



AGREEMENT NO. MA-057-~~13011685~~ 14011405
BETWEEN
PRADO FAMILY SHOOTING RANGE
AND
THE COUNTY OF ORANGE,
PROBATION DEPARTMENT
FOR
USE OF SHOOTING RANGE FACILITIES

Contents

<u>SECTION</u>		<u>PAGE</u>
I. GENERAL TERMS AND CONDITIONS		
A.	Governing Law and Venue	4
B.	Entire CONTRACT	4
C.	Amendments	4
D.	Taxes	4
E.	Delivery	4
F.	Acceptance/Payment.....	5
G.	Warranty	5
H.	Patent/Copyright Materials/Proprietary Infringement	5
I.	Assignment or Sub-contracting.....	5
J.	Non-Discrimination	6
K.	Termination.....	6
L.	Consent to Breach Not Waiver	6
M.	Remedies Not Exclusive	6
N.	Independent Contractor.....	6
O.	Performance	7
P.	Insurance Provisions	7
Q.	Bills and Liens	9
R.	Changes.....	9
S.	Change of Ownership	9
T.	Force Majeure	9
U.	Confidentiality	9
V.	Compliance with Laws	9
W.	Freight (F.O.B. Destination)	9
X.	Pricing.....	9
Y.	Waiver of Jury Trial.....	9
Z.	Terms and Conditions	10
AA.	Headings	10
BB.	Severability	10
CC.	Calendar Days.....	10
DD.	Attorneys Fees	10
EE.	Interpretation.....	10
FF.	Authority	10
GG.	Employment Eligibility Verification	10
HH.	Indemnification Provisions	10
II. ADDITIONAL TERMS AND CONDITIONS		
1.0	Scope of CONTRACT.....	11
2.0	Term.....	11
3.0	Compensation and Payment.....	11
4.0	Conflict of Interest	11
5.0	Contingency of Funds	11
6.0	Child Support Enforcement Requirements	12
7.0	EDD Independent Contractor Reporting Requirements	12
8.0	CONTRACTOR Bankruptcy/Insolvency	12
9.0	Breach of CONTRACT	12

10.0	Remedies Not Exclusive	13
11.0	Interpretation of CONTRACT	13
12.0	Conflict with Existing Law	13
13.0	Covenant against Contingent Fees	13
14.0	Notices	13
15.0	Usage	13
III.	SCOPE OF WORK.....	14
IV.	COST/COMPENSATION FOR CONTRACT SERVICES	14
1.	Compensation	14
2.	Payment/Invoicing Instructions	14
	Signature Page.....	16

ATTACHMENT

Attachment A - Child Support Enforcement Requirements.....	17
--	----

AGREEMENT NO. MA-057-13011685 14011405
BETWEEN
PRADO FAMILY SHOOTING RANGE
AND
THE COUNTY OF ORANGE, PROBATION DEPARTMENT
FOR
USE OF SHOOTING RANGE FACILITIES

This Agreement No. MA-057-13011685 14011405, hereinafter "CONTRACT", is made and entered into upon execution of all necessary signatures, by and between Prado Family Shooting Range, with a place of business at 17501 Pomona Rincon Road, Chino, CA 91708, hereinafter "CONTRACTOR", and the County of Orange, a political subdivision of the State of California, hereinafter "COUNTY", acting through the Orange County Probation Department, hereinafter "Probation". CONTRACTOR and COUNTY may sometimes be referred to individually as "Party" or collectively as "Parties".

RECITALS

WHEREAS, COUNTY has a need for shooting range facilities for designated Probation staff to be trained in the use of firearms, in their peace officer capacities; and

WHEREAS, CONTRACTOR is willing to provide the shooting range facilities for Probation's firearms instructors to train their staff.

NOW, THEREFORE, the Parties mutually agree as follows:

I. 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 trial to another county.
- B. Entire CONTRACT:** This CONTRACT, when accepted by the 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 by 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 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 PURCHASING AGENT in writing.
- D. Taxes:** Not applicable.

- 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. Over-shipments and under-shipments of goods shall be only as agreed to in writing 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 COUNTY and its indemnitees as identified in paragraph "HH" below, and as more fully described in paragraph "HH", 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 "HH" below, it shall indemnify, defend, and hold COUNTY and COUNTY INDEMNITEES (as defined in paragraph "HH") 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. In the event of such a breach, this Contract may be terminated forthwith.

In the event that ADMINISTRATOR should consent to subcontracting, each and all of the provisions for this CONTRACT and any amendment thereto shall extend to and be binding upon and inure to the benefit of the successors or administrators of the respective parties. Whenever the CONTRACTOR is authorized to subcontract, the terms of this CONTRACT shall prevail over those of any such subcontract.

In the event the CONTRACTOR is allowed to subcontract, the COUNTY shall look to the CONTRACTOR for the results of its sub-tier. The CONTRACTOR agrees to be responsible for all the subcontractor's acts and omissions to the same extent as if the subcontractors were employees of the CONTRACTOR. No subcontracts shall alter in any way any legal responsibility of the CONTRACTOR to the COUNTY.

In the event that ADMINISTRATOR should consent to subcontracting, the CONTRACTOR shall include in all subcontracts the following provision: "This contract is a subcontract under the terms of a prime CONTRACT with the County of Orange. All representations and warranties shall inure to the benefit of the County of Orange."

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 – Default of Contractor: If CONTRACTOR is in default of any of its obligations under this CONTRACT, County shall give 60 days' notice to CONTRACTOR that this CONTRACT may be canceled if the specific deficiencies are not corrected. If CONTRACTOR is in default of any of its obligations under this CONTRACT and COUNTY determines that such default poses a serious threat to public safety, and CONTRACTOR has not commenced cure within 10 days after receipt of a written notice of default and cured such default within the time specified in the notice, the COUNTY shall immediately be entitled to commence resolution in accordance with this paragraph or to terminate this CONTRCT by giving written notice to take effect immediately. Default shall include failure to carry out any of the requirements of this CONTRACT, including, but not limited to not providing enough properly skilled workers or proper materials, persistently disregarding laws and or ordinances, not proceeding with the work as agreed to herein, or otherwise substantially violating any provision of this CONTRACT. Upon termination of the CONTRACT with CONTRACTOR, the COUNTY may begin negotiations with a third-party Contractor to provide goods and/or services as specified in this CONTRACT.

Termination – Convenience of the County: Performance of services under this CONTRACT may be terminated by COUNTY in whole or in part, when such action is deemed by COUNTY to be in its best interest. Termination of work shall be effected by delivery to CONTRACTOR of a 60-day written Notice of Termination specifying the extent to which performance of work is terminated, and the date upon which such termination becomes effective. This provision is not applicable when COUNTY terminates the CONTRACT pursuant to Section II, Paragraph 5 of this CONTRACT.

After receipt of the Notice of Termination and except as otherwise directed by COUNTY, CONTRACTOR shall:
1) Stop services under this CONTRACT on the date and to the extent specified in the Notice of Termination, and
2) Complete performance of that parts of the work that is not terminated by the Notice of Termination.

Termination – Orderly: Upon termination or other expiration of this Contract, each party shall promptly return to the other party all papers, electronic data, materials, and other properties of the other held by each for purposes of execution of the Contract. In addition, each party will assist the other party in orderly termination of this Contract and the transfer of all aspects, tangible and intangible, as may be necessary for the orderly, non-disruptive business continuation of each party.

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
Employers' Liability Insurance	\$1,000,000 per occurrence

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 "HH" 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 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 party 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 party 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 party 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. Indemnification Provisions:** CONTRACTOR agrees to indemnify, defend with counsel approved in writing by COUNTY, and hold harmless the COUNTY, its officers, elected and appointed officials, 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

1.0 Scope of CONTRACT: CONTRACTOR shall provide shooting range facilities as part of Probation's firearms training program, pursuant to Section III ("Scope of Work") of this CONTRACT.

2.0 Term: The term of this CONTRACT shall be for a ~~one-year~~ three-year period, commencing on April 8, ~~2009~~ 2014 through April 7, ~~2010~~ 2017, unless otherwise terminated sooner by County; and shall be subject to the additional termination provisions set forth in the following sections:

Section I, General Terms and Conditions:

Paragraph I – Assignment or Subcontracting

Paragraph K – Termination

Paragraph P – Insurance Provisions

Section II, Additional Terms and Conditions:

Paragraph 5.0 – Contingency of Funds

Paragraph 6.0 – Child Support Enforcement Requirements

Paragraph 8.0 – CONTRACTOR Bankruptcy/Insolvency

Paragraph 12.0 – Conflict with Existing Law

Paragraph 13.0 – Covenant against Contingent Fees

2.1 This Contract is renewable for ~~four~~ one additional ~~one-year periods~~ two-year period, commencing on April 8, ~~2010~~ 2017 through April 7, ~~2014~~ 2019, unless otherwise terminated sooner by County during that renewal period. The County shall not be required to give a reason if it elects not to renew this Contract.

3.0 Compensation and Payment: The CONTRACTOR agrees to accept the specified compensation as set forth in Section IV of this CONTRACT, entitled "Cost/Compensation for Contract Services", based on actual usage, 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. The total cost under this CONTRACT shall not exceed \$90,000.

4.0 Conflict of Interest: The CONTRACTOR shall exercise reasonable care and diligence to prevent any actions or conditions that could result in a conflict with the best interests of the COUNTY. This obligation shall apply to the CONTRACTOR; the CONTRACTOR'S employees, agents, and relatives; sub-tier contractors; and third parties associated with accomplishing work and services hereunder. The CONTRACTOR'S efforts shall include, but not be limited to, establishing precautions to prevent its employees or agents from making, receiving, providing or offering gifts, entertainment, payments, loans or other considerations which could be deemed to appear to influence individuals to act contrary to the best interests of the COUNTY.

The Orange County Board of Supervisors policy prohibits its employees from engaging in activities involving a conflict of interest. The CONTRACTOR shall not, during the period of this CONTRACT, employ any COUNTY employee for any purpose.

5.0 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.

6.0 Child Support Enforcement Requirements: In order to comply with child support enforcement requirements of the County of Orange, within ten (10) days of notification of selection of award of CONTRACT, but prior to official award of CONTRACT, the selected CONTRACTOR hereby agrees to furnish assigned Deputy Purchasing Agent with the required CONTRACTOR data and certifications, in the form of Attachment A to this CONTRACT, entitled "County of Orange Child Support Enforcement Certification Requirements," attached hereto and incorporated herein by reference.

Failure of CONTRACTOR to timely submit the data and/or certifications required above or to comply with all federal and state employee 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 this CONTRACT. Failure to cure such breach within sixty (60) calendar days of notice from the COUNTY shall constitute grounds for termination of this CONTRACT.

7.0 EDD Independent Contractor Reporting Requirement: Effective January 1, 2001, the COUNTY is required to file federal Form 1099-Misc for services received from a "Service provider" to whom the COUNTY pays \$600 or more or with whom the COUNTY enters into a Contract for \$600 or more within a single calendar year. The purpose of this reporting requirement is to increase child support collection by helping to locate parents who are delinquent in their child support obligations.

The term "Service provider" is defined in California Unemployment Insurance Code Section 1088.8, subparagraph B.2 as "an individual who is not an employee of the Service recipient for California purposes and who received compensation or executes a Contract for services performed for that Service recipient within or without the state." The term is further defined by the California Employment Development Department to refer specifically to independent contractors. An independent Contractor is defined as "an individual who is not an employee of the government entity for California purposes and who receives compensation or executes a Contract for services performed for that government entity either in or outside of California."

The reporting requirement does not apply to corporations, general partnerships, limited liability partnerships, and limited liability companies.

Additional information on this reporting requirement can be found at the California Employment Development Department web site located at http://www.edd.ca.gov/Payroll_Taxes/FAQ_-_California_Independent_Contractor_Reporting.htm.

To comply with the reporting requirements, COUNTY procedures for contracting with independent contractors mandate that the following information be completed and forwarded to the contracting agency/department immediately upon request:

- First name, middle initial and last name
- Social Security Number
- Address
- Start and expiration dates of Contract
- Amount of Contract

8.0 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.

9.0 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:

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

10.0 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.

11.0 Interpretation of CONTRACT: In the event of a conflict or question involving the provisions of any part of this CONTRACT, interpretation and clarification, as necessary, shall be determined by the COUNTY'S assigned deputy purchasing agent. If discrepancies in CONTRACT exist between the CONTRACTOR and the COUNTY'S assigned deputy purchasing agent in interpreting the provision(s), final interpretation and clarification shall be determined by the COUNTY'S Purchasing Agent or his/her designee.

12.0 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.

13.0 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 CONTRACT price or consideration, or otherwise recover the full amount of such commission, percentage, brokerage, or contingent fee from CONTRACTOR.

14.0 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
1055 N. Main Street
Santa Ana, CA 92701
Attn: Purchasing Services

TO: CONTRACTOR
Prado Family Shooting Range
17501 Pomona Rincon Road
Chino, CA 91708
Attn: Chad Carlson, Owner

15.0 Usage: No guarantee is given by the COUNTY to the CONTRACTOR regarding usage of this CONTRACT. Usage figures, if provided, are approximate. The CONTRACTOR agrees to supply services and/or commodities requested, as needed by the COUNTY, at prices listed in Section IV of this CONTRACT, regardless of quantity requested.

III. SCOPE OF WORK

A. Objectives

Deputized staff of the Orange County Probation Department (Probation) who are authorized to carry firearms are required to meet training requirements under Penal Code sections 830.5 and 832, and to qualify in firearm proficiency at least quarterly. Required initial training for authorized deputies include the satisfactory completion of: (a) the Peace Officers Standards and Training (POST) certification under Penal Code section 832; and (b) the 40-hour California Probation Officers of California (CPOC) Defensive Pistol Course, as taught by Probation's Rangemasters.

It is Probation policy that the use of a firearm by an authorized deputy shall be limited to circumstances where necessary for self defense, the defense of others, or in an imminent threat of death or serious bodily injury. Thus, ongoing training in the safe and defensive use of firearms is essential in order for deputized staff to exhaust all reasonable means of self-protection and the protection of others in the officer's presence before resorting to the use of a firearm.

As determined by the Chief Probation Officer, training is provided on a recurrent basis to maintain authorized deputies' tactical skills and advanced knowledge of firearms, as well as to keep current on department policies, procedures, and required certifications. Thus, while authorized deputies are required to qualify with their department-issued firearm quarterly, in the intervening months, authorized deputies also participate in tactical range practicum designed and developed by Probation Rangemasters.

B. CONTRACTOR's Responsibilities

CONTRACTOR shall provide COUNTY with the use of CONTRACTOR's ~~park facilities~~ shooting range facilities, as specified below, for COUNTY's certification and recertification of designated peace officers in firearms training:

1. Outdoor range and classrooms located at: Prado Family Shooting Range, 17501 Pomona Rincon Road, Chino, CA 91710 ~~which shall be accessible seven days a week for training~~
2. ~~Shooting Solutions simulator for enhanced armed officer safety training~~
Scheduling flexibility to accommodate Probation's regular work hours and other ongoing POST certification training requirements all through the year
3. ~~Safe, private area where deputies can clean and maintain their weapons under the supervision of COUNTY-supervised instruction~~
Accommodation for Probation Rangemasters to train designated officers outdoors on firearms use and proficiency and provide classroom instruction covering the legal liabilities of defensive arming
4. ~~Multiple targets, turning targets, and lateral moving target systems, which shall enable practice with moving targets, adding realism to the training~~
Onsite storage of training supplies and equipment in between training sessions
5. ~~Secluded site where trainees can be isolated from others to train under COUNTY-supervised instruction~~
Designated range areas for law enforcement that are closed to the public during Probation training
6. ~~Multiple shooting bays, including four (4) for pistols and two (2) for rifles, with shooting bays rated for high-powered rifles, shotguns and pistols~~

IV. COST/COMPENSATION FOR CONTRACT SERVICES

1. Compensation: The amounts to be billed under this CONTRACT shall be based on Probation’s actual usage of CONTRACTOR’s shooting range facilities, at the rates specified below. CONTRACTOR may be paid up to a total maximum amount of ~~\$75,000~~ ~~\$90,000~~ for the initial three-year term of April 8, ~~2009~~ ~~2014~~ through April 7, ~~2012~~ ~~2017~~. If the CONTRACT is renewed for the two-year term of April 8, ~~2012~~ ~~2018~~ through April 7, ~~2014~~ ~~2019~~, CONTRACTOR shall be paid up to a total maximum amount of ~~\$50,000~~ ~~\$60,000~~ for the two-year term.

<u>Time/Duration of Usage</u>	<u>Rate</u>
Full 8-Hour Day for One Range	\$350
Half 4-Hour Day for One Range	\$250
Additional Range for Full or Half Day Use	\$200
Shooting Solutions Simulator	\$25

2. Payment/Invoicing Instructions:

- a. Upon completion of each scheduled use of the facility, 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
- Description of services

- 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 have caused this CONTRACT to be executed in the County of Orange, State of California.

PRADO FAMILY SHOOTING RANGE*

By: _____

Dated: _____

Name: _____

Title: _____

By: _____

Dated: _____

Name: _____

Title: _____

COUNTY OF ORANGE

Name Title

Signature Date

**APPROVED AS TO FORM:
COUNTY COUNSEL
ORANGE COUNTY, CALIFORNIA**

By: _____

Dated: _____

Deputy County Counsel

* If a corporation, this document must be signed by two corporate officers. The first signature must be either the Chairman of the Board, President, or any Vice President. The second signature must be the Secretary, an Assistant Secretary, the Chief Financial Officer, or any Assistant Treasurer.

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