts:** Exposures of damages or media attention arising from any litigation County may face.
- J. **Auto Liability:** Third party property damage or bodily injury caused by fleet or contractual vehicle operated by employee in course and scope of employment. County self-insures auto liability.

III. CONTRACTOR REQUIREMENTS

- A. Contractor must have the capability to perform and complete the services in all respects of the Scope of Work and have all applicable licenses, permits and certifications required in accordance with all Federal and State laws, statutes, ordinances, policies/procedures throughout the contract term.
- B. Contractor partners, senior associates and associates must have all applicable law degrees, must be licensed to practice law in the State of California, and must be in good standing and in accordance by Federal and State laws and statutes throughout the contract term. Contractor also must have assigned to this Contract partners, senior associates and/or associates admitted to the Ninth Circuit and admitted to the Northern, Central, Southern and Eastern Districts of California.
- C. Contractor must have, at minimum, five (5) years of business experience as an established law firm in General Tort Defense.
- D. Contractor must have various levels of attorney services working on any assigned County project. Refer to Section V-H. below for required experience levels.
- E. Contractor's personnel shall be available 24/7 throughout the Contract term.
- F. Contractor's personnel agree and must comply with all Health Insurance Portability and Accountability Act of 1006 (HIPPA) regulations.
- G. Contractor's personnel agree and must comply with County Media Contact Protocols, determined only by County. Refer to Section V-K. below.
- H. Contractor's personnel agree and must comply with County Conflict of Interest regulations, determined by County. Refer to Section V.I. below.
- I. Contractor agrees that County, Risk (or County Authorized Personnel) has the final decision on who the trial attorney will be on a case on behalf of County.
- J. Contractor accepts the compensation set forth in Attachment B – Pricing and Compensation, as full compensation for services rendered.
- K. Contractor's assigned Trial Counsel(s) must have all the following requirements (any exceptions must be approved by the claims manager) throughout the Contract term:
 - 1. Must be licensed to practice law in the State of California and admitted to practice in Federal Court.
 - 2. Must possess expertise and skills in the areas of Advisory, Negotiations, Investigation, Arbitration and Litigations Services.

3. Should have at least eight (8) years of governmental entity defense experience. (County's preference)
4. Must have at least eight (8) years of specialization in one or more of the service areas or areas in which assigned Trial Counsel is providing services.
5. Should be an American Board of Trial Advocates (ABOTA) member in good standing or have tried at least fifteen (15) Superior Court jury trials to verdict, this does not apply to firms that handle non-jurisdiction cases. (County's preference).

IV. CONTRACTOR RESPONSIBILITIES

- A. Contractor's responsibilities shall be to assist Risk staff in defending litigating claims against County and its employees.
- B. As needed, Risk staff may engage members of Contractor's Liability Defense Team in one or more of these categories on a case-by-case basis in the defense of formal complaints or claims against County which may require, but may not be limited to, performing the following services on behalf of County:
 1. Evaluating claims and/or formal complaints filed against County; determining County's potential liability; recommending appropriate course of action; and participating in or initiating litigation processes as required or necessary.
 2. Providing advisory, negotiation, research, investigation and arbitration services, as well as attendance at and participation in court ordered settlement conferences and arbitration proceedings if and when requested by County; attending and participating in closed session hearings with County's Board of Supervisors as needed.
 3. Providing County with the necessary representation by staff qualified to perform the legal tasks at the least costly billing category as is acceptable to Risk.
 4. Providing all legal services requested by Risk within or reasonably related to the description of the Scope of Services.
 5. Meeting with County representatives as requested by Risk.
 6. Obtaining written approval from Risk before retaining any consultant or expert witness to assist with any individual matter assigned to Contractor.
 7. Obtaining the approval of Risk prior to undertaking legal research of more than twelve (12) hours on any issue.
 8. Obtaining prior approval from Risk for travel outside the Counties of Orange, Los Angeles, Riverside, Imperial, Kern, San Bernardino, Ventura, Santa Barbara or San Diego.
 9. Consulting with Risk or Project Manager on strategic and tactical decisions.
 10. If applicable, assisting County in settlement evaluations and negotiations, and obtain County's authority before making any settlement proposal on County's behalf or to the Court or to any other party to a case or matter.
 11. If applicable, providing County more specific scope of work, as requested by County, depending on the type, category and complexity of individual case assignments.
 12. Occasionally, Contractor may be required to provide training or an overview on lessons learned on specific results of trial cases, or how to improve a legal process on a subject as deemed necessary by County and agreed upon by

Contractor in writing. All training sessions, subjects and schedules shall be coordinated with County Project Manager.

13. Contractor may offer a paperless distribution of pleadings, discovery, and all case related communications. This facilitates a secure accessibility of documents and ability to remotely retrieve documents by assigned personnel to each case from anywhere.
14. Contractor has the ability to conduct most, if not all, court hearings, depositions and mediations via remote video conferencing. However, Contractor and County shall agree upon which hearings may be conducted online or in person, depending on each case.
15. Once the strategy is developed, Contractor will meet with County to collaborate and further develop the strategy, goals, and approach to case resolution. Meetings shall take place regularly, in person, by telephone and via emails, to ensure open communication and transparency.
16. Contractor personnel shall respond to all County inquiries within 24-hours and where a substantive response cannot be provided, an acknowledgment of the communication and time frame for a substantive response will be provided.
17. Contractor will maintain the highest standards, ethics and confidentiality levels to protect the confidences of the County and its employees at all times and refraining from public comment.

V. LIABILITY CLAIMS MANAGEMENT LITIGATION PROTOCOL

A. OVERVIEW:

The County, Risk Liability/Property Claims Management Division is interested in reinforcing the case handling requirements of the County that are applicable in the handling of its Third-Party Liability Cases. Toward that end, Risk asks that all our defense firms review the following County litigation protocols for file handling and reporting. Each attorney performing services for the Liability/Property Claims Management Division shall be familiar with the protocols below and agrees to comply with the provisions therein.

B. INITIAL FILE REFERRAL

1. Litigation is assigned to defense firms by County Claims Management at CEO/Risk.
2. Acknowledgement of receipt of the matter is to be completed and returned to CEO/Risk within three (3) business days of the defense firm's receipt of the case. Acknowledgement may be returned via either U.S. mail or email.

C. INITIAL REPORTING REQUIREMENTS

1. Initial case review and evaluation report is to be received by CEO/Risk within 30-45 days after assignment to defense firm. If additional time is needed to adequately evaluate the case and prepare the initial evaluation, defense firm will provide notice of that delay either via phone call or email message to the handling individual so the file may be documented.
2. The initial report shall include, but not be limited to:
 - a. Analysis of the facts of the case and the issues raised in the complaint as it is currently pled, potential exposure, etc.
 - b. Recommendations for responsiveness pleadings to be filed (i.e. an

answer, demurrer, motion to strike, etc.)

- c. Additional information that may be sought to adequately defend County including further documentation, interviews with employees, etc.
- d. Overall estimate of time frame it is anticipated may be applicable to the case at issue. (i.e. state court action, it is subject to the provisions of Fast Track, etc.)
- e. Tentative legal budget for representation costs based on facts available at the time of assignment.

D. ONGOING REPORTING REQUIREMENTS

1. While a case is pending, CEO/Risk expects to receive status reports from assigned defense firm concerning all case developments. Specifically, the following guidelines are expected to be met:
 - a. **Motions:** Handling adjuster shall be placed on notice of hearing date(s). Report on the outcome of the *hearing shall be generated no later than three (3) business days after judge's decision.
 - b. If the hearing results in the judge directing County to provide discovery or any other action that is time sensitive, defense counsel shall provide telephonic notice of the judge's order/decision immediately after the conclusion of the hearing.
 - c. **Case Management and/or Trial Setting Conferences:** Report shall be received no later than three (3) business days after the hearing. Defense firm shall provide written notice of dates, times and locations for all mandatory settlement conferences and trials.
 - d. **Automatic Status Reports:** CEO/Risk does not require automatic status reports on its cases. CEO/Risk expects defense counsel to report ongoing developments (re-hashing old reports in order to generate a monthly or quarterly report is of no value). If the handling adjuster requests a status report, defense firm shall endeavor to provide same by the date requested or within seven (7) business days of receiving request.
 - e. **Pre-Trial Report:** CEO/Risk does require a Pre-Trial report no later than 30 days prior to the trial date on a matter. If the trial is continued or delayed for any reason, the Pre-Trial report shall be updated and re-submitted no later than 60 days prior to the subsequently assigned trial date.
 - f. **Daily Trial Report:** CEO/Risk also requires a daily written trial report from counsel during the course of a trial giving enough detail to inform CEO and Board of Supervisors. This report most commonly is done by email. Contact via a telephone call with the handling adjuster after trial on any big issues. It can also be done via an in-depth email. At the conclusion of a trial, the handling attorney shall submit a summary trial report, including the outcome of the trial and any recommendations concerning filing an appeal, etc.

E. DISCOVERY REQUESTS PROPOUNDED BY COUNTY

1. It is expected the majority of discovery recommendations will be included in the initial evaluation report provided to CEO/Risk. Upon receipt of that report, adjuster will contact defense firm to discuss discovery to be undertaken

including filing of motions to narrow the issues, obtaining medical and other records, scheduling of depositions, etc. Agreement will be reached concerning the initial discovery to be conducted with the understanding that subsequent case developments may necessitate additional discovery on other issues.

- a. For all Depositions: Regardless of which Party sets a deposition, the summary of the deposition shall be provided no later than 30 days after the deposition takes place. Delays in providing summaries shall be discussed with the handling adjuster at CEO/Risk and an interim report may be provided if needed.
- b. Discovery Responses: Summaries of all discovery responses received from other parties shall be provided to CEO/Risk no later than 30 days from receipt of same by defense firm.
- c. Contractor shall have the availability to conduct court hearings, depositions and mediations via remote video conferencing. However, Contractor and County shall agree upon which hearings may be conducted online or in person, depending on each case. County Project Manager must approve this process for each case in writing.

F. DISCOVERY REQUESTS PROPOUNDED TO COUNTY

1. Upon receipt of discovery requests propounded to County by opposing counsel, defense firm shall conduct a review of same and forward the requests to CEO/Risk with an initial list of items, etc. that may be required in order to prepare County's responses to same. The discovery requests shall be received by County no later than two (2) business days after the defense firm initially receives the requests.
2. After sending the requests to County, Defense counsel shall prepare proposed responses based upon the information previously provided to the defense firm and submit those proposed responses and any additional requests for items or information from County to the handling adjuster no less than ten (10) days prior to the time the responses are due. If necessary, defense counsel is charge with obtaining extensions of time to provide adequate time for County to respond. A 30-day extension of time normally what County will require in order to obtain additional documentation, etc.

G. SETTLEMENT DISCUSSIONS

1. It is expected that defense counsel will identify areas of concern in the initial case evaluation. However, during the course of discovery, it may be revealed that a case is or has the potential of becoming one involving adverse liability. As soon as counsel becomes aware of same, it is anticipated the handling adjuster will be consulted concerning potential early resolution of the case.
2. Defense counsel shall advise handling adjuster re: all discussions concerning resolution of case. Counsel shall direct all requests for mediation, settlement conferences, etc. to the handling adjuster. Counsel shall not engage in settlement discussions with opposing counsel unless specifically authorized to do so by County.
3. All offers or demands for settlement received by defense counsel shall be reported to CEO/Risk prior to a response being provided to opposing counsel.

H. EXPERIENCE LEVELS OF LAW FIRM STAFF

1. County requires the following experience levels for each category identified in the approved fee schedule:
 - a. Partner - Partner in the firm
 - b. Senior Associate - Eight (8) years practicing law with at least 5-years in governmental tort
 - c. Associate - Law school graduate licensed to practice law in California
 - d. Paralegal - Five 5-years as a paralegal (Certified). Juris Doctor or passing the bar accepted.
 - e. Law Clerk - Enrolled in law school or recently graduated.
 - f. Law Assistant - Conducts research, drafts pleadings, etc. (Not a secretary/clerical staff).

I. CONFLICT OF INTEREST

It is the policy of the County to prohibit the employment of any law firm pursuing matters adverse to the interests of the County, while simultaneously being employed by County unless the Board of Supervisors is advised of, and gives specific consent to, such adverse employment. If the Board of Supervisors declines to consent to that employment, the law firm shall decline any such employment or shall no longer represent the County.

J. BUSINESS ASSOCIATE OF COUNTY

Due to the nature of the litigation being handled by our defense firms, it has been deemed that defense counsel are a "Business Associate of County" in regard to compliance with the terms and conditions of the Health Portability and Accountability Act of 1996 (HIPPA).

K. MEDIA CONTACT PROTOCOLS

All defense counsel is aware of County's Media policy which was reaffirmed via letter directed to all firms on May 6, 2009. It states that counsel is not to comment on cases when contacted by the press. If counsel is contacted by the press, notification is to be made to CEO/Risk as soon as practical but no later than within 24-hours of the contact. If counsel believes a member of the press is attending a trial, notice should be given to CEO/Risk. If testimony during an ongoing trial radically changes the tenor of the case or appears to adversely impact the jury, counsel shall notify the handling adjuster as soon as possible.

ATTACHMENT B
PRICING AND COMPENSATION

I. COMPENSATION: This is a fixed fee Contract between County and Contractor for Liability Defense Litigation Services as provided in Attachment A, Scope of Work.

Contractor agrees to accept the specified compensation as set forth in this Contract as full remuneration for performing all services and furnishing all staffing, labor, tax, shipping, freight, insurance requirements required, for any reasonably unforeseen difficulties which may arise or be encountered in the execution of the services until acceptance, for risks connected with the services, and for performance by Contractor of all its duties and obligations hereunder. Contractor shall only be compensated as set forth herein below for work performed in accordance with the Scope of Work. County has no obligation to pay any sum in excess of total Contract amount specified unless authorized by an amendment in accordance with Paragraph "C" – Amendments and "P" – Changes of County's General Terms and Conditions.

II. PRICING: Hours shall be billed based on actual time spent on each project, not on a portal-to-portal basis. The following tables set forth the hourly billing rates for Liability Defense Litigation Services under this Contract, which were authorized by County's Board of Services.

A. GENERAL TORT LITIGATION FEES

LINE #	SERVICE LEVEL CATEGORY	HOURLY RATE
1	PARTNERS	\$215
2	SENIOR ASSOCIATES	\$185
3	ASSOCIATES	\$160
4	PARALEGALS	\$105
5	LAW CLERKS	\$100
6	LEGAL ASSISTANTS	\$95

B. CIVIL RIGHTS LITIGATION FEES

LINE #	SERVICE LEVEL CATEGORY	HOURLY RATE
1	PARTNERS	\$245
2	SENIOR ASSOCIATES	\$215
3	ASSOCIATES	\$190
4	PARALEGALS	\$115
5	LAW CLERKS	\$110
6	LEGAL ASSISTANTS	\$105

C. EMPLOYMENT FEES

LINE #	SERVICE LEVEL CATEGORY	HOURLY RATE
1	PARTNERS	\$240
2	SENIOR ASSOCIATES	\$215
3	ASSOCIATES	\$190
4	PARALEGALS	\$115
5	LAW CLERKS	\$110
6	LEGAL ASSISTANTS	\$105

D. ENVIRONMENTAL LITIGATION FEES

LINE #	SERVICE LEVEL CATEGORY	HOURLY RATE
1	PARTNERS	\$250
2	SENIOR ASSOCIATES	\$215
3	ASSOCIATES	\$190
4	PARALEGALS	\$115
5	LAW CLERKS	\$110
6	LEGAL ASSISTANTS	\$95

E. FLOOD LITIGATION AND SUBSIDENCE LITIGATION FEES

LINE #	SERVICE LEVEL CATEGORY	HOURLY RATE
1	PARTNERS	\$240
2	SENIOR ASSOCIATES	\$215
3	ASSOCIATES	\$190
4	PARALEGALS	\$115
5	LAW CLERKS	\$110
6	LEGAL ASSISTANTS	\$105

F. ADDITIONAL AND/OR OTHER REIMBURSABLES

LINE #	INTERNAL COST ITEMS/SERVICES	FEES
1	PHOTOCOPIES Photocopies in excess of 50 pages at one time so long as those copies are required for discovery responses and not for the convenience of the firm. Department to verify.	\$0.10 PER PAGE
2	MILEAGE Mileage if travel is required in excess of 75 miles one way. Reimbursement shall be at current IRS rate.	PER IRS RATE
3	PARKING Parking charges if accompanied by appropriate receipts.	PER RECEIPT
4	EXCESS POSTAGE Only when excess postage is determined and agreed upon by all Parties.	PER RECEIPT
5	OTHERS Any other fee may be authorized and shall be reviewed and approved by the Risk Office as necessary.	PER BILL AND/OR RECEIPTS

III. BILLING PROTOCOLS

A. Billing procedures:

1. Each firm shall bill the County for legal services on a monthly basis as follows:
 - i. On a per case basis
 - ii. In 1/10th hour increments
 - iii. Include a detailed work description and the name and position of the person who did the work for each entry. Staff members shall only be billed in one of the categories shown on the approved rate schedule included in this Attachment B.

- iv. Include a total summary of hours by attorney and/or staff person
 - v. Include a final total of all hours worked by all staff
 - vi. Include a separate section for costs and advances
 - vii. Include receipts, invoices or cancelled checks for all costs advanced
 - viii. Include a total amount due
2. At the bottom of the invoice, each bill shall include a summary of the time and fees for each person who has worked on the file and shall identify whether the individual is a partner, senior associate, etc.
- NOTE:** The County does not provide payment for time spent for meetings between the various attorneys in your office to discuss cases. County also pays for only one attorney to review a document received from opposing counsel or the court.
3. County will not pay for ordinary costs of conducting business. The following items shall not be reimbursed: Rent, utilities, document preparation, word processing, support staff, ordinary postage, incoming and outgoing facsimiles, in-house courier, local telephone charges, routine in office photocopying, office supplies, internet accounts, email accounts, and local area travel and meal expenses.
4. Invoices for services rendered by outside vendors(not Contractor), such as photocopy services, court reporters, trial exhibits preparation services, expert witnesses and the like shall be paid directly by Contractor and included on the following month's invoice for legal services as a cost advanced or disbursement entry. The following exceptions apply:
- i. If the outside Vendor's charges are in excess of \$1,500, the invoice may be submitted directly to County for payment or Contractor may elect to issue payment directly to the vendor. County prefers Vendor's charges up to \$5,000 be paid by Contractor and submitted on monthly billing. Auditor Controller may take weeks to process these.
 - ii. In the event a Vendor's charges are to be submitted directly to County for payment, Contractor shall ensure that a current properly completed W-9 accompanies said invoice and shall submit both items with a cover letter directed to County approving said charges.
5. County requires competitive outside photocopying Vendors fees. All outside Vendor charges for photocopying shall be paid at County approved rates as determined by County Liability Claims Management.
6. County claims management will review and provide prior approval for properly itemized expenditure reimbursements to be incurred in the defense of litigation for the following: Court fees, phone charges, out of area travel expenses and all Westlaw and/or Lexis Nexis online charges for case research.

IV. INVOICE INSTRUCTIONS

Contractor must provide an invoice on Contractor's letterhead for services rendered. Each invoice must have a unique number and must include at minimum, but not limited to, the following information:

- A. Contractor's name and address;
- B. Contractor's remittance address if different from above;
- C. Name of County Department/contact person;
- D. Contract number must be referenced on all invoices;

- E. Service date(s) – Month of Service;
- F. Service description, including job classifications and hourly rates;
- G. Contractor's Tax Identification Number (TIN) or Employer's Identification Number (EIN);
- H. Total dollar amount of invoice

The responsibility for providing an acceptable invoice to County for payment rests with Contractor. Incomplete or incorrect invoices are not acceptable and will be returned to Contractor for correction. County's Project Manager, or designee, is responsible for approval of invoices and subsequent submittal of invoices to the Auditor-Controller for processing of payment.

Invoices shall be submitted to the County of Orange/Office of Risk Management for approval. The invoices should be directed to the attention of the individual within Risk who is overseeing the case. Invoices missing the required information or back up documentation shall be returned to Contractor for revision. Please send invoices to:

County of Orange
CEO/Office of Risk Management
Attn: Gary Stopforth, Program Manager/Coordinator
601 N. Ross Street, 5th Floor
Santa Ana, CA 92701

V. PAYMENT TERMS

Payment will be made after receipt of an invoice in a format acceptable to the County and verified and approved by the department and subject to routine processing requirements.

Billing shall cover services not previously invoiced. Contractor must reimburse the County for any monies paid to Contractor for services not provided or when services do not meet the Contract requirements.

Payments made by County shall not preclude the right of County from thereafter disputing any items or services involved or billed under this Contract and shall not be constructed as acceptance of any part of the services.

VI. ELECTRONIC FUNDS TRANSFER (EFT)

The County offers Contractors the option of receiving payment directly to their bank account via an Electronic Fund Transfer (EFT) process in lieu of a check payment. Payment made via EFT will also receive an Electronic Remittance Advice with the payment details via e-mail. An email address will need to be provided to the County via an EFT Authorization Form, contact the DPA to request a form.

**ATTACHMENT C
BUSINESS ASSOCIATE CONTRACT**

A. GENERAL PROVISIONS AND RECITALS:

1. The Parties agree that the terms used, but not otherwise defined below in Paragraph B, shall have the same meaning given to such terms under the Health Insurance Portability and Accountability Act of 1996, Public Law 104-191 ("HIPAA"), the Health Information Technology for Economic and Clinical Health Act, Public Law 111-005 ("the HITECH Act"), and regulations promulgated thereunder by the U.S. Department of Health and Human Services (DHHS) ("the HIPAA regulations") (45 CFR Parts 160, 162 and 164) as they may exist now or be hereafter amended.
2. The Parties agree that a business associate relationship under HIPAA, the HITECH Act, and the HIPAA regulations between the Contractor and County arises to the extent that Contractor performs, or delegates to subcontractors to perform, functions or activities on behalf of County pursuant to, and as set forth in, the Contract that are described in the definition of "Business Associate" in 45 CFR § 160.103.
3. The County wishes to disclose to Contractor certain information pursuant to the terms of the Contract, some of which may constitute Protected Health Information ("PHI"), as defined below in Subparagraph B.10, to be used or disclosed in the course of providing services and activities pursuant to, and as set forth, in the Contract.
4. The Parties intend to protect the privacy and provide for the security of PHI that may be created, received, maintained, transmitted, used, or disclosed pursuant to the Contract in compliance with the applicable standards, implementation specifications, and requirements of HIPAA, the HITECH Act, and the HIPAA regulations as they may exist now or be hereafter amended.
5. The Parties understand and acknowledge that HIPAA, the HITECH Act, and the HIPAA regulations do not pre-empt any state statutes, rules, or regulations that are not otherwise pre-empted by other Federal law(s) and impose more stringent requirements with respect to privacy of PHI.
6. The Parties understand that the HIPAA Privacy and Security rules, as defined below in Subparagraphs B.9 and B.14, apply to the Contractor in the same manner as they apply to a covered entity (County). Contractor agrees therefore to be in compliance at all times with the terms of this Business Associate Contract and the applicable standards, implementation specifications, and requirements of the Privacy and the Security rules, as they may exist now or be hereafter amended, with respect to PHI and electronic PHI created, received, maintained, transmitted, used, or disclosed pursuant to the Contract.

B. DEFINITIONS:

1. "Administrative Safeguards" are administrative actions, and policies and procedures, to manage the selection, development, implementation, and maintenance of security measures to protect electronic PHI and to manage the conduct of Contractor's workforce in relation to the protection of that information.
2. "Breach" means the acquisition, access, use, or disclosure of PHI in a manner not permitted under the HIPAA Privacy Rule which compromises the security or privacy of the PHI.
 - a. Breach excludes:
 - i. Any unintentional acquisition, access, or use of PHI by a workforce member or person acting under the authority of Contractor or County, if such acquisition, access, or use was made in good faith and within the scope of authority and does not result in further use or disclosure in a manner not permitted under the

Privacy Rule.

- ii. Any inadvertent disclosure by a person who is authorized to access PHI at Contractor to another person authorized to access PHI at the Contractor, or organized health care arrangement in which County participates, and the information received as a result of such disclosure is not further used or disclosed in a manner not permitted under the HIPAA Privacy Rule.
 - iii. A disclosure of PHI where Contractor or County has a good faith belief that an unauthorized person to whom the disclosure was made would not reasonably have been able to retain such information.
- b. Except as provided in paragraph (a) of this definition, an acquisition, access, use, or disclosure of PHI in a manner not permitted under the HIPAA Privacy Rule is presumed to be a breach unless Contractor demonstrates that there is a low probability that the PHI has been compromised based on a risk assessment of at least the following factors:
 - i. The nature and extent of the PHI involved, including the types of identifiers and the likelihood of re-identification;
 - ii. The unauthorized person who used the PHI or to whom the disclosure was made;
 - iii. Whether the PHI was actually acquired or viewed; and
 - iv. The extent to which the risk to the PHI has been mitigated.
- 3. "Data Aggregation" shall have the meaning given to such term under the HIPAA Privacy Rule in 45 CFR § 164.501.
- 4. "Designated Record Set" shall have the meaning given to such term under the HIPAA Privacy Rule in 45 CFR § 164.501.
- 5. "Disclosure" shall have the meaning given to such term under the HIPAA regulations in 45 CFR § 160.103.
- 6. "Health Care Operations" shall have the meaning given to such term under the HIPAA Privacy Rule in 45 CFR § 164.501.
- 7. "Individual" shall have the meaning given to such term under the HIPAA Privacy Rule in 45 CFR § 160.103 and shall include a person who qualifies as a personal representative in accordance with 45 CFR § 164.502(g).
- 8. "Physical Safeguards" are physical measures, policies, and procedures to protect CONTRACTOR's electronic information systems and related buildings and equipment, from natural and environmental hazards, and unauthorized intrusion.
- 9. "The HIPAA Privacy Rule" shall mean the Standards for Privacy of Individually Identifiable Health Information at 45 CFR Part 160 and Part 164, Subparts A and E.
- 10. "Protected Health Information" or "PHI" shall have the meaning given to such term under the HIPAA regulations in 45 CFR § 160.103.
- 11. "Required by Law" shall have the meaning given to such term under the HIPAA Privacy Rule in 45 CFR § 164.103.
- 12. "Secretary" shall mean the Secretary of the Department of Health and Human Services or his or her designee.
- 13. "Security Incident" means attempted or successful unauthorized access, use, disclosure, modification, or destruction of information or interference with system operations in an information system. "Security incident" does not include trivial incidents that occur on a

daily basis, such as scans, “pings”, or unsuccessful attempts to penetrate computer networks or servers maintained by Contractor.

14. “The HIPAA Security Rule” shall mean the Security Standards for the Protection of electronic PHI at 45 CFR Part 160, Part 162, and Part 164, Subparts A and C.
15. “Subcontractor” shall have the meaning given to such term under the HIPAA regulations in 45 CFR § 160.103.
16. “Technical safeguards” means the technology and the policy and procedures for its use that protect electronic PHI and control access to it.
17. “Unsecured PHI” or “PHI that is unsecured” means PHI that is not rendered unusable, unreadable, or indecipherable to unauthorized individuals through the use of a technology or methodology specified by the Secretary of Health and Human Services in the guidance issued on the HHS Web site –

<http://www.hhs.gov/hipaa/for-professionals/breach-notification/guidance/index.html>.
18. “Use” shall have the meaning given to such term under the HIPAA regulations in 45 CFR § 160.103.

C. OBLIGATIONS AND ACTIVITIES OF CONTRACTOR AS BUSINESS ASSOCIATE:

1. Contractor agrees not to use or further disclose PHI County discloses to Contractor other than as permitted or required by this Business Associate Contract or as required by law.
2. Contractor agrees to use appropriate safeguards, as provided for in this Business Associate Contract and the Contract, to prevent use or disclosure of PHI County discloses to Contractor or Contractor creates, receives, maintains, or transmits on behalf of County other than as provided for by this Business Associate Contract.
3. Contractor agrees to comply with the HIPAA Security Rule at Subpart C of 45 CFR Part 164 with respect to electronic PHI County discloses to Contractor or Contractor creates, receives, maintains, or transmits on behalf of County.
4. Contractor agrees to mitigate, to the extent practicable, any harmful effect that is known to Contractor of a Use or Disclosure of PHI by Contractor in violation of the requirements of this Business Associate Contract.
5. Contractor agrees to report to County immediately any Use or Disclosure of PHI not provided for by this Business Associate Contract of which Contractor becomes aware. Contractor must report Breaches of Unsecured PHI in accordance with Paragraph E below and as required by 45 CFR § 164.410.
6. Contractor agrees to ensure that any Subcontractors that create, receive, maintain, or transmit PHI on behalf of Contractor agree to the same restrictions and conditions that apply through this Business Associate Contract to Contractor with respect to such information.
7. Contractor agrees to provide access, within fifteen (15) calendar days of receipt of a written request by County, to PHI in a Designated Record Set, to County or, as directed by County, to an Individual in order to meet the requirements under 45 CFR § 164.524.
8. Contractor agrees to make any amendment(s) to PHI in a Designated Record Set that County directs or agrees to pursuant to 45 CFR § 164.526 at the request of County or an Individual, within thirty (30) calendar days of receipt of said request by County. Contractor agrees to notify County in writing no later than ten (10) calendar days after said amendment is completed.
9. Contractor agrees to make internal practices, books, and records, including policies and procedures, relating to the use and disclosure of PHI received from, or created or received by Contractor on behalf of, County available to County and the Secretary in a time and manner

as determined by County or as designated by the Secretary for purposes of the Secretary determining County's compliance with the HIPAA Privacy Rule.

10. Contractor agrees to document any Disclosures of PHI County discloses to Contractor or Contractor creates, receives, maintains, or transmits on behalf of County, and to make information related to such Disclosures available as would be required for County to respond to a request by an Individual for an accounting of Disclosures of PHI in accordance with 45 CFR § 164.528.
11. Contractor agrees to provide County or an Individual, as directed by County, in a time and manner to be determined by County, that information collected in accordance with the Contract in order to permit County to respond to a request by an Individual for an accounting of Disclosures of PHI in accordance with 45 CFR § 164.528.
12. Contractor agrees that to the extent Contractor carries out County's obligation under the HIPAA Privacy and/or Security rules Contractor will comply with the requirements of 45 CFR Part 164 that apply to County in the performance of such obligation.
13. Contractor shall work with County upon notification by Contractor to County of a Breach to properly determine if any Breach exclusions exist as defined in Subparagraph B.2.a above.

D. SECURITY RULES:

1. Contractor shall comply with the requirements of 45 CFR § 164.306 and establish and maintain appropriate Administrative, Physical and Technical Safeguards in accordance with 45 CFR § 164.308, § 164.310, § 164.312, and § 164.316 with respect to electronic PHI County discloses to Contractor or Contractor creates, receives, maintains, or transmits on behalf of County. Contractor shall follow generally accepted system security principles and the requirements of the HIPAA Security Rule pertaining to the security of electronic PHI.
2. Contractor shall ensure that any subcontractors that create, receive, maintain, or transmit electronic PHI on behalf of Contractor agree through a contract with Contractor to the same restrictions and requirements contained in this Paragraph D of this Business Associate Contract.
3. Contractor shall report to County immediately any Security Incident of which it becomes aware. Contractor shall report Breaches of Unsecured PHI in accordance with Paragraph E below and as required by 45 CFR § 164.410.

E. BREACH DISCOVERY AND NOTIFICATION:

1. Following the discovery of a Breach of Unsecured PHI, Contractor shall notify County of such Breach, however both Parties agree to a delay in the notification if so advised by a law enforcement official pursuant to 45 CFR § 164.412.
 - a. A Breach shall be treated as discovered by Contractor as of the first day on which such Breach is known to Contractor or, by exercising reasonable diligence, would have been known to Contractor.
 - b. Contractor shall be deemed to have knowledge of a Breach, if the Breach is known, or by exercising reasonable diligence would have known, to any person who is an employee, officer, or other agent of Contractor, as determined by federal common law of agency.
2. Contractor shall provide the notification of the Breach immediately to the County Privacy Officer at:

Rafael Linares Chief Information Security Officer 1055 N. Main St, 6th Floor Santa Ana, CA 92701 Office: (714) 567-7611 E-mail: Rafael.linares@ocit.ocgov.com	Linda Le, County Privacy Officer, CHPC, CHC, CHP OCIT – Enterprise Privacy & Cybersecurity 1055 N. Main Street, 6 th Floor Santa Ana, CA 92701 (714) 834-4082 Linda.le@ceoit.ocgov.com privacyofficer@ocgov.com
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- a. Contractor's notification may be oral but shall be followed by written notification within 24 hours of the oral notification.
3. Contractor's notification shall include, to the extent possible:
 - a. The identification of each Individual whose Unsecured PHI has been, or is reasonably believed by Contractor to have been, accessed, acquired, used, or disclosed during the Breach.
 - b. Any other information that County is required to include in the notification to Individual under 45 CFR §164.404 (c) at the time Contractor is required to notify County or promptly thereafter as this information becomes available, even after the regulatory sixty (60) day period set forth in 45 CFR § 164.410 (b) has elapsed, including:
 - i. A brief description of what happened, including the date of the Breach and the date of the discovery of the Breach, if known;
 - ii. A description of the types of Unsecured PHI that were involved in the Breach (such as whether full name, social security number, date of birth, home address, account number, diagnosis, disability code, or other types of information were involved);
 - iii. Any steps Individuals should take to protect themselves from potential harm resulting from the Breach;
 - iv. A brief description of what Contractor is doing to investigate the Breach, to mitigate harm to Individuals, and to protect against any future Breaches; and
 - v. Contact procedures for Individuals to ask questions or learn additional information, which shall include a toll-free telephone number, an e-mail address, Web site, or postal address.
4. County may require Contractor to provide notice to the Individual as required in 45 CFR § 164.404, if it is reasonable to do so under the circumstances, at the sole discretion of the County.
5. In the event that Contractor is responsible for a Breach of Unsecured PHI in violation of the HIPAA Privacy Rule, Contractor shall have the burden of demonstrating that Contractor made all notifications to County consistent with this Paragraph E and as required by the Breach notification regulations, or, in the alternative, that the acquisition, access, use, or disclosure of PHI did not constitute a Breach.
6. Contractor shall maintain documentation of all required notifications of a Breach or its risk assessment under 45 CFR § 164.402 to demonstrate that a Breach did not occur.
7. Contractor shall provide to County all specific and pertinent information about the Breach, including the information listed in Section E.3.b.(1)-(5) above, if not yet provided, to permit County to meet its notification obligations under Subpart D of 45 CFR Part 164 as soon as practicable, but in no event later than fifteen (15) calendar days after Contractor's initial report of the Breach to County pursuant to Subparagraph E.2 above.
8. Contractor shall continue to provide all additional pertinent information about the Breach to

County as it may become available, in reporting increments of five (5) business days after the last report to County. Contractor shall also respond in good faith to any reasonable requests for further information, or follow-up information after report to County, when such request is made by County.

9. Contractor shall bear all expense or other costs associated with the Breach and shall reimburse County for all expenses County incurs in addressing the Breach and consequences thereof, including costs of investigation, notification, remediation, documentation or other costs associated with addressing the Breach.

F. PERMITTED USES AND DISCLOSURES BY CONTRACTOR:

1. Contractor may use or further disclose PHI County discloses to Contractor as necessary to perform functions, activities, or services for, or on behalf of, County as specified in the Contract, provided that such use or Disclosure would not violate the HIPAA Privacy Rule if done by COUNTY except for the specific Uses and Disclosures set forth below.
 - a. Contractor may use PHI County discloses to Contractor, if necessary, for the proper management and administration of Contractor.
 - b. Contractor may disclose PHI County discloses to Contractor for the proper management and administration of Contractor or to carry out the legal responsibilities of Contractor, if:
 - i. The Disclosure is required by law; or
 - ii. Contractor obtains reasonable assurances from the person to whom the PHI is disclosed that it will be held confidentially and used or further disclosed only as required by law or for the purposes for which it was disclosed to the person and the person immediately notifies Contractor of any instance of which it is aware in which the confidentiality of the information has been breached.
 - c. Contractor may use or further disclose PHI County discloses to Contractor to provide Data Aggregation services relating to the Health Care Operations of Contractor.
2. Contractor may use PHI County discloses to Contractor, if necessary, to carry out legal responsibilities of Contractor.
3. Contractor may use and disclose PHI County discloses to Contractor consistent with the minimum necessary policies and procedures of County.
4. Contractor may use or disclose PHI County discloses to Contractor as required by law.

G. OBLIGATIONS OF COUNTY:

1. County shall notify Contractor of any limitation(s) in County's notice of privacy practices in accordance with 45 CFR § 164.520, to the extent that such limitation may affect Contractor's Use or Disclosure of PHI.
2. County shall notify Contractor of any changes in, or revocation of, the permission by an Individual to use or disclose his or her PHI, to the extent that such changes may affect Contractor's Use or Disclosure of PHI.
3. County shall notify Contractor of any restriction to the Use or Disclosure of PHI that County has agreed to in accordance with 45 CFR § 164.522, to the extent that such restriction may affect Contractor's Use or Disclosure of PHI.
4. County shall not request Contractor to use or disclose PHI in any manner that would not be permissible under the HIPAA Privacy Rule if done by County.

H. BUSINESS ASSOCIATE TERMINATION:

1. Upon County's knowledge of a material breach or violation by Contractor of the requirements of this Business Associate Contract, County shall:
 - a. Provide an opportunity for Contractor to cure the material breach or end the violation within thirty (30) business days; or
 - b. Immediately terminate the Contract, if Contractor is unwilling or unable to cure the material breach or end the violation within (30) days, provided termination of the Contract is feasible.
2. Upon termination of the Contract, Contractor shall either destroy or return to County all PHI Contractor received from County or Contractor created, maintained, or received on behalf of County in conformity with the HIPAA Privacy Rule.
 - a. This provision shall apply to all PHI that is in the possession of Subcontractors or agents of Contractor.
 - b. Contractor shall retain no copies of the PHI.
 - c. In the event that Contractor determines that returning or destroying the PHI is not feasible, Contractor shall provide to County notification of the conditions that make return or destruction infeasible. Upon determination by County that return or destruction of PHI is infeasible, Contractor shall extend the protections of this Business Associate Contract to such PHI and limit further Uses and Disclosures of such PHI to those purposes that make the return or destruction infeasible, for as long as Contractor maintains such PHI.
3. The obligations of this Business Associate Contract shall survive the termination of the Contract.