



CONSULTANT SERVICES AGREEMENT NO. MA-057-13011466
BETWEEN
THE W. HAYWOOD BURNS INSTITUTE
AND
THE COUNTY OF ORANGE
FOR
PHASE III OF THE ENHANCED DISPROPORTIONATE
MINORITY CONTACT
TECHNICAL ASSISTANCE GRANT
FROM
THE BOARD OF STATE AND COMMUNITY CORRECTIONS

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CONSULTANT SERVICES AGREEMENT NO. MA-057-13011466
BETWEEN
THE W. HAYWOOD BURNS INSTITUTE
AND
THE COUNTY OF ORANGE
FOR
PHASE II ~~III~~ CONSULTING SERVICES
UNDER
~~THE CORRECTIONS STANDARDS AUTHORITY~~
~~DISPROPORTIONATE MINORITY CONTACT~~
OF ENHANCED DISPROPORTIONATE MINORITY CONTACT
TECHNICAL ASSISTANCE PROJECT II GRANT
FROM THE BOARD OF STATE AND COMMUNITY CORRECTIONS

This agreement to provide consulting services under ~~Phase III~~ of the Enhanced ~~Corrections Standards Authority's~~ Disproportionate Minority Contact Technical Assistance Project II grant from the Board of State and Community Corrections, hereinafter referred to as "CONTRACT", is made and entered into, as of the date fully executed, by and between the W. Haywood Burns Institute, a San Francisco-based national nonprofit organization, hereinafter referred to as "CONTRACTOR", and the County of Orange, a political subdivision of the State of California, hereinafter referred to as "COUNTY", acting through the Orange County Probation Department ("Probation").

RECITALS:

WHEREAS, CONTRACTOR and COUNTY entered into the "Agreement for Consulting services under the Corrections Standards Authority Disproportionate Minority Contact Enhanced Technical Assistance Project II Grant" with funding provided by the Corrections Standards Authority ("CSA"), for the period January 1, 2010 through June 30, 2011;

WHEREAS, the COUNTY, ~~acting through Probation~~, obtained continuation grant funding from CSA for the period July 1, 2011 through September 30, 2012 for Phase II of the Disproportionate Minority Contact Enhanced Technical Assistance Project II Grant ("DMC-TAP") grant;

WHEREAS, CSA became the Board of State and Community Corrections (BSCC) effective July 1, 2012;

WHEREAS, COUNTY obtained continuation grant funding from BSCC for the period October 1, 2012 through December 31, 2013 for Phase III of the DMC-TAP grant

WHEREAS, COUNTY seeks continued consultant services from CONTRACTOR under Phase III of the ~~DMC-TAP CSA Enhanced Disproportionate Minority Contact Technical Assistance Project II~~ grant, and CONTRACTOR agrees to provide such services in accordance with the terms and conditions set forth herein.

WHEREAS, ~~CONTRACTOR has offered to provide such Phase II consultant services, and COUNTY has accepted CONTRACTOR's offer, in accordance with the terms and conditions set forth herein.~~

NOW, THEREFORE, the parties mutually agree as follows:

I. GENERAL TERMS AND CONDITIONS

- A. **Governing Law and Venue:** This Purchase Order (hereinafter "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 and all rights to request that an action be transferred for trial to another county.
- B. **Entire Contract:** This CONTRACT, when accepted by CONTRACTOR, either in writing or by the shipment of any article or other commencement of performance hereunder, 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. No exceptions, alternatives, substitutes or revisions are valid or binding on COUNTY unless authorized by COUNTY in writing. 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 COUNTY'S Purchasing Agent or his designee, hereinafter "PURCHASING AGENT."
- 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 no 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, price quoted does not include California state sales or use tax.
- E. **Delivery:** Time of delivery 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 description, or services that do not conform to the prescribed statement of work. Acceptance of any part of the order for goods shall not bind COUNTY to accept future shipments, nor deprive it the right to return goods already accepted, at CONTRACTOR's expense. Overshipments and undershipments shall be only as agreed to by the COUNTY. Delivery shall not be deemed to be complete until goods, or services, have been actually received and accepted in writing by COUNTY.
- F. **Acceptance/Payment:** Unless otherwise agreed to in writing by the COUNTY, 1) acceptance shall not be deemed complete unless in writing and until all the goods/services have actually been received, inspected, and tested to the satisfaction of COUNTY, and 2) payment shall be made in arrears after satisfactory acceptance.
- G. **Warranty:** CONTRACTOR expressly warrants that the goods/services 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 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 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 the 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 "II" below, it shall indemnify, defend, and hold COUNTY and COUNTY INDEMNITEES harmless from any and all such claims and responsible for payment of costs, damages, penalties and expenses related to or arising from such claim(s), including, but not limited to, attorney's fees, costs and expenses.
- I. **Assignment or Sub-contracting:** 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 or sub-contracted by CONTRACTOR without the express written consent of COUNTY. Any attempt by CONTRACTOR to assign or sub-contract the performance or any portion thereof this CONTRACT without the express written consent of the COUNTY shall be invalid and shall constitute a breach of this CONTRACT.
- J. **Non-Discrimination:** In the performance of this CONTRACT, CONTRACTOR agrees that it will 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 all the penalties imposed for a violation of Section 1720 et seq. of the California Labor Code.
- K. **Termination:** In addition to any other remedies or rights it may have by law, COUNTY has the right to terminate this CONTRACT without penalty immediately with cause or after 30 days' written notice without cause, unless otherwise specified. Cause shall be defined as any breach of contract, any misrepresentation or fraud on the part of the CONTRACTOR. Exercise by COUNTY of its right to terminate the CONTRACT shall relieve COUNTY of all further obligations.
- L. **Consent to Breach Not Waiver:** No term or provision of this CONTRACT shall be deemed waived and no breach excused, unless such waiver of consent shall be 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. **Remedies Not Exclusive:** The remedies for breach set forth in this CONTRACT are cumulative as to one another and as to any other provided by law, rather than exclusive; and the expression of certain remedies in this CONTRACT does not preclude resort by either party to any other remedies provided by law.
- N. **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.
- O. **Performance:** CONTRACTOR shall perform all work under this CONTRACT, taking necessary steps and precautions to perform the work to the 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 the CONTRACTOR under this contract. CONTRACTOR shall perform all work diligently, carefully, and in a good and workman-like manner;

shall furnish all labor, supervision, machinery, equipment, materials, and supplies necessary therefore; shall obtain and maintain all permits and licenses required by public authorities in connection with performance of the work; and, if permitted to subcontract, shall be fully responsible for all work performed by subcontractors.

- P. **Insurance Provisions:** Prior to the provision of services under this CONTRACT, the CONTRACTOR agrees to purchase all required insurance at CONTRACTOR'S expense and to deposit with the COUNTY Certificates of Insurance, including all endorsements required herein, necessary to satisfy the COUNTY that the insurance provisions of this CONTRACT have been complied with and to keep such insurance coverage and the certificates therefore on deposit with the COUNTY during the entire term of this CONTRACT. In addition, all subcontractors performing work on behalf of CONTRACTOR pursuant to this CONTRACT shall obtain insurance subject to the same terms and conditions as set forth herein for CONTRACTOR.

All self-insured retentions (SIRs) and deductibles shall be clearly stated on the Certificate of Insurance. If no SIRs or deductibles apply, indicate this on the Certificate of Insurance with a 0 by the appropriate line of coverage. Any self-insured retention (SIR) or deductible in an amount in excess of \$25,000 (\$5,000 for automobile liability), shall specifically be approved by the County Executive Office (CEO)/Office of Risk Management.

If the CONTRACTOR fails to maintain insurance acceptable to the COUNTY for the full term of this CONTRACT, the COUNTY may terminate this CONTRACT.

Qualified Insurer

Minimum insurance company ratings as determined by the most current edition of the **Best's Key Rating Guide/Property-Casualty/United States or ambest.com** shall be A- (Secure A.M. Best's Rating) and VIII (Financial Size Category).

The policy or policies of insurance must be issued by an insurer licensed to do business in the state of California (California Admitted Carrier). If the carrier is a non-admitted carrier in the state of California and does not meet or exceed an A.M. Best rating of A-/VIII, CEO/Office of Risk Management retains the right to approve or reject carrier after a review of the company's performance and financial ratings. If the non-admitted carrier meets or exceeds the minimum A.M. Best rating of A-/VIII, the agency can accept the insurance.

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

<u>Coverage</u>	<u>Minimum Limits</u>
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

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 2010 or CG 2033 or a form at least as broad naming the County of Orange, its elected and appointed officials, officers, employees, agents as Additional Insureds.
- 2) A primary non-contributing endorsement evidencing that the CONTRACTOR'S insurance is primary and any insurance or self-insurance maintained by the County of Orange shall be excess and non-contributing.

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

The Workers' Compensation policy shall contain a waiver of subrogation endorsement waiving all rights of subrogation against the County of Orange, and members of the Board of Supervisors, its elected and appointed officials, officers, agents and employees.

All insurance policies required by this CONTRACT shall give the County of Orange 30 days notice in the event of cancellation and 10 days for non-payment of premium. This shall be evidenced by policy provisions or an endorsement separate from the Certificate of Insurance.

If CONTRACTOR'S Professional Liability policy is a "claims made" policy, CONTRACTOR shall agree to maintain professional liability coverage for two years following completion of CONTRACT.

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

Insurance certificates should be forwarded to the agency/department address listed on the solicitation.

If the CONTRACTOR fails to provide the insurance certificates and endorsements within seven days of notification by CEO/Purchasing or the agency/department purchasing division, award may be made to the next qualified vendor.

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 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.

- Q. **Bills and Liens:** CONTRACTOR shall pay promptly all indebtedness for labor, materials and equipment used in performance of the work. CONTRACTOR shall not permit any lien or charge to attach to the work or the premises, but if any does so attach, CONTRACTOR shall promptly procure its release and, in accordance with the requirements paragraph "II" below, indemnify, defend, and hold COUNTY harmless and be responsible for payment of all costs, penalties and expenses related to arising from or related thereto.
- R. **Changes:** CONTRACTOR shall make no changes in the work or perform any additional work without the COUNTY'S specific written approval.
- S. **Change of Ownership:** CONTRACTOR agrees that if there is a change or transfer in ownership of CONTRACTOR's business prior to completion of this CONTRACT, the new owners will 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.
- T. **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 caused by any act of God, war, civil disorder, employment strike or other cause beyond its reasonable control, provided CONTRACTOR gives written notice of the cause of the delay to COUNTY within 36 hours of the start of the delay and CONTRACTOR avails himself of any available remedies.
- U. **Confidentiality:** CONTRACTOR agrees to maintain the confidentiality of all COUNTY and COUNTY-related records and information pursuant to all statutory laws relating to privacy and confidentiality that currently exist or exist at any time during the term of this CONTRACT. All such records and information shall be considered confidential and kept confidential by CONTRACTOR and CONTRACTOR's staff, agents and employees.
- V. **Compliance with Laws:** CONTRACTOR represents and warrants that the 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 compliance, and pursuant to the requirements of paragraph "HH" below, 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.
- W. **Freight (F.O.B. Destination):** CONTRACTOR assumes full responsibility for all transportation, transportation scheduling, packing, handling, insurance, and other services associated with delivery of all products deemed necessary under this CONTRACT.
- X. **Pricing:** The CONTRACT bid price shall include full compensation for providing all required goods in accordance with required specifications, or services as specified herein or when applicable, in the scope of services attached to this CONTRACT, and no additional compensation will be allowed therefore, unless otherwise provided for in this CONTRACT.
- Y. **Waiver of Jury Trial:** Each party acknowledges that it is aware of and has had the opportunity to seek advice of counsel of its choice with respect to its rights to trial by jury, and each party, for itself and its

successors, creditors, and assigns, does hereby expressly and knowingly waive and release all such rights to trial by jury in any action, proceeding or counterclaim brought by any party hereto against the other (and/or against its officers, directors, employees, agents, or subsidiary or affiliated entities) on or with regard to any matters whatsoever arising out of or in any way connected with this CONTRACT and /or any claim of injury or damage.

- Z. **Terms and Conditions:** CONTRACTOR acknowledges that it has read and agrees to all terms and conditions included in this CONTRACT.
- AA. **Headings:** The various headings and numbers herein, the grouping of provisions of this CONTRACT into separate clauses and paragraphs, and the organization hereof are for the purpose of convenience only and shall not limit or otherwise affect the meaning hereof.
- BB. **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 and invalidated thereby.
- CC. **Calendar Days:** Any reference to the word "day" or "days" herein shall mean calendar day or calendar days, respectively, unless otherwise expressly provided.
- DD. **Attorney Fees:** In an action of proceeding to enforce and interpret any provision of this CONTRACT, or where any provision hereof is validly asserted as a defense, each part shall bear its own attorney's fees, costs and expenses.
- EE. **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 part has been represented by experienced and knowledgeable independent legal counsel of their own choosing, or has knowingly declined to seek such counsel despite being encouraged and given the opportunity to do so. Each part further acknowledges that they have not been influenced to any extent whatsoever in executing this CONTRACT by any other party hereto or by a person representing them, or both. Accordingly, any rule of law (including California Division 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 provision of this CONTRACT shall be interpreted in a reasonable manner to effect the purpose of the parties and this CONTRACT.
- FF. **Authority:** The parties to this CONTRACT represent and warrant that this CONTRACT has been duly authorized and executed and constitutes the legally binding obligation of their respective organization or entity, enforceable in accordance with its terms.
- GG. **Employee Eligibility Verification:** The CONTRACTOR warrants that it fully complies 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. The 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. The CONTRACTOR shall retain all such documentation for all covered employees for the period prescribed by the law. The CONTRACTOR shall indemnify, defend with counsel approved in writing by COUNTY, and hold harmless, the COUNTY, its agents, officers, and employees from employer sanctions and any other liability which may be assessed against the CONTRACTOR or the 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.

HH-II. Certifications: As required by Section 1352, Title 31 of the U.S. Code, and implemented as 28 CFR 69, the CONTRACTOR certifies that:

No federally appropriated funds have been paid or will be paid, by or on behalf of the undersigned, to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with the making of any federal grant, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any federal grant or cooperative agreement.

If any funds other than federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress an officer or employee of Congress, or an employee of a Member of Congress in connection with this federal grant or cooperative agreement, the CONTRACTOR shall complete and submit Standard Form LLL, "Disclosure of Lobbying Activities," in accordance with its instructions.

H-HH. Indemnification Provisions: 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.

II. ADDITIONAL TERMS AND CONDITIONS

1. TERM OF CONTRACT

This CONTRACT shall be effective when fully executed, ~~December 6, 2011~~ through ~~September 30, 2012~~ ~~December 31, 2013~~; and shall be subject to the termination provisions set forth in the following sections:

Section II, General Terms and Conditions:

Paragraph I – Assignment or Subcontracting

Paragraph K – Termination

Paragraph P – Insurance Provisions

Section II, Additional Terms and Conditions:

Paragraph 6 – Contractor Bankruptcy/Insolvency

Paragraph 7 – Conflict with Existing Law

Paragraph 8 – Covenant Against Contingent Fees

Paragraph 8-0 9– Contingency of Funds

Paragraph 10-0 – Child Support Enforcement Requirements

2. ADJUSTMENTS SCOPE OF WORK

~~No adjustments made to the Scope of Work, as described in Section III of this CONTRACT, will be authorized or paid for without prior written notice from the COUNTY assigned Deputy Purchasing Agent, as approved by the Probation Project Director.~~

3. 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.~~

2. COMPENSATION

The CONTRACTOR agrees to accept the specified compensation as set forth in Section III, Paragraph 5.0 of this CONTRACT as full remuneration for performing all services and furnishing all staffing and materials 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 the CONTRACTOR of all its duties and obligations hereunder.

3. BREACH OF CONTRACT

The failure of the CONTRACTOR to comply with any of the provisions, covenants or conditions of this CONTRACT shall be a material breach of this CONTRACT. In such event the COUNTY may, and in addition to any other remedies available at law, in equity, or otherwise specified in this CONTRACT:

1. Afford the 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;
2. Discontinue payment to the CONTRACTOR for and during the period in which the CONTRACTOR is in breach; and
3. Offset against any monies billed by the CONTRACTOR but yet unpaid by the COUNTY those monies disallowed pursuant to the above.

4. CONTRACTOR BANKRUPTCY/INSOLVENCY

If the CONTRACTOR should be adjudged bankrupt or should have a general assignment for the benefit of its creditors or if a receiver should be appointed on account of the CONTRACTOR's insolvency, the COUNTY may terminate this CONTRACT.

5. CONFLICT WITH EXISTING LAW

The CONTRACTOR and the COUNTY agree that if any provision of this CONTRACT is found to be illegal or unenforceable, such term or provision shall be deemed stricken and the remainder of the CONTRACT shall remain in full force and effect. Either party having knowledge of such term or provisions shall promptly inform the other of the presumed non-applicability of such provision. Should the offending provision go to the heart of the CONTRACT, the CONTRACT shall be terminated in a manner commensurate with interests of both parties to the maximum extent reasonable.

6. COVENANT AGAINST 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, excepting bona fide employees 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 shall have the right to terminate this CONTRACT in accordance with the

termination clause and, in its sole discretion, to deduct from the Agreement price or consideration, or otherwise recover the full amount of such commission, percentage, brokerage, or contingent fee from CONTRACTOR.

6. PAYMENT TERMS PAYMENT IN ARREARS

Invoices are to be submitted monthly in arrears to the user agency/department to the ship to address, unless otherwise directed in this CONTRACT. CONTRACTOR shall reference CONTRACT number on invoice. Payment will be net 30 days after receipt of an invoice in a format acceptable to the COUNTY and verified and approved by the agency/department and subject to routine processing requirements. The responsibility for providing an acceptable invoice rests with the CONTRACTOR.

Billing shall cover services and/or goods not previously invoiced. The CONTRACTOR shall reimburse the COUNTY for any monies paid to the CONTRACTOR for goods or services not provided or when goods or services do not meet the CONTRACT requirements.

Payments made by the COUNTY shall not preclude the right of the COUNTY from thereafter disputing any items or services involved or billed under this CONTRACT and shall not be construed as acceptance of any part of the goods or services.

7. PAYMENT INVOICING INSTRUCTIONS

The CONTRACTOR will provide a two part invoice on the CONTRACTOR's letterhead for goods delivered and/or services rendered. In the case of goods, the CONTRACTOR will leave an invoice with each delivery. Each invoice will have a number and will include the following information:

1. _____ CONTRACTOR's name and address
2. _____ CONTRACTOR's remittance address, if different from 1, above
3. _____ Name of COUNTY agency/department
4. _____ Delivery/service address
5. _____ Master Agreement (MA) or Purchase Order (PO) number
6. _____ Date of order
7. _____ Product/service description, quantity, and prices
8. _____ Sales tax, if applicable
9. _____ Freight/delivery charges, if applicable
10. _____ Total

7. 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.

8. OWNERSHIP OF DOCUMENTS

The 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 the COUNTY and may be used by the COUNTY as it may require without additional cost to the COUNTY. None of the

documents, reports and other incidental or derivative work or furnished materials shall be used by CONTRACTOR without the express written consent of the COUNTY.

9. COUNTY OF ORANGE CHILD SUPPORT ENFORCEMENT

In order to comply with the child support enforcement requirements of the County of Orange, within 30 days of award of contract, CONTRACTOR agrees to furnish the required data and certifications to the contract administrator, the Purchasing Agent, or the agency/department deputy purchasing agent.

Failure of CONTRACTOR to timely submit the data and/or certifications required or to comply with all federal, state, and local reporting requirements for child support enforcement or to comply with all lawfully served Wage and Earnings Assignment Orders and Notices of Assignment shall constitute a material breach of the CONTRACT. Failure to cure such breach within 60 calendar days of notice from the COUNTY shall constitute grounds for termination of the CONTRACT.

10. JUVENILE RECORD INFORMATION

In addition to the general confidentiality provisions stated in Section I, Paragraph U herein, CONTRACTOR specifically agrees to comply with the Orange County Superior Court Policy: Juvenile Court Exchange of Information, Confidentiality and Media Policy, or as it may be amended, attached hereto as Exhibit 1.0 and incorporated herein by reference, which governs the confidentiality of Juvenile Offender records.

The Juvenile Court's policy was adopted in accordance with Welfare and Institutions Code Section 827 and all applicable statutes, court orders and case law. No access, disclosure, or release of information regarding juveniles shall be permitted except as authorized. If authorization is in doubt, no such information shall be released without the prior approval and consent of the Judge of the Juvenile Court.

Juvenile Record Information is understood to include all records and data, which identify the subject of the information and associate him/her with any aspect of the administration of the Juvenile Court Law of the State of California. Such information includes but is not limited to the subject's offense history, social history, all information of a diagnostic or evaluative nature, and any other personal or confidential data which can be traced to the individual, whether generated by CONTRACTOR or not.

CONTRACTOR shall be responsible for safeguarding all PROBATION information provided for use by CONTRACTOR.

11. NOTICES

Any and all notices, requests 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.

TO: COUNTY

Orange County Probation Department

TO: CONTRACTOR

The W. Haywood Burns Institute

P.O. Box 10260
Santa Ana, CA 92711
Attn: Riek Tran, Contract Services
Division Director
Juvenile Court Services

180 Howard Street, Suite 320
San Francisco, CA 94105
Attn: Ophelia Williams, Director of Operations

III. SCOPE OF WORK

1.0 Introduction

The Orange County Probation Department (Probation) is the recipient of a continuation grant award from the Department of Corrections and Rehabilitation, Corrections Standards Authority (CSA), under the Disproportionate Minority Contact Technical Assistance Project II (DMC TAP II), Phase II. The DMC TAP II grant program provides funding to support probation departments in understanding and identifying DMC, and to implement broad system reform. It is designed to equip probation departments with the tools and resources needed to provide leadership in developing and/or strengthening community-based DMC reduction activities, via a three-phased approach: DMC Infrastructure and Education; Stakeholder Collaboration and DMC Reduction Plan Development; and Implementation of DMC Reduction Plan.

Disproportionate Minority Contact (DMC) refers to the overrepresentation of minority youth coming into contact with the juvenile justice system at all points, from arrest through confinement, relative to their numbers in the general population. DMC first came to national attention in 1988, when the Coalition for Juvenile Justice focused on the problem in its annual report to Congress. In response to the report, Congress required that all states receiving formula grant funds address disproportionality among detained and confined youth. In 1992, Congress elevated DMC to a core requirement for states. Under the Juvenile Justice and Delinquency Prevention Act of 2002, if a state fails to address the overrepresentation of minority youth in the juvenile justice system, the Office of Juvenile Justice and Delinquency Prevention may withhold 20 percent of that State's formula grant allocation for the subsequent year. The Act expanded the requirement to include disproportionality at all points in the juvenile justice system.

Authorizing Legislation

Pursuant to the Juvenile Justice and Delinquency Prevention (JJDP) Act of 2002, the Office of Juvenile Justice and Delinquency Prevention (OJJDP) administers the Formula Grants program, which supports state and local delinquency prevention and intervention efforts, and juvenile justice system improvements. Congress appropriates funds and OJJDP awards them to states on the basis of their proportionate populations under age 18.

States receiving Formula Grants awards must demonstrate a good faith effort to address disproportionate minority contact ("DMC"). DMC refers to the overrepresentation of youth of color who come into contact with the juvenile justice system, from arrest through confinement, relative to their numbers in the general population. OJJDP works proactively with states to ensure that they comply with the requirements of the JJDP Act of 2002, including DMC.

Incremental Phased Approach to DMC Reduction

In January 2004, then Corrections Standards Authority (CSA) assumed responsibility for administering California's Formula Grants funds. CSA launched a statewide initiative to reduce the disparity and corresponding overrepresentation of youth of color coming into contact with the juvenile justice system, by using a multi-faceted approach of: (a) direct service through DMC grants; (b) education of juvenile justice professionals in reducing racial and ethnic disparities; and (c) identification by counties of DMC issues and solutions through comprehensive reduction plans.

Phase I

Orange County was one of seven counties awarded a grant for Phase I of CSA's Disproportionate Minority Contact-Technical Assistance Project (DMC-TAP). The grant awarded the Orange County Probation Department (Probation) \$125,000 for the 18-month period of January 1, 2010 through June 30, 2011. A portion of the grant (\$50,000) was allocated for a consultant services agreement with CONTRACTOR.

Phase II

Having demonstrated successful completion of Phase I, Probation applied for, and received continued DMC-TAP grant funding in the amount of \$150,000 for the 15-month period of July 1, 2011 through September 30, 2012. As with Phase I, a portion of the grant (\$75,000) was allocated for a second consultant services agreement with CONTRACTOR. CSA designed Phase II to support the education of juvenile justice system stakeholders about probation departments' DMC efforts, and to engage stakeholders in the development of DMC reduction strategies and a long-term DMC reduction plan.

Phase III

Effective July 1, 2012, CSA became the Board of State and Community Corrections ("BSCC"). Probation has again been awarded continued DMC-TAP funding in the amount of \$150,000 for the 15-month period of October 1, 2012 through December 31, 2013. As with Phases I and II, a portion of the grant (\$75,000) is allocated for a third consultant services agreement with CONTRACTOR. BSCC requires Phase III activities to be undertaken as a "system improvement and reform" effort.

2.0 Goals of DMC-TAP II

As a ~~second Enhanced~~ ~~third~~ DMC-TAP grant opportunity, ~~DMC-TAP II~~ ~~this CONTRACT~~ is focused on the following goals:

- 2.1 ~~Continue to~~ educate juvenile justice professionals in DMC specifically all Probation staff, peripheral stakeholders (including relevant community members)
- 2.2 Engage all levels of Probation staff in the work to reduce racial and ethnic disparities;
- 2.3 Collect and analyze data to identify decision points where disparity/disproportionality occurs;
- 2.4 ~~Continue to~~ enhance data-system capacity for the purpose of determining the extent of racial and ethnic disparities in the system, the causes of such disparities and correlating trends;
- 2.5 Develop and produce comprehensive COUNTY-wide DMC reduction plans including issues identification and correlating COUNTY-specific solutions; and
- 2.6 Ensure viable processes/mechanisms in place for monitoring over time.
- 2.7 ~~Work with consultant staff, stakeholders and community members to develop a plan for sustainability once the grant period ends~~
- 2.8 ~~Continue review of existing juvenile justice programs and policies within the COUNTY in regards to DMC, by a newly formed DMC Steering Committee~~

~~2.6 Project specific goals for the COUNTY include:~~

~~2.6.1 DMC training to Probation staff to achieve cultural competency as well as gender-responsiveness;~~

~~2.6.2 Review of existing juvenile justice programs and policies within the COUNTY in regards to DMC, by a newly formed DMC Steering Committee.~~

3.0 CONTRACTOR's Responsibilities:

In Phase H **III** of the DMC-TAP H grant, CONTRACTOR shall provide consultation regarding:

~~3.1 Assist Probation staff with mapping out the key juvenile decision points and Relative Rate Index of DMC at each point encountered by Probation, which may include:~~

~~3.1.1 Arrest~~

~~3.1.2 Bookings~~

~~3.1.3 Detention holds~~

~~3.1.4 Filed petitions~~

~~3.1.5 Sustained petitions~~

~~3.1.6 Institutional commitments~~

~~3.2 Provide training for a targeted group of community stakeholders, Probation staff and other juvenile justice partners in order to increase system understanding of racial and ethnic disparities in the justice system and their impact of their own perceptions and attitudes on DMC.~~

~~3.3 Guide the gathering of data on the target population, such as youth detained as a result of bench warrant/violation of probation ("BW/VOP") that are needed to implement system-wide changes.~~

~~3.4 Assist Probation staff in the preparation of quarterly progress reports, final project report, and plans for sustainability of the DMC initiative.~~

~~3.5 Provide support to strategically develop changes in policies and procedures, as needed based on data collection.~~

~~3.6 Assist Probation staff with assessing the current system capacity for identifying racial and ethnic disparities, and presenting the information to the DMC steering committee.~~

~~3.7 Assist the Project Coordinator in facilitating the DMC work within the steering committee.~~

3.1 The continued education of Probation staff, juvenile justice professionals and other community stakeholders about DMC strategies and reduction efforts

3.2 The enhancement of data system capability to collect relevant data for analyzing the extent of racial and ethnic disparities in the juvenile system, their causes and correlating trends

3.3 The review and analysis of DMC data on a quarterly basis, providing feedback, critique and suggestions for modifications as needed to Probation and its collaborative partners

3.4 Development of a comprehensive DMC reduction plan that identifies issues and solutions

for reducing the number of youth of color detained for probation violations and bench warrants, as the target population

3.5 The need to change or improve policies and practices regarding juvenile justice system involvement and detention utilization for youth of color.

3.6 The identification of community based interventions to address DMC target populations

3.7 Sustainability of DMC reduction plans for continuing the DMC work once the grant expires

3.8 Commitment of key stakeholders to DMC reduction efforts especially the continued implementation of DMC reduction plans for their ongoing sustainability

4.0 COUNTY's Responsibilities:

Probation shall appoint a DMC Project Coordinator to direct COUNTY's efforts to reduce the overrepresentation of youth of color coming into contact with the juvenile justice system, whose responsibilities shall include, but are not limited to:

- 4.1 Direct and coordinate the implementation or improvement of DMC data collection and analysis
- 4.2 Collaborate with CONTRACTOR to continue the implementation of work plan
- 4.3 Engage stakeholders in the development and implementation of a system-wide DMC reduction plan
- 4.4 Work in conjunction with the steering committee, coordinating the ongoing review and assessment of existing juvenile justice programs and policies with regards to DMC
- 4.5 Act as liaison for stakeholders
- 4.6 Prepare quarterly progress reports, final project report, and plans for sustainability of the DMC initiative
- 4.7 Communicate the progress of DMC reduction activities to community stakeholders
- 4.8 Oversee the gathering of data on the target population, such as bench warrant/violation of probation ("BW/VOP") that are needed to implement system changes
- 4.9 Coordinate, oversee and participate in the training for community stakeholders, Probation staff and other juvenile justice partners in order to increase system understanding of racial and ethnic disparities in the justice system and their impact of their own perceptions and attitudes on DMC

5.0 Compensation

~~As approved for funding by CSA, the total amount to be paid to CONTRACTOR for its performance under this CONTRACT shall not exceed \$75,000. The COUNTY will not be obligated to pay any amount in excess of \$75,000.~~

6.0 Project Coordination

Probation's Project Coordinator, as described in Paragraph 4.0 above shall:

6.1 Have final authority and responsibility for decisions affecting services required under this CONTRACT.

6.2 Designate Probation personnel who will participate in DMC training.

IV. COST/COMPENSATION FOR CONTRACT SERVICES

1. **Fixed Price:** This is a fixed-price agreement between the COUNTY and CONTRACTOR. The COUNTY shall have no obligation to pay any sum in excess of the set, fixed prices.

2. **Compensation:** As approved for funding by BSCC, the total amount to be paid to CONTRACTOR for its performance under this CONTRACT shall not exceed \$75,000. The COUNTY will not be obligated to pay any amount in excess of \$75,000.

3. **Payment/Invoicing Instructions:**

a. Invoices are to be submitted monthly in arrears. CONTRACTOR shall send invoices to:
Orange County Probation Department
P.O. Box 10260
Santa Ana, CA 92711
Attention: Administrative & Fiscal Division, Accounts Payable Unit

b. CONTRACTOR shall send invoices with the following information:
- CONTRACTOR'S name and address
- CONTRACTOR'S remittance address, if different from the address above
- COUNTY CONTRACT number
- CONTRACTOR'S federal taxpayer identification number
- Date(s) CONTRACTOR provided service

c. The responsibility for providing an acceptable invoice to the COUNTY for payment rests with the CONTRACTOR. Incomplete or incorrect invoices are not acceptable and will be returned to the CONTRACTOR for correction.

d. As a condition of payment, the COUNTY may require that the CONTRACTOR furnish documentation such as detailed itemizations and receipts as may be required by the County's Auditor-Controller.

e. Payments made by the COUNTY shall not preclude the right of the COUNTY from thereafter disputing any services invoiced or billed under this CONTRACT and shall not be construed as acceptance of any part of the services.

IN WITNESS WHEREOF, the parties hereto certify that they have read and understand all the terms and conditions contained herein and have hereby caused this CONTRACT to be executed.

The W. Haywood Burns Institute*

**COUNTY OF ORANGE, a political
subdivision of the State of California**

By: _____

By: _____

Deputy Purchasing Agent

Title: _____

Dated: _____

Dated: _____

By: _____

Title: _____

Dated: _____

**COUNTY OF ORANGE, a political
subdivision of the State of California**

By: _____
Deputy Purchasing Agent

Dated: _____

APPROVED AS TO FORM:
OFFICE OF COUNTY COUNSEL
ORANGE COUNTY, CALIFORNIA

Deputy County Counsel

Dated: _____

*For Contractors/ Vendors that are corporations, signature requirements are as follows:

1) ~~One signature by the Chairman of the Board, the President or any Vice President,~~

~~and _____~~

2) ~~One Signature by the Secretary, any Assistant Secretary, the Chief Financial Officer or an
Assistant Treasurer.~~

For Contractors/Vendors that are **not Corporations**, the person who has authority to bind the Contractor/Vendor to a contract must sign on one of the lines above

*** If the Contractor is a corporation, signatures of two specific corporate officers are required as further set forth.**

The first corporate officer signature must be by one of the following: 1) the Chairman of the Board; 2) the President; 3) any Vice President.

The second corporate officer signature must be by one of the following: a) Secretary; b) Assistant Secretary; c) Chief Financial Officer; d) Assistant Treasurer.

In the alternative, a single corporate signature is acceptable when accompanied by a corporate Resolution demonstrating the legal authority of the signatory to bind the company.

ATTACHMENT A
County of Orange Child Support Enforcement
Certification Requirements

A. In the case of an individual Contractor, his/her name, date of birth, Social Security number, and residence address:

Name: _____
D.O.B: _____
Social Security No: _____
Residence Address: _____

B. In the case of a Contractor doing business in a form other than as an individual, the name, date of birth, Social Security number, and residence address of each individual who owns an interest of ten percent (10%) or more in the contracting entity:

Name: _____
D.O.B: _____
Social Security No: _____
Residence Address: _____

Name: _____
D.O.B: _____
Social Security No: _____
Residence Address: _____

Name: _____
D.O.B: _____
Social Security No: _____
Residence Address: _____

C. A certification that the Contractor has fully complied with all applicable federal and state reporting requirements regarding its employees; and

D. A certification that the Contractor has fully complied with all lawfully served Wage and Earnings Assignment Orders and Notices of Assignment and will continue to so comply.

"I certify that _____ is in full compliance with all applicable federal and state reporting requirements regarding its employees and with all lawfully served Wage and Earnings Assignment Orders and Notices of Assignments and will continue to be in compliance throughout the term of Contract _____ with the County of Orange. I understand that failure to comply shall constitute a material breach of the Contract and that failure to cure such breach within ten (10) calendar days of notice from the County shall constitute grounds for termination of the Contract.

Authorized Signature Name Title

Exhibit 1

Orange County Superior Court Policy:

Juvenile Court Exchange of Information, Confidentiality and Media Policy