



**WIA COST REIMBURSEMENT AGREEMENT**

**County of Orange**

**FUNDING SOURCES: 100% FEDERAL**

**AGREEMENT #: 12-28-629304-WIA-A**

**CFDA: 17.258 WIA Adult Programs**

**Funding Agency: Department of Labor**

**17.278 WIA Dislocated Worker Formula Grants**

**Funding Agency: Department of Labor**

**17.261 WIA Pilots, Demonstrations, Research Projects Funding Agency: Department of Labor**

## TABLE OF CONTENTS

No.	Page
1. ADMINISTRATION OF AGREEMENT .....	5
2. PURPOSE .....	6
3. TERM .....	6
4. CONTINGENCY OF FUNDS.....	6
5. STATEMENT OF WORK.....	7
6. SERVICES .....	7
7. BREACH-SANCTIONS .....	7
8. TERMINATION.....	8
9. COMPLIANCE WITH LAW.....	8
(a) Federal.....	8
(1) Clean Air Act and Clean Water Act .....	9
(2) Energy Efficiency Standards .....	9
(b) State.....	9
(c) County .....	9
(d) Local .....	9
(e) Court Orders .....	9
(f) Terms and Conditions .....	9
10. COMPLIANCE WITH COUNTY WIA POLICIES AND PROCEDURES .....	9
11. PERFORMANCE STANDARDS .....	9
12. MODIFICATION OF PROGRAM COMPONENTS AND SERVICE LEVELS .....	10
13. PARTICIPANTS .....	11
(a) Benefits.....	11
(b) Labor Standards .....	11
(c) Complaint Handling Procedures .....	11
(d) Non-Discrimination and Compliance Provisions.....	11
14. CONFIDENTIALITY.....	13
15. INSTRUCTORS.....	13
16. EQUIPMENT .....	14
17. SATISFACTORY WORK.....	15
18. REPORTS .....	15
19. BUDGET SCHEDULE .....	15
20. MODIFICATION OF BUDGET SCHEDULE .....	15

1	21. PAYMENTS BY COUNTY .....	16
2	(a) Monthly Payments .....	16
3	(b) County Discretion.....	17
4	(c) Advance .....	17
5	(d) Invoices.....	17
6	22. PROGRAM INCOME.....	17
7	23. PELL GRANT/HEA TITLE IV.....	18
8	24. INDEPENDENT CONTRACTOR .....	18
9	25. SUBCONTRACTORS .....	19
10	26. NO SUPPLANTATION .....	19
11	27. EMPLOYEE ELIGIBILITY VERIFICATION .....	20
12	28. ASSIGNMENT.....	20
13	29. FISCAL ACCOUNTABILITY.....	20
14	(a) Financial Management System.....	20
15	(b) CONTRACTOR's Records.....	21
16	(c) Costs Charged .....	21
17	30. ANNUAL AUDIT .....	21
18	31. ACCESS AND RECORDS .....	21
19	(a) Access .....	21
20	(b) Records Retention .....	22
21	32. FRAUD .....	22
22	33. INDEMNIFICATION .....	23
23	34. INSURANCE .....	23
24	35. PATENT/COPYRIGHT MATERIALS/PROPRIETARY INFORMATION.....	26
25	36. INTELLECTUAL PROPERTY .....	26
26	(a) Federal Funding.....	26
	(b) Ownership.....	27
	(c) Retained Rights/License Rights .....	29
	(d) Copyright.....	29
	(e) Patent Rights .....	30
	(f) Third Party Intellectual Property.....	30
	(g) Warranties.....	31
	(h) Intellectual Property Indemnity.....	32
	(i) Survival .....	33

1	37. CORPORATE STATUS.....	33
2	38. STANDARDS OF CONDUCT .....	33
3	(a) General Assurance .....	33
4	(b) Employment of Former State and COUNTY Employees .....	34
5	(c) Conducting Business Involving Relatives.....	34
6	(d) Conducting Business Involving Close Personal Friends and Associates .....	34
7	(e) Avoidance of Conflict of Economic Interest.....	34
8	39. SWEATFREE CODE OF CONDUCT .....	34
9	40. DRUG FREE WORKPLACE .....	35
10	41. DEBARMENT .....	35
11	42. SECTARIAN ACTIVITIES .....	35
12	43. LITERATURE .....	36
13	44. LOBBYING .....	36
14	45. DISPUTES .....	36
15	46. TOTAL AGREEMENT .....	37
16	47. CHILD SUPPORT ENFORCEMENT.....	37
17	48. EDD INDEPENDENT CONTRACTOR REPORTING REQUIREMENTS .....	37
18	49. NOTICES .....	37
19	50. GOVERNING LAW AND VENUE.....	38
20	51. WAIVER .....	38
21	52. PUBLICITY .....	38
22	53. CALENDAR DAYS .....	38

**SIGNATURES****EXHIBITS**

- A. General Program Requirements
- B. Statement of Work
- C. Performance Standards and Matrix
- D. Budget Schedule
- E. Drug-Free Workplace Certification
- F. Suspension & Debarment
- G. Certification Regarding Lobbying
- H. Disclosure Form to Report Lobbying
- I. Child Support Enforcement Provision (for profit only providers)
- J. EDD Independent Operator Reporting Requirements
- K. OC Community Resources Contract Reimbursement Policy
- L. Authorized Signature Form

THIS WIA Cost Reimbursement Agreement ("AGREEMENT") by and between the County of Orange, hereinafter referred to as "COUNTY", and ProPath, Inc., hereinafter referred to as "CONTRACTOR", County and Contractor are sometimes individually referred to as "Party", or collectively referred to as "Parties", consists of fifty-three (53) sections and the following twelve (12) exhibits: A. General Requirements; B. Statement of Work; C. Performance Standards; D. Budget Schedule; E. Drug Free Workplace Certification, F. Suspension & Debarment Certification G. Certification Regarding Lobbying, H. Disclosure Form to Report Lobbying, I. Child Support Enforcement Provision (for-profit providers only), J. Employment Development Department Independent Operator Reporting Requirements, K. OC Community Resources Contract Reimbursement Policy, and L. Authorized Signature Form.

**WHEREAS**, Congress has enacted the "Workforce Investment Act of 1998," hereinafter referred to as "the Act," to provide workforce investment activities, through statewide and local workforce investment systems, that increase employment, retention and earnings of participants, and increase occupational skill attainment by participants, and, as a result, improve the quality of the workforce and enhance the productivity and competitiveness of the Nation; and

**WHEREAS**, COUNTY, acting as the Administrator of the Act funds, is empowered to make a portion of the funds available pursuant to the Act (hereinafter referred to as "grant funds") to CONTRACTOR, for the purpose of implementing the provisions of the Act; and

**WHEREAS**, COUNTY, by Minute Order dated, June 26, 2012 a copy of which is on file with the Clerk of the Board of Supervisors of Orange County and which by this reference is incorporated herein and made a part hereof as if fully set forth, has appropriated a portion of grant funds in an amount not to exceed ~~two million four hundred eighteen thousand five hundred dollars (\$2,418,500.00)~~ two million four hundred ninety three thousand five hundred dollars (\$2,493,500.00) to engage CONTRACTOR to carry out certain program services; and

**WHEREAS**, CONTRACTOR, in order to receive grant funds, is agreeable to the terms and conditions hereinafter set forth;

**NOW, THEREFORE, IT IS MUTUALLY AGREED AS FOLLOWS:**

**1. ADMINISTRATION OF AGREEMENT**

COUNTY'S OC Community Resources Director or designee (hereinafter referred to as "DIRECTOR"), shall administer this Agreement as is necessary or reasonable to comply with or implement the grant funds received by COUNTY and as required by law or applicable regulations.

## **2. PURPOSE**

The purpose of the program funded by this Agreement is to provide workforce investment activities that increase employment, retention, earnings and occupations skill attainment through local workforce investment systems to those seeking employment. Additionally, this program is funded to increase the effectiveness of local and regional business through business improvement and development activities, job matching, and other services. All services are intended to improve the quality of the workforce and enhance the productivity and competitiveness of Orange County and the United States. CONTRACTOR shall ensure that the program funded hereby shall comply with this purpose.

## **3. TERM**

The effective term of this Agreement shall commence on July 1, 2012 and terminate on June 30, 2013 subject to the provisions of this Agreement; however, CONTRACTOR shall perform such duties extending beyond this term, including but not limited to obligations with respect to indemnification, audits, monitoring, reporting and accounting. CONTRACTOR and CONTRACT ADMINISTRATOR may mutually agree in writing to extend the term of this Agreement up to and including a period of one year, provided that COUNTY's maximum obligation stated in this Agreement does not increase as a result, and on the same terms and conditions upon mutual agreement of the parties in writing without further Board action, unless the COUNTY earlier terminates this AGREEMENT pursuant to the provisions contained herein.

## **4. CONTINGENCY OF FUNDS**

CONTRACTOR acknowledges that the obligations of COUNTY under this Agreement are contingent upon the availability of Federal and/or State funds, as applicable, for the reimbursement of CONTRACTOR's expenditures, and inclusion of sufficient funds for the services hereunder in the budget approved by COUNTY's Board of Supervisors each fiscal year this Agreement remains in effect or operation. In the event that such funding is terminated or reduced, CONTRACT ADMINISTRATOR may

1 immediately terminate this Agreement, reduce COUNTY's maximum obligation, or modify this  
2 Agreement, without penalty. The decision of CONTRACT ADMINISTRATOR shall be binding on  
3 CONTRACTOR. CONTRACT ADMINISTRATOR shall provide CONTRACTOR with written notification  
4 of such determination. CONTRACTOR shall immediately comply with CONTRACT ADMINISTRATOR's  
5 decision.

## 6 **5. STATEMENT OF WORK**

7 This Agreement is based upon the Statement of Work, attached hereto and incorporated herein as  
8 Exhibit B to this Agreement. CONTRACTOR agrees to comply with all provisions, to perform all work,  
9 and to provide all services set forth in this Agreement and the aforementioned Statement of Work in a  
10 professional, timely and diligent manner. The parties hereto agree that concerning matters not  
11 specifically contained within the body of this Agreement, the Statement of Work will be controlling.

## 12 **6. SERVICES**

13 CONTRACTOR agrees that those specific program components to be performed by  
14 CONTRACTOR, and the service levels to be utilized by COUNTY for program evaluation and monitoring,  
15 include, but are not limited to, those set forth in Exhibits "A", "B", and "C" which are attached hereto and  
16 incorporated herein as if fully set forth. CONTRACTOR agrees that it is responsible for and guarantees  
17 performance of all of the specific program components and service levels listed in Exhibits "A", "B", and  
18 "C". CONTRACTOR further agrees that lack of compliance with Exhibits "A", "B", and "C" may, in  
19 addition to those remedies as provided herein, constitute grounds for COUNTY to reduce the level of  
20 payment otherwise provided of this Agreement or to reduce the payment level and budget at which  
21 CONTRACTOR will be funded for the remainder of the period of this Agreement. Reductions in an  
22 amount up to 10% of the total contract may be made by CONTRACT ADMINISTRATOR. Except for  
23 Section 4 of the Agreement, any reduction over 10% shall occur only as a result of action of Board of  
24 Supervisors upon recommendation by CONTRACT ADMINISTRATOR

## 25 **7. BREACH - SANCTIONS**

26 If, through any cause, CONTRACTOR violates any of the terms and conditions of this Agreement, or  
any prior Agreements whereby grant funds were received by CONTRACTOR, or if CONTRACTOR

reports inaccurately, or if an audit report makes disallowances, CONTRACTOR shall promptly remedy its acts or omissions and/or repay COUNTY all amounts due COUNTY as a result thereof. For any such failures or violations COUNTY shall also have the right, at its sole discretion, to: (1) immediately discontinue program support until such time as CONTRACTOR fulfills its obligations or remedies all violations of this Agreement or prior Agreements; and/or (2) collect outstanding amounts, as determined by CONTRACT ADMINISTRATOR to be due COUNTY from CONTRACTOR, by offsetting or debiting from current claims or invoices, if after thirty (30) days written notice CONTRACTOR has failed to repay same or a repayment schedule has not been made; and/or (3) terminate this Agreement as provided herein. CONTRACT ADMINISTRATOR shall give CONTRACTOR written notice of any action pursuant to this paragraph, which notice shall be deemed served on the date of mailing.

#### **8. TERMINATION**

(a) CONTRACT ADMINISTRATOR may terminate this Agreement without penalty immediately with cause or after thirty (30) days written notice without cause, unless otherwise specified. Notice shall be deemed served on the date of mailing. Cause shall be defined as any breach of contract, any misrepresentation or fraud on the part of the CONTRACTOR. Exercise by CONTRACT ADMINISTRATOR of the right to terminate this Agreement shall relieve COUNTY of all further obligation under this Agreement.

(b) Upon termination, or notice thereof, CONTRACTOR agrees to cooperate with CONTRACT ADMINISTRATOR in the orderly transfer of service responsibilities, active case records, pertinent documents and all equipment or materials purchased with COUNTY funds.]

#### **9. COMPLIANCE WITH LAW**

In its performance under this Agreement, CONTRACTOR shall fully comply with the requirements of the following, whether or not otherwise referred to in this Agreement:

(a) The Act and all applicable federal statutes, regulations, policies, procedures and directives, including but not limited to, 20 C.F.R. Parts 652 and 660 through 671.



(1) All applicable standards and orders and requirements issued under Section 306 of the Clean Air Act, Section 508 of the Clean Water Act and Environmental Protection Agency regulations in contracts in excess of \$100,000.

(2) CONTRACTOR shall comply with such mandatory standards and policies relating to energy efficiency as particularized in the State Energy Conservation Plan. (Title 20, California Code of Regulations), as required by the U.S. Energy Policy and Conservation Act (P.L. 94-163) as each may now exist or be hereafter amended.

(b) All applicable State statutes, regulations, policies, procedures and directives;

(c) All applicable COUNTY policies, procedures and directives;

(d) All applicable local ordinances and requirements, including use permits and licensing;

(e) Court orders applicable to CONTRACTOR'S operations; and

(f) The terms and conditions of this Agreement, including Exhibits.

If any of the foregoing is enacted, amended, or revised, CONTRACTOR will comply with such or will notify CONTRACT ADMINISTRATOR in writing within thirty (30) days after enactment or modification that it cannot so comply. COUNTY may thereupon terminate this Agreement, if necessary.

#### **10. COMPLIANCE WITH COUNTY WIA POLICIES AND PROCEDURES**

CONTRACTOR shall comply with all applicable parts of COUNTY's WIA Policies and Procedures for recruitment, intake, assessment, referral, and internal monitoring of compliance with provisions of this Agreement. Said Policies and Procedures may be modified by CONTRACT ADMINISTRATOR upon ten (10) days written notice to CONTRACTOR.

#### **11. PERFORMANCE STANDARDS**

CONTRACTOR shall comply with and adhere to the performance accountability standards and general program requirements described in Sections 136 (Performance Standards) and 195 (General Program Requirements) of the Act and applicable regulations and as contained in Exhibit "C". Should the Performance Requirements defined in the Agreement between the State of California and the County of Orange be changed, COUNTY shall have the right to unilaterally modify this agreement to meet such requirements.

**12. MODIFICATION OF PROGRAM COMPONENTS AND SERVICE LEVELS**

The parties hereto agree that those program components and service levels detailed in Exhibits "A", "B", and "C" may be modified upon mutual written agreement of the CONTRACT ADMINISTRATOR and CONTRACTOR so long as the total payments under this Agreement are not increased and the basic goals and objectives of the program are not altered. Should the Federal Government and/or the State of California modify any program component and/or service level detailed in Exhibits "A", "B", and/or "C" then the COUNTY shall have the right to unilaterally modify this Agreement to meet such requirements.

(a) CONTRACT ADMINISTRATOR may at any time, by written change order to CONTRACTOR, make changes within the general scope of this Agreement, including, in the definition of services and tasks to be performed, the manner in which services are performed, the time and place of performance thereof and additional related provisions. Such change orders may be made when necessitated by changes in the Orange County One-Stop System operations or performance, the operations or performance of CONTRACTOR, or changes in applicable statutes, regulations or State of California or Federal mandates or directives.

CONTRACTOR and CONTRACT ADMINISTRATOR shall make a good faith effort to reach agreement with respect to change orders, which affect the price of services under the Agreement. CONTRACTOR's protest or failure to agree to the amount of any adjustment to be made as a result of a change order shall be a dispute for which an appeal may be made pursuant to this Agreement. Notwithstanding the foregoing, the price of services under this Agreement shall not be increased except by written modification of this Agreement indicating the new services and price of this Agreement if applicable. Until the parties reach agreement, CONTRACTOR shall not be obligated to assume increased performance under the change order beyond the limitation of funds established within this Agreement.

(b) CONTRACTOR may request changes in the scope of performance or services under this Agreement, by submitting a written request to CONTRACT ADMINISTRATOR describing the request and its impact on the Statement of Work and Budget Schedule. CONTRACT ADMINISTRATOR will review the request and respond in writing within ten (10) business days. Requests shall be reviewed in light of

all CID program activities. CONTRACT ADMINISTRATOR's decision whether to approve the request or request Board of Supervisors' approval shall be final. CONTRACT ADMINISTRATOR may approve a request that meets all of the following criteria:

(ii) It does not materially change the terms of this Agreement, and

(iii) It is supported by adequate consideration to COUNTY.

Board of Supervisors' action is necessary to approve a request from CONTRACTOR that does not satisfy all of the criteria listed above.

### 13. PARTICIPANTS

(a) Benefits. CONTRACTOR shall provide wages and benefits to individuals who participate in the activities and services funded by this Agreement ("participants") in accordance with the standards and requirements of the Act, including Section 181 of the Act.

(b) Labor Standards. CONTRACTOR shall adhere to the Labor Standards described in the Act, including Section 181 of the Act, and all other applicable codes and regulations.

(c) Complaint Handling Procedures. CONTRACTOR shall comply with the "Complaint Handling Procedures" under the Act, a copy of which is available from the CONTRACT ADMINISTRATOR. CONTRACTOR shall advise participants of their right to file complaints under the Act and of the procedures for resolution of any complaints. CONTRACTOR shall follow COUNTY's procedures for handling complaints which is available from the CONTRACT ADMINISTRATOR alleging a violation of the Act, regulations, grants or other agreements under the Act, and any decision of the COUNTY, the State or the Federal government relating to the complaint shall be binding on and shall be followed by CONTRACTOR.

(d) Nondiscrimination and Compliance Provisions

(1) CONTRACTOR shall comply fully with the nondiscrimination and equal opportunity provisions of the Act (Section 188); the Nontraditional Employment for Women Act of 1991; Title VI of the Civil Rights Act of 1964, as amended; Section 504 of the Rehabilitation Act of 1973, as amended; the Age Discrimination Act of 1975, as amended; the Americans with Disabilities Act of 1990; Title IX of the Education Amendments of 1972, as amended; the Equal Opportunity provisions in Executive Order

1 11246, as amended by Executive Order 11375 and supplemented by the requirements of 41 C.F.R. Part  
2 60; and with all applicable requirements imposed by or pursuant to regulations or Executive Order  
3 implementing those laws, including, but not limited to, 29 C.F.R. Part 37. The United States, the State of  
4 California and COUNTY have the right to seek judicial enforcement of this requirement.

5 (2) CONTRACTOR shall comply with the provisions of the Fair Employment and Housing Act  
6 (California Government Code, Section 12900 et seq.) and the regulations promulgated thereunder  
7 (California Code of Regulations, Title 2, Section 7285.0 et seq.). The applicable regulations of the Fair  
8 Employment and Housing Commission implementing Government Code Section 12990 (a-f), set forth in  
9 Chapter 5 of Division 4 of Title 2 of the California Code of Regulations are incorporated into this  
10 Agreement by reference and made a part hereof as if set forth in full.

11 (3) In the performance of this Agreement, CONTRACTOR and its subcontractors shall not  
12 deny the Agreement's benefits to any person on the basis of race, ancestry, national origin, religion,  
13 color, ethnic group identification, sex, age, mental or physical disability (including HIV and AIDS), medical  
14 condition (including cancer), marital status, denial of family care leave, political affiliation or belief, nor will  
15 they unlawfully discriminate, harass or allow harassment against any employee or applicant for  
16 employment because of race, ancestry, national origin, religion, color, ethnic group identification, sex,  
17 age, mental or physical disability (including HIV and AIDS), medical condition (including cancer), marital  
18 status, denial of family care leave, political affiliation or belief. CONTRACTOR shall insure that the  
19 evaluation and treatment of employees and applicants for employment are free from such discrimination  
20 and harassment.

21 (4) CONTRACTOR will include the non-discrimination and compliance provisions of this  
22 Section of the Agreement in all subcontracts to perform work under this Agreement.

23 (5) CONTRACTOR will give written notice of its obligations under this Section of the  
24 Agreement to labor organizations with which CONTRACTOR has a collective bargaining or other  
25 agreement.

26 (6) CONTRACTOR shall furnish any and all information requested by CONTRACT  
ADMINISTRATOR and shall permit CONTRACT ADMINISTRATOR access, during business hours, to

books, records and accounts in order to ascertain CONTRACTOR's compliance with the above non-discrimination requirements.

#### 14. **CONFIDENTIALITY**

(a) Without prejudice to any other section of this Agreement, CONTRACTOR shall, where applicable, maintain the confidential nature of information provided to it concerning participants in accordance with the requirements of Federal and State law. However, CONTRACTOR shall submit to COUNTY, the State of California and/or the United States Government or their representatives, all records requested for administrative purposes, including audit, examinations, monitoring and verification of reports submitted by CONTRACTOR, costs incurred and services rendered hereunder.

(b) CONTRACTOR shall require all of its employees, agents, subcontractors and volunteer staff who may provide services to CONTRACTOR under this Agreement to sign an agreement with CONTRACTOR before commencing the provision of any such services, to maintain the confidentiality of any and all materials and information with which they may come into contact, or the identities or any identifying characteristics or information with respect to any and all participants referred to CONTRACTOR by COUNTY, except as may be required to provide services under this Agreement or to those specified in this Agreement as having the capacity to audit CONTRACTOR, and as to the latter, only during such audit. CONTRACTOR shall provide reports and any other information required by COUNTY in the administration of this Agreement, and as otherwise permitted by law.

(c) CONTRACTOR agrees that any and all subcontracts entered into shall be subject to the confidentiality requirements of this Agreement.

#### 15. **INSTRUCTORS**

CONTRACTOR shall ensure that all instructors involved in the training of participants are qualified to instruct in the appropriate program or training component or curriculum. If necessary, such instructors shall be appropriately certified by the State of California. Within thirty (30) days after the execution of this Agreement, CONTRACTOR shall submit to CONTRACT ADMINISTRATOR a list of the names and qualifications of all instructors who will be providing such training and shall notify CONTRACT ADMINISTRATOR within five (5) business days of any amendments or revisions thereto.

1 **16. EQUIPMENT**

2 All items purchased with funds provided under this Agreement or which are furnished to  
3 CONTRACTOR by COUNTY which have a single unit cost of at least five thousand dollars (\$5,000),  
4 including all taxes, shipping, handling and installation costs shall be considered Equipment. Title to all  
5 Equipment purchased vests and will remain in COUNTY as such shall be designated by CONTRACT  
6 ADMINISTRATOR. The use of such Equipment is limited to the performance of this Agreement. Upon  
7 the termination of this Agreement, CONTRACTOR shall immediately return any Equipment to COUNTY  
8 or its representatives, or dispose of them in accordance with the directions of CONTRACT  
9 ADMINISTRATOR.

10 CONTRACTOR further agrees to the following:

11 (a) To maintain Equipment in good working order and condition, except for normal wear and  
12 tear.

13 (b) To label all items of Equipment, do periodic inventories as required by CONTRACT  
14 ADMINISTRATOR and to maintain an inventory list showing where and how the Equipment is being  
15 used, in accordance with procedures developed by CONTRACT ADMINISTRATOR. All such lists shall  
16 be submitted to CONTRACT ADMINISTRATOR within ten (10) days of the request therefore. Inventory  
17 lists must be maintained for four (4) years after final disposition of property.

18 (c) To report in writing to CONTRACT ADMINISTRATOR immediately after discovery, the loss  
19 or theft of Equipment. For stolen items, the local law enforcement agency must be contacted and a copy  
20 of the police report submitted to CONTRACT ADMINISTRATOR.

21 (d) To purchase a policy or policies of insurance covering loss or damage to any and all  
22 Equipment purchased under this Agreement, in the amount of the full replacement value thereof,  
23 providing protection against the classification of fire, extended coverage, vandalism, malicious mischief  
24 and special extended perils (all risks) covering the parties' interests as they appear.

25 (e) The purchase of any Equipment by CONTRACTOR shall be requested by CONTRACTOR  
26 in writing, shall require the prior written approval of CONTRACT ADMINISTRATOR, and shall fulfill the  
provisions of this Agreement which are appropriate and directly related to CONTRACTOR's service or

activity under the terms of this Agreement. COUNTY may refuse reimbursement for any costs resulting from Equipment purchased, which are incurred by CONTRACTOR, if prior written approval has not been obtained from CONTRACT ADMINISTRATOR.

(f) The purchase of computer-related and electronic equipment under \$5,000, including, but not limited to laptops, desktop computers, cell phones, PDAs, cameras, and DVD players, must be approved by CONTRACT ADMINISTRATOR.

#### **17. SATISFACTORY WORK**

Services rendered hereunder are to be performed to the written satisfaction of DIRECTOR. COUNTY's staff will interpret all reports and determine the quality, acceptability and progress of the services rendered in accordance with the Performance Criteria listed in Exhibit "C". Inconsistencies in performance will be corrected as they occur and are detected. COUNTY will notify CONTRACTOR of any deficiencies and will provide technical assistance to CONTRACTOR to make necessary corrections.

#### **18. REPORTS**

CONTRACTOR shall maintain records and submit such reports, data and information at such times as CONTRACT ADMINISTRATOR may require, and in the form CONTRACT ADMINISTRATOR may require, regarding the performance of CONTRACTOR'S services, activities, costs or other data relating to this Agreement as may be requested by CONTRACT ADMINISTRATOR, upon a form approved by CONTRACT ADMINISTRATOR. CONTRACT ADMINISTRATOR may modify the provisions of this paragraph without further Board action upon written notice to CONTRACTOR.

#### **19. BUDGET SCHEDULE**

CONTRACTOR agrees that the expenditures of any and all funds under this Agreement will be in accordance with the BUDGET SCHEDULE, a copy of which is attached hereto as Exhibit "D" and which by this reference is incorporated herein and made a part hereof as if fully set forth

#### **20. MODIFICATION OF BUDGET SCHEDULE**

(a) Upon written approval of CONTRACT ADMINISTRATOR, CONTRACTOR shall have the authority to transfer allocated program funds from one category of the overall program budget to any other category of the overall program budget, as long as the amount of the total grant is not increased

1 and the basic goals and objectives of the program are not altered. No such transfer may be made  
2 without the express prior written approval of CONTRACT ADMINISTRATOR. A modification of the  
3 BUDGET SCHEDULE may include the addition of any new budget category. Approval of the Budget  
4 Modification by CONTRACT ADMINISTRATOR includes approval of the new Budget Category.

5 (b) CONTRACTOR may submit a program or budget modification request in response to the  
6 modification of program components and/or service levels which significantly alter CONTRACTOR's  
7 Statement of Work. Without further Board action, CONTRACT ADMINISTRATOR may execute  
8 amendments to this Agreement modifying CONTRACTOR's services in amounts that do not collectively  
9 increase or decrease by more than 10% the price of said services under this Agreement when originally  
10 executed. Modifications in excess of 10% of the original Agreement price, and modifications that  
11 materially alter either of the parties' obligations hereunder must be approved by the COUNTY's Board of  
12 Supervisors.

## 13 **21. PAYMENTS BY COUNTY**

14 CONTRACTOR agrees that any and all funds received under this Agreement shall be disbursed or  
15 encumbered on or before June 30, 2013, and that any and all funds remaining as of June 30, 2013  
16 which have not been disbursed or encumbered shall be returned by CONTRACTOR to COUNTY within  
17 thirty (30) days of the expiration or earlier termination of the Agreement as provided herein. No expense  
18 of CONTRACTOR will be reimbursed by COUNTY if incurred after June 30, 2013. No CONTRACTOR  
19 expenses shall be paid if billing is received by COUNTY after July 31, 2013.

20 Upon the effective date of this Agreement, COUNTY shall make payments to CONTRACTOR in  
21 accordance with the following payment schedule:

22 (a) Monthly Payments. Beginning August 1, 2012, upon receipt and approval by OC  
23 Community Services/Community Investment Division (CID) of CONTRACTOR's invoice showing the prior  
24 month's actual expenditures, COUNTY shall make monthly reimbursement payments based on  
25 CONTRACTOR's invoice so long as the total payments under this Agreement do not exceed ~~two million~~  
26 ~~four hundred eighteen thousand five hundred dollars (\$ 2,418,500.00)~~ two million four hundred ninety  
three thousand five hundred dollars (\$2,493,500.00).



1 (b) COUNTY Discretion. At the sole discretion of COUNTY, payments to CONTRACTOR may  
2 be made more frequently than monthly, but such payments shall always be in arrears and not in advance  
3 of the provision of services by CONTRACTOR.

4 (c) Advance. Notwithstanding (b) above, upon written request and justification from  
5 CONTRACTOR, COUNTY may advance to CONTRACTOR a sum not to exceed one sixth (1/6) of  
6 COUNTY'S maximum obligation hereunder. ADMINISTRATOR shall reduce the amount of monthly  
7 payments in the seventh, eighth, ninth, tenth, and eleventh months by twenty percent (20%) of any  
8 advance payment, under (a) above, to recover any outstanding advance or part thereof. Such recovery  
9 may not exceed the total of all outstanding advances. No monthly payment shall be made to  
10 CONTRACTOR which would result in less money remaining unpaid to CONTRACTOR than the total of  
11 advances made to CONTRACTOR.

12 (d) Invoices. COUNTY will reimburse CONTRACTOR for eligible project-related costs only.  
13 CONTRACTOR shall submit requests for reimbursement to COUNTY on a monthly basis beginning on  
14 August 1, 2012, and must provide adequate documentation as required by COUNTY in accordance with  
15 the OC Community Resources Policy for Documenting SUBRECIPIENT Costs, incorporated herein by  
16 reference as Exhibit K. Failure to provide any of the required documentation will cause COUNTY to  
17 withhold all or a portion of a request for reimbursement, or return the entire reimbursement package to  
18 CONTRACTOR, until such documentation has been received and approved by COUNTY.

## 19 **22. PROGRAM INCOME**

20 COUNTY's maximum obligation hereunder shall be reduced by the amount of any program  
21 income earned by CONTRACTOR, from sources other than COUNTY, as a result of this Agreement or  
22 the services provided by CONTRACTOR pursuant to this Agreement. It shall be the responsibility of  
23 CONTRACTOR to inform the COUNTY in writing of any income earned as a result of this Agreement.

24 It is mutually understood that the State or Federal agency responsible for providing the funding for  
25 this Agreement may designate certain revenue of CONTRACTOR as Program Income. To be  
26 designated as Program Income and, therefore, as other than a cost off-set, CONTRACTOR shall do all of  
the following:

1 (a) Submit a plan to the CONTRACT ADMINISTRATOR for use of any and all proposed  
2 Program Income;

3 (b) Set-up and maintain a separate bank account for any proposed Program Income and  
4 account for any and all such income received; and

5 (c) Report to CONTRACT ADMINISTRATOR any and all Program Income received no later  
6 than thirty (30) days from the date of receipt; record the amount received on internal financial records;  
7 and indicate the amount received on the monthly claim submitted to CONTRACT ADMINISTRATOR.

8 CONTRACT ADMINISTRATOR shall then forward the plan for the requested use of the proposed  
9 Program Income to the appropriate State and/or Federal agencies for approval.

10 CONTRACTOR shall not spend any of the proposed Program Income unless or until such time as  
11 CONTRACT ADMINISTRATOR obtains authorization for the use of the Program Income from the  
12 responsible State and/or Federal agency and provides CONTRACTOR with prior written approval for the  
13 use of the funds.

14 CONTRACT ADMINISTRATOR may, in its sole discretion, issue future policy statements and/or  
15 instructions with respect to Program Income. CONTRACTOR shall immediately comply with such policy  
16 statements and/or instructions.

17 **23. PELL GRANTS/HEA TITLE IV**

18 If CONTRACTOR provides any services under this Agreement to applicants for or recipients of  
19 Pell Grants or awards pursuant to Title IV of the Higher Education Act, CONTRACTOR shall cooperate  
20 with CONTRACT ADMINISTRATOR in coordinating these grants and awards with WIA funding in  
21 accordance with 20 C.F.R. 663.320 and Section 134 (d) of the Act. CONTRACTOR shall inform  
22 CONTRACT ADMINISTRATOR in writing of the amounts and disposition of any Pell Grants, Higher  
23 Education Act Title IV awards and other financial aid granted to each WIA participant under this  
24 Agreement.

25 **24. INDEPENDENT CONTRACTOR**

26 CONTRACTOR is and shall at all times be deemed to be, an independent contractor and shall be  
wholly responsible for the manner in which it performs the services required of it by the terms of this

Agreement. Nothing herein contained shall be construed as creating the relationship of employer and employee, or principal and agent, between COUNTY and CONTRACTOR or any of CONTRACTOR'S agents or employees. CONTRACTOR assumes exclusively the responsibility for the acts of its employees or agents as they relate to services to be provided during the course and scope of their employment. CONTRACTOR, its agents, employees and volunteers, shall not be entitled to any rights and/or privileges of COUNTY employees, and shall not be considered in any manner to be COUNTY employees.

## **25. SUBCONTRACTORS**

CONTRACTOR shall not subcontract for services under this Agreement without the prior written consent of CONTRACT ADMINISTRATOR. If CONTRACT ADMINISTRATOR consents in writing to a subcontract, in no event shall the subcontract alter, in any way, any legal responsibility of CONTRACTOR to COUNTY. CONTRACT ADMINISTRATOR may refuse to pay obligations incurred under any subcontract that does not comply with the terms of this Agreement. All subcontracts must be in writing and copies of same shall be provided to CONTRACT ADMINISTRATOR within thirty (30) days of execution. CONTRACTOR shall include in each subcontract any provision CONTRACT ADMINISTRATOR may require

CONTRACTOR shall ensure that all subcontracts for services and contracted staff are procured in a manner consistent with Federal, State and local guidelines. Description of the intended method of procurement must be included as part of the budget which is included as Exhibits "D" and "D-1" of this Agreement. CONTRACTOR shall itemize all subcontractor and contracted staff costs in the budget so it is clear how the funds will be allocated and spent by each subcontractor. By entering into this Agreement CONTRACTOR agrees that it is the direct provider of services.

## **26. NO SUPPLANTATION**

CONTRACTOR shall not supplant any Federal, State or COUNTY funds intended for the purposes of this Agreement with any funds made available under this Agreement. CONTRACTOR shall not claim reimbursement from COUNTY for, or apply sums received from COUNTY with respect to, that portion of its obligations which have been paid by another source of revenue. CONTRACTOR agrees that it shall

not use funds received pursuant to this Agreement, either directly or indirectly, as a contribution or compensation for purposes of obtaining Federal, State or COUNTY funds under any Federal, State or COUNTY program without prior written approval of CONTRACT ADMINISTRATOR.

**27. 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.

**28. ASSIGNMENT**

The terms, covenants, and conditions contained herein shall apply to and bind the heirs, successors, executors, administrators, and assigns of the CONTRACTOR. No portion of this Agreement shall be assigned without the express written consent of COUNTY. Any attempt by CONTRACTOR to assign any portion of this Agreement without the express written consent of COUNTY shall be invalid and shall constitute a breach of this contract.

**29. FISCAL ACCOUNTABILITY**

(a) Financial Management System. CONTRACTOR shall establish and maintain a sound financial management system, based upon generally accepted accounting principles. CONTRACTOR's system shall provide fiscal control and accounting procedures that will include the following:

(1) Information pertaining to subgrant and contract awards, obligations, unobligated balances, assets, expenditures, and income;

(2) Effective internal controls to safeguard assets and assure their proper use;

(3) A comparison of actual expenditures with budgeted amounts for each subgrant and contract;

(4) Source documentation to support accounting records; and

(5) Proper charging of costs and cost allocation.

(b) CONTRACTOR's Records. CONTRACTOR's records shall be sufficient to:

(1) Permit preparation of required reports;

(2) Permit the tracking of funds to a level of expenditure adequate to establish that funds have not been used in violation of the applicable restrictions on the use of such funds; and

(3) Permit the tracking of program income, or profits earned, and any costs incurred (such as stand-in costs) that are otherwise allowable except for funding limitations.

(c) Costs Charged. Costs shall be charged to this Agreement only in accordance with the following:

(1) the Act;

(2) 20 C.F.R. Part 667; and

(3) State implementing legislation.

### 30. ANNUAL AUDIT

CONTRACTOR shall arrange for an independent audit to be performed by a Certified Public Accountant, which shall include an audit of the WIA funds received from COUNTY, in accordance with the Act and 20 C.F.R. Section 667.200. CONTRACTOR shall submit two (2) copies of each required audit report to COUNTY within thirty (30) days after the date received by CONTRACTOR.

### 31. ACCESS AND RECORDS

(a) Access. COUNTY, the State of California and the United States Government and/or their representatives, shall have access, for purposes of monitoring, auditing, and examining, to CONTRACTOR's activities, books, documents and papers (including computer records and emails) and

1 to records of CONTRACTOR's subcontractors, consultants, contracted employees, bookkeepers,  
2 accountants, employees and participants related to this Agreement. CONTRACTOR shall insert this  
3 condition in each agreement between CONTRACTOR and a subcontractor that is pursuant to this  
4 Agreement shall require the subcontractor to agree to this condition. Such agencies or representatives  
5 shall have the right to make excerpts, transcripts and photocopies of such records and to schedule on  
6 site monitoring at their discretion. Monitoring activities also may include, but are not limited to,  
7 questioning employees and participants and entering any premises or onto any site in which any of the  
8 services or activities funded hereunder are conducted or in which any of the records of CONTRACTOR  
9 are kept. CONTRACTOR shall make available its books, documents, papers, financial records, etc.,  
10 within three (3) days after receipt of written demand by CONTRACT ADMINISTRATOR which shall be  
11 deemed received upon date of sending. In the event CONTRACTOR does not make the above  
12 referenced documents available within the County of Orange, California, CONTRACTOR agrees to pay  
13 all necessary and reasonable expenses incurred by COUNTY, or COUNTY's designee, in conducting  
14 any audit at the location where said records and books of account are maintained.

15 (b) Records Retention. All accounting records and evidence pertaining to all costs of  
16 CONTRACTOR and all documents related to this Agreement shall be kept available at CONTRACTOR's  
17 office or place of business for the duration of this Agreement and thereafter for four (4) years after  
18 completion of an audit. Records which relate to (1) complaints, claims, administrative proceedings or  
19 litigation arising out of the performance of this Agreement, or (2) costs and expenses of this Agreement  
20 to which COUNTY or any other governmental agency takes exception, shall be retained beyond the four  
21 (4) years until final resolution or disposition of such appeals, litigation, claims, or exceptions.

22 (c) CONTRACTOR shall pay to COUNTY the full amount of COUNTY's liability to the State or  
23 Federal government or any agency thereof resulting from any disallowance or other audit exceptions to  
24 the extent that such liability is attributable to CONTRACTOR's failure to perform under this Agreement.

## 25 **32. FRAUD**

26 CONTRACTOR shall immediately report all suspected or known instances and facts concerning  
possible fraud, abuse or criminal activity under this Agreement.

**33. INDEMNIFICATION**

CONTRACTOR agrees to indemnify, defend with counsel approved in writing by COUNTY, and hold COUNTY, the State of California, and the Orange County Workforce Investment Board, their 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 Agreement. 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.

**34. INSURANCE**

(a) Prior to the provision of services under this Agreement, the CONTRACTOR agrees to purchase all required insurance at CONTRACTOR's expense and to deposit with CONTRACT ADMINISTRATOR Certificates of Insurance, including all endorsements required herein, necessary to satisfy COUNTY that the insurance provisions of this Agreement have been complied with and to keep such insurance coverage and the certificates therefore on deposit with CONTRACT ADMINISTRATOR during the entire term of this Agreement. In addition, all subcontractors performing work on behalf of CONTRACTOR pursuant to this Agreement shall obtain insurance subject to the same terms and conditions as set forth herein for CONTRACTOR. If the contractor fails to maintain insurance acceptable to the County for the full term of this contract, the County may terminate this contract.

(b) 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 CONTRACTOR is a governmental entity, CONTRACTOR may elect to self-insure for the insurance coverage required by this Agreement.

(c) 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).

(d) 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.

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

Coverage	Minimum Limits
Commercial General Liability with Broad Form Property Damage	\$1,000,000 combined single limit per occurrence
Endorsement and Contractual Liability	\$2,000,000 Aggregate
Automobile Liability including all owned, non-owned and hired vehicles	\$1,000,000 combined single limit per occurrence
Workers' Compensation	Statutory
Employer's Liability	\$1,000,000 per occurrence
Sexual Misconduct	\$1,000,000 per occurrence

(f) 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. The County of Orange, Orange County Workforce Investment Board, and State of California shall be added as additional insureds on all insurance policies required by this Agreement with respect to the services provided by CONTRACTOR under the terms of this Agreement



(except Workers' Compensation/Employers' Liability). An additional insured endorsement evidencing that the County of Orange is an additional insured shall accompany the Certificate of Insurance.

(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. An endorsement evidencing that CONTRACTOR's insurance is primary and non-contributing shall specifically accompany the Certificate of Insurance for the Commercial General Liability and Sexual Misconduct Insurance.

(3) All insurance policies required by this Agreement 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 employment or appointment.

(4) 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.

(g) 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.

(h) 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).

(i) CONTRACTOR is aware of the provisions of Section 3700 of the California Labor Code which requires every employer to be insured against liability for Workers' Compensation or be self-insured in accordance with provisions of that code. CONTRACTOR will comply with such provisions and shall furnish COUNTY satisfactory evidence that CONTRACTOR has secured, for the period of this Agreement, statutory Workers' Compensation insurance and Employers' Liability insurance with minimum limits of \$1,000,000 per occurrence.

(j) If CONTRACTOR fails to provide the insurance certificates and endorsements within seven (7) days of notification by CEO/Risk Management or by CONTRACT ADMINISTRATOR, award may be made to the next qualified proponent.

(k) 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.

(l) 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.

(m) 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.

### **35. PATENT/COPYRIGHT MATERIALS/PROPRIETARY INFORMATION**

CONTRACTOR agrees to grant the COUNTY, Federal and State governments a royalty-free, nonexclusive and irrevocable license to publish, copy, translate or use, now and hereafter, all materials, data, films, tapes, etc., developed under this Agreement including those covered by copyright. The COUNTY, Federal, and State governments reserve the right to authorize others to use or reproduce such materials. Further, the COUNTY, Federal, and State governments shall have access to any report, preliminary findings or data assembled by CONTRACTOR under this Agreement and shall retain ownership and patent rights to any discovery or invention under this Agreement, as provided in 29 CFR 97.34 and 97.36(i)(8&9).

### **36. INTELLECTUAL PROPERTY**

(a) Federal Funding. In any Agreement funded in whole or in part by the federal government, COUNTY may acquire and maintain the Intellectual Property rights, title, and ownership, which result directly or indirectly from the Agreement, except as provided in 37 Code of Federal Regulations part

401.14. CONTRACTOR agrees to grant the COUNTY, Federal and State governments a royalty-free, non-exclusive, irrevocable, paid-up license throughout the world to use, duplicate, or dispose of such Intellectual Property throughout the world in any manner for governmental purposes and to have and permit others to do so.

(b) Ownership.

(1) Except where COUNTY has agreed in a signed writing to accept a license, COUNTY shall be and remain, without additional compensation, the sole owner of any and all rights, title and interest in all intellectual property, from the moment of creation, whether or not jointly conceived, that are made, conceived, derived from, or reduced to practice by CONTRACTOR or COUNTY and which result directly or indirectly from this Agreement.

(2) For the purposes of this Agreement, Intellectual Property means recognized protectable rights and interest such as: patents, (whether or not issued) copyrights, trademarks, service marks, applications for any of the foregoing, inventions, trade secrets, trade dress, logos, insignia, color combinations, slogans, moral rights, right of publicity, author's rights, contract and licensing rights, works, mask works, industrial design rights, rights of priority, know how, design flows, methodologies, devices, business processes, developments, innovations, good will, any data or information maintained, collected or stored in the ordinary course of business by COUNTY, and all other legal rights protecting intangible proprietary information as may exist now and/or hereafter come into existence, and all renewals and extensions, regardless of whether those rights arise under the laws of the United States, or any other state, country or jurisdiction.

(i) For the purposes of the definition of Intellectual Property, "works" means all literary works, writings and printed matter including the medium by which they are recorded or reproduced, photographs, art work, pictorial and graphic representations and works of a similar nature, film, motion pictures, digital images, animation cells, and other audiovisual works including positives and negatives thereof, sound recordings, tapes, educational materials, interactive videos, computer software and any other materials or products created, produced, conceptualized and fixed in a tangible medium of expression. It includes preliminary and final products and any materials and information developed for the

1 purposes of producing those final products. "Works" does not include articles submitted to peer review or  
2 reference journals or independent research projects.

3 (3) In the performance of this Agreement, CONTRACTOR may exercise and utilize certain of  
4 its Intellectual Property in existence prior to the effective date of this Agreement. In addition, under this  
5 Agreement, CONTRACTOR may access and utilize certain of COUNTY's Intellectual Property in  
6 existence prior to the effective date of this Agreement. Except as otherwise set forth herein,  
7 CONTRACTOR shall not use any of COUNTY's Intellectual Property now existing or hereafter existing  
8 for any purposes without the prior written permission of COUNTY. Except as otherwise set forth herein,  
9 neither the CONTRACTOR nor COUNTY shall give any ownership interest in or rights to its Intellectual  
10 Property to the other Party. If, during the term of this Agreement, CONTRACTOR accesses any third-  
11 party Intellectual Property that is licensed to COUNTY, CONTRACTOR agrees to abide by all license and  
12 confidentiality restrictions applicable to COUNTY in the third-party's license agreement.

13 (4) CONTRACTOR agrees to cooperate with COUNTY in establishing or maintaining  
14 COUNTY's exclusive rights in the Intellectual Property, and in assuring COUNTY's sole rights against  
15 third parties with respect to the intellectual Property. If the CONTRACTOR enters into any agreements or  
16 subcontracts with other parties in order to perform this Agreement, CONTRACTOR shall require the  
17 terms of the agreement(s) to include all Intellectual Property provisions of paragraphs thirty-four (34) (a)  
18 through thirty-four (i). Such terms must include, but are not limited to, the subcontractor assigning and  
19 agreeing to assign to COUNTY all rights, title and interest in Intellectual Property made, conceived,  
20 derived from, or reduced to practice by the subcontractor, CONTRACTOR or COUNTY and which result  
21 directly or indirectly from this Agreement or any subcontract.

22 (5) Pursuant to paragraph thirty-four (34) (b) (4) of the Intellectual Property Provisions of this  
23 Agreement, the requirement for the CONTRACTOR to include all Intellectual Property Provisions of  
24 paragraph thirty four (a) through thirty-four (i) of the Intellectual Property Provisions in all agreements and  
25 subcontracts it enters into with other parties does not apply to agreements or subcontracts that are for  
26 customized and on-the-job training as authorized under 20 CFR 663.700-730.

(6) CONTRACTOR further agrees to assist and cooperate with COUNTY in all reasonable respects, and execute all documents and, subject to reasonable availability, give testimony and take all further acts reasonably necessary to acquire, transfer, maintain, and enforce COUNTY's Intellectual Property rights and interests.

(c) Retained Rights/License Rights.

(1) Except for Intellectual Property made, conceived, derived from, or reduced to practice by CONTRACTOR or COUNTY and which result directly or indirectly from this Agreement, CONTRACTOR shall retain title to all of its Intellectual Property to the extent such Intellectual Property is in existence prior to the effective date of this Agreement. CONTRACTOR hereby grants to COUNTY, without additional compensation, a permanent, non-exclusive, royalty free, paid-up, worldwide, irrevocable, perpetual, non-terminable license to use, reproduce, manufacture, sell, offer to sell, import, export, modify, publicly and privately display/perform, distribute, and dispose of CONTRACTOR's Intellectual Property with the right to sublicense through multiple layers, for any purpose whatsoever, to the extent it is incorporated in the Intellectual Property resulting from this Agreement, unless CONTRACTOR assigns all rights, title and interest in the Intellectual Property as set forth herein.

(2) Nothing in this provision shall restrict, limit, or otherwise prevent CONTRACTOR from using any ideas, concepts, know-how, methodology or techniques related to its performance under this Agreement, provided that CONTRACTOR's use does not infringe the patent, copyright, trademark rights, license or other Intellectual Property rights of COUNTY or third party, or result in a breach or default of any provisions of paragraphs thirty four (a) through thirty-four (i) or result in a breach of any provisions of law relating to confidentiality.

(d) Copyright.

(1) CONTRACTOR agrees that for purposes of copyright law, all works (as defined in Ownership, paragraph thirty-four (b) (2) (i) of authorship made by or on behalf of CONTRACTOR in connection with CONTRACTOR's performance of this Agreement shall be deemed "works made for hire." CONTRACTOR further agrees that the work of each person utilized by CONTRACTOR in connection with the performance of this Agreement will be a "work made for hire," whether that person is an

1 employee of CONTRACTOR or that person has entered into an agreement with CONTRACTOR to  
2 perform the work. CONTRACTOR shall enter into a written agreement with any such person that (i) all  
3 work performed for CONTRACTOR shall be deemed a "work made for hire" under the Copyright Act and  
4 (ii) that person shall assign all right, title, and interest to COUNTY to any work product made, conceived,  
5 derived from or reduced to practice by CONTRACTOR or COUNTY and which result directly or indirectly  
6 from this Agreement.

7 (2) All materials, including, but not limited to, computer software, visual works or text,  
8 reproduced or distributed pursuant to this Agreement that include Intellectual Property made, conceived,  
9 derived from, or reduced to practice by CONTRACTOR or COUNTY and which result directly or indirectly  
10 from this Agreement may not be reproduced or disseminated without prior written permission from  
11 COUNTY.

12 (e) Patent Rights. With respect to inventions made by CONTRACTOR in the performance of this  
13 Agreement, which did not result from research and development specifically included in the Agreement's  
14 scope of work, CONTRACTOR hereby grants to COUNTY a license as described under paragraph thirty  
15 four (c) for devices or material incorporating, or made through the use of such inventions. If such  
16 inventions result from research and development work specifically included within the Agreement's scope  
17 of work, then CONTRACTOR agrees to assign to COUNTY, without additional compensation, all its right,  
18 title and interest in and to such inventions and to assist COUNTY in securing United States and foreign  
19 patents with respect thereto.

20 (f) Third-Party Intellectual Property. Except as provided herein, CONTRACTOR agrees that its  
21 performance of this Agreement shall not be dependent upon or include any Intellectual Property of  
22 CONTRACTOR or third party without first: (i) obtaining COUNTY's prior written approval; and (ii) granting  
23 to or obtaining for COUNTY's, without additional compensation, a license, as described in paragraph  
24 thirty-four (c), for any of CONTRACTOR's or third-party's Intellectual Property in existence prior to the  
25 effective date of this Agreement. If such a license upon these terms is unattainable, and COUNTY  
26 determines that the Intellectual Property should be included in or is required for CONTRACTOR's

performance of this Agreement, CONTRACTOR shall obtain a license under terms acceptable to COUNTY.

(g) Warranties.

(1) CONTRACTOR represents and warrants that:

(i) CONTRACTOR has secured and will secure all rights and licenses necessary for its performance of this Agreement.

(ii) Neither CONTRACTOR's performance of this Agreement, nor the exercise by either Party of the rights granted in this Agreement, nor any use, reproduction, manufacture, sale, offer to sell, import, export, modification, public and private display/performance, distribution, and disposition of the Intellectual Property made, conceived, derived from, or reduced to practice by CONTRACTOR or COUNTY and which result directly or indirectly from this Agreement will infringe upon or violate any Intellectual Property right, non-disclosure obligation, or other proprietary right or interest of any third-party or entity now existing under the laws of, or hereafter existing or issued by, any state, the United States, or any foreign country. There are currently no actual or threatened claims by any such third party based on an alleged violation of any such right by CONTRACTOR.

(iii) Neither CONTRACTOR's performance nor any part of its performance will violate the right of privacy of, or constitute a libel or slander against any person or entity.

(iv) CONTRACTOR has secured and will secure all rights and licenses necessary for Intellectual Property including, but not limited to, consents, waivers or releases from all authors of music or performances used, and talent (radio, television and motion picture talent), owners of any interest in and to real estate, sites locations, property or props that may be used or shown.

(v) CONTRACTOR has not granted and shall not grant to any person or entity any right that would or might derogate, encumber, or interfere with any of the rights granted to COUNTY in this Agreement.

(vi) CONTRACTOR has appropriate systems and controls in place to ensure that state funds will not be used in the performance of this Agreement for the acquisition, operation or maintenance of computer software in violation of copyright laws.

(vii) CONTRACTOR has no knowledge of any outstanding claims, licenses or other charges, liens or encumbrances of any kind or nature whatsoever that could affect in any way CONTRACTOR's performance of this Agreement.

(2) COUNTY MAKES NO WARRANTY, THAT THE INTELLECTUAL PROPERTY RESULTING FROM THIS AGREEMENT DOES NOT INFRINGE UPON ANY PATENT, TRADEMARK, COPYRIGHT OR THE LIKE, NOW EXISTING OR SUBSEQUENTLY ISSUED.

(h) Intellectual Property Indemnity.

(1) CONTRACTOR shall indemnify, defend and hold harmless COUNTY and its licensees and assignees, and its officers, contract administrators, employees, agents, representatives, successors, and users of its products, ("Indemnities") from and against all claims, actions, damages, losses, liabilities (or actions or proceedings with respect to any thereof), whether or not rightful, arising from any and all actions or claims by any third party or expenses related thereto (including, but not limited to, all legal expenses, court costs, and attorney's fees incurred in investigating, preparing, serving as a witness in, or defending against, any such claim action, or proceeding, commenced or threatened) to which any of the Indemnities may be subject, whether or not CONTRACTOR is a party to any pending or threatened litigation, which arise out of or are related to (i) the incorrectness or breach of any of the representations, warranties, covenants or agreements of CONTRACTOR pertaining to Intellectual Property; or (ii) any Intellectual Property infringement, or any other type of actual or alleged infringement claim, arising out of COUNTY's use, reproduction, manufacture, sale, offer to sell, distribution, import, export, modification, public and private performance/display, license, and disposition of the Intellectual Property made, conceived, derived from, or reduced to practice by CONTRACTOR or COUNTY and which result directly or indirectly from this Agreement. This indemnity obligation shall apply irrespective of whether the infringement claim is based on a patent, trademark or copyright registration that was issued after the effective date of this Agreement. COUNTY reserves the right to participate in and/or control, at CONTRACTOR's expense, any such infringement action brought against COUNTY.

(2) Should any Intellectual Property licensed by the CONTRACTOR to COUNTY under this Agreement become the subject of an Intellectual Property infringement claim CONTRACTOR will



1 exercise its authority reasonably and in good faith to preserve COUNTY's right to use the licensed  
2 Intellectual Property in accordance with this Agreement at no expense to COUNTY. COUNTY shall have  
3 the right to monitor and appear through its own counsel (at CONTRACTOR's expense) in any such claim  
4 or action. In the defense or settlement of the claim, CONTRACTOR may obtain the right for COUNTY to  
5 continue using the licensed intellectual Property or, replace or modify the licensed Intellectual Property,  
6 so that the replaced or modified Intellectual Property becomes non-infringing provided that such  
7 replacement or modification is functionally equivalent to the original licensed Intellectual Property. If such  
8 remedies are not reasonably available, COUNTY may be entitled to a refund of all monies paid under this  
9 Agreement, without restriction or limitation of any other rights and remedies available at law or in equity.

10 (3) CONTRACTOR agrees that damages alone would be inadequate to compensate  
11 COUNTY for breach of any term of these Intellectual Property provisions of paragraphs thirty three (a)  
12 through thirty-four (i) by CONTRACTOR. CONTRACTOR acknowledges COUNTY would suffer  
13 irreparable harm in the event of such breach and agrees COUNTY shall be entitled to obtain equitable  
14 relief, including without limitation an injunction, from a court of competent jurisdiction, without restriction  
15 or limitation of any other rights and remedies available at law or in equity.

16 (i) Survival. The provisions set forth herein shall survive any termination or expiration of this  
17 Agreement or any project schedule.

### 18 **37. CORPORATE STATUS**

19 All corporate CONTRACTORS shall be registered with the California Secretary of State and shall  
20 be in good standing, without suspension by the California Secretary of State, Franchise Tax Board, or  
21 Internal Revenue Service. Any change in corporate status or suspension shall be reported by  
22 CONTRACTOR immediately in writing to CONTRACT ADMINISTRATOR.

### 23 **38. STANDARDS OF CONDUCT**

24 (a) General Assurance. Every reasonable course of action will be taken by CONTRACTOR in  
25 order to maintain the integrity of this expenditure of public funds and to avoid favoritism and questionable  
26 or improper conduct. This Agreement will be administered in an impartial manner, free from efforts to  
gain personal, financial or political gain. CONTRACTOR, its officers and employees, in administering this

Agreement, will avoid situations which give rise to a suggestion that any decision was influenced by prejudice, bias, special interest or desire for personal gain.

(b) Employment of Former State or COUNTY Employees. CONTRACTOR will ensure that any of its employees who were formerly employed by the State of California or the County of Orange, in a position that could have enabled such individuals to impact policy regarding or implementation of programs covered by this Agreement, will not be assigned to any part or phase of the activities conducted pursuant to this Agreement for a period of not less than two (2) years following the termination of such employment.

(c) Conducting Business Involving Relatives. No relative by blood, adoption or marriage of any executive or employee of CONTRACTOR will receive favorable treatment when considered for enrollment in programs provided by, or employment with, CONTRACTOR.

(d) Conducting Business Involving Close Personal Friends and Associates. Executives and employees of CONTRACTOR will be particularly aware of the varying degrees of influence that can be exerted by personal friends and associates and, in administering this Agreement, will exercise due diligence to avoid situations which give rise to an assertion that favorable treatment is being granted to friends and associates.

(e) Avoidance of Conflict of Economic Interest. No executive or employee of CONTRACTOR, elected official in the area, or voting or non-voting member of a WIB, will solicit or accept money or any other consideration from a third person, for the performance of an act reimbursed in whole or part by CONTRACTOR or COUNTY. Supplies, materials, equipment or services purchased with Agreement funds will be used solely for purposes allowed under this Agreement. No voting member of the OCVIB will cast a vote on the provision of services by that member (or any organization which that member represents) or vote on any matter which would provide direct financial benefit to that member or any business or organization which the member directly represents.

### **39. SWEATFREE CODE OF CONDUCT**

All CONTRACTORS contracting for the procurement or laundering of apparel, garments or corresponding accessories, or the procurement of equipment, materials, or supplies, other than

procurement related to a public works contract, declare under penalty of perjury that no apparel, garments or corresponding accessories, equipment, or supplies have been furnished to the Contractor from sources that include sweatshop labor, forced labor, convict labor, indentured labor under penal sanction, abusive forms of child labor or exploitation of children in sweatshop labor. The CONTRACTOR further declares under penalty of perjury that they adhere to the Sweatfree Code of Conduct as set forth on the California Department of Industrial Relations website located at [www.dir.ca.gov](http://www.dir.ca.gov), and Public Contract Code Section 6108.

The CONTRACTOR agrees to cooperate fully in providing reasonable access to the CONTRACTOR's records, documents, agents or employees, or premises if reasonably required by authorized officials of the State or COUNTY, the Department of Industrial Relations, or the Department of Justice to determine the CONTRACTOR's compliance with the requirements under paragraph a of the Sweatfree Code of Conduct.

#### **40. DRUG FREE WORKPLACE**

CONTRACTOR shall execute and abide by the Drug Free Workplace Certification attached hereto as Exhibit "E" and incorporated herein by this reference.

#### **41. DEBARMENT**

CONTRACTOR shall execute and abide by the Debarment & Suspension Certification attached hereto as Exhibit "F" and incorporated herein by this reference and by so doing declares that it is not debarred or suspended or otherwise excluded from or ineligible for participation in Federal/State assistance programs in accordance with 29 C.F.R. Part 98.

#### **42. SECTARIAN ACTIVITIES**

CONTRACTOR agrees that this Agreement will not provide for the advancement or aid to any religious sect, church or creed for a purpose that is sectarian in nature, nor will it help to support or sustain any school, college, university, hospital or other institution controlled by any religious creed, church, or sectarian denomination. However, in accordance with Presidential Executive Order No. 13279, issued December, 2002, CONTRACTOR shall also provide and promote equal treatment to all faith-based organizations in administering its federally-funded activities.

**43. LITERATURE**

Any literature distributed by CONTRACTOR for the purpose of apprising businesses, participants, or the general public of its programs under this Agreement shall state that its programs are supported by the County of Orange and the Orange County Workforce Investment Board, and shall state that the program is an "equal opportunity employer/program" and that "auxiliary aids and services are available upon request to individuals with disabilities."

**44. LOBBYING**

(a) CONTRACTOR shall execute and abide by the terms of the "Certification Regarding Lobbying," which is attached hereto as Exhibit "G" and incorporated herein by this reference. CONTRACTOR shall complete and immediately forward to CONTRACT ADMINISTRATOR the "Disclosure Form to Report Lobbying," a copy of which is attached hereto as Exhibit "H", incorporated herein by this reference, if CONTRACTOR, or any person, firm or corporation acting on CONTRACTOR's behalf, engaged or engages in lobbying any federal officer, employee, elected official or agency with respect to this Agreement or the funds to be received by CONTRACTOR pursuant to this Agreement.

(b) CONTRACTOR agrees that the funds provided herein shall not be used to promote, directly or indirectly, any political party, political candidate or political activity, except as permitted by law.

**45. DISPUTES**

Except as otherwise provided in this Agreement, any dispute concerning any question arising after the commencement of this Agreement shall be decided by CONTRACT ADMINISTRATOR. In such a case, CONTRACT ADMINISTRATOR shall reduce its decision to writing and mail or otherwise furnish a copy thereof to CONTRACTOR. The decision of CONTRACT ADMINISTRATOR shall be final and conclusive unless within thirty (30) calendar days from the mailing or delivery of such copy, CONTRACT ADMINISTRATOR receives from CONTRACTOR a written request to appeal said decision to the COUNTY Board of Supervisors. Pending final decision of the appeal, CONTRACTOR shall act in accordance with the written decision of CONTRACT ADMINISTRATOR.

**46. TOTAL AGREEMENT**

This Agreement, together with Exhibits A - K, expresses the total understanding of the parties. There are no oral understandings of the parties or terms and conditions other than as are stated herein. CONTRACTOR acknowledges that it has read and agrees to all terms and conditions included in this Agreement.

**47. CHILD SUPPORT ENFORCEMENT**

In order to comply with child support enforcement requirements of the County of Orange, CONTRACTOR shall execute and abide by the "Child Support Enforcement Provision" (for profit only providers) attached hereto as Exhibit "I" and incorporated herein by this reference within thirty (30) days of award of contract.

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

**48. EDD INDEPENDENT CONTRACTOR REPORTING REQUIREMENTS**

CONTRACTOR shall execute and abide by the "EDD Independent Contractor Reporting Requirements Certification" attached hereto as Exhibit "J" and incorporated herein by this reference.

**49. NOTICES**

All notices, reports and correspondence between the parties hereto respecting this Agreement shall be in writing and deposited in the United States Mail, postage prepaid, addressed as follows:

COUNTY: OC Community Resources  
OC Community Services / Community Investment Division  
1300 South Grand Avenue  
Building "B"  
Santa Ana, California 92705

1 CONTRACTOR: ProPath, Inc.  
2 785 Tucker Rd., Ste G392  
3 Tehachapi, CA 93561

4 **50. GOVERNING LAW AND VENUE**

5 This Agreement has been negotiated and executed in the state of California and shall be governed  
6 by and construed under the laws of the state of California. In the event of any legal action to enforce or  
7 interpret this Agreement, the sole and exclusive venue shall be a court of competent jurisdiction located  
8 in Orange County, California, and the parties hereto agree to and do hereby submit to the jurisdiction of  
9 such court, notwithstanding Code of Civil Procedure Section 394. Furthermore, the parties specifically  
10 agree to waive any and all rights to request that an action be transferred for trial to another County.

11 **51. WAIVER**

12 No delay or omission by either party hereto to exercise any right or power accruing upon any  
13 noncompliance or default by the other party with respect to any of the terms of this Agreement shall  
14 impair any such right or power or be construed to be a waiver thereof. A waiver by either of the parties  
15 hereto of any of the covenants, conditions, or agreements to be performed by the other shall not be  
16 construed to be a waiver of any succeeding breach thereof or of any other covenant, condition or  
17 agreement herein contained.

18 **52. PUBLICITY**

19 Information and solicitations, prepared and released by CONTRACTOR, concerning the services  
20 provided under this Agreement, shall state that the program, wholly or in part, is funded by the County of  
21 Orange and the Orange County Workforce Investment Board.

22 **53. CALENDAR DAYS**

23 Any reference to the word "day" or "days" herein shall mean calendar day or calendar days,  
24 respectively, unless otherwise expressly provided.  
25  
26

**IN WITNESS WHEREOF**, the Parties hereto certify that they have read and understand all the terms and conditions contained herein and have duly authorized and caused this Agreement to be executed as of the date stated below written.

PROPATH, INC.

By: \_\_\_\_\_

By: \_\_\_\_\_

Title: \_\_\_\_\_

Title: \_\_\_\_\_

Dated: \_\_\_\_\_

Dated: \_\_\_\_\_

COUNTY OF ORANGE

A political Subdivision of the State of California

By: \_\_\_\_\_

Steve Franks

Director, Orange County Community Resources

**APPROVED AS TO FORM  
COUNTY COUNSEL**

\*\*\*\*\*

\*[Authorized signatures for corporations. Requirement of two signatures 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 that are not corporations, a person who has the authority to bind the contractor to a contract.]