

AMENDED AND RESTATED AGREEMENT

THIS AMENDED AND RESTATED AGREEMENT, hereinafter referred to as "Agreement," is made and entered into this 20th day of August, 2019, by and between the COUNTY OF FRESNO, a Political Subdivision of the State of California, hereinafter referred to as "COUNTY", and Kent Kawagoe, PhD, whose address is 5740 N. Palm, Ste. 105, Fresno, CA 93704, hereinafter referred to as "CONTRACTOR".

WITNESSETH:

WHEREAS, COUNTY and CONTRACTOR entered into Procurement Agreement No. P-16-162-L, dated April 12, 2016 (hereinafter "Agreement P-16-162-L") pursuant to which CONTRACTOR agreed to provide psychological appeals evaluator services for the Department of Human Resources; and

WHEREAS, COUNTY and CONTRACTOR entered into a First Amendment to Agreement P-16-162-L dated March 7, 2018, (hereinafter "Amendment I") increasing the maximum compensation under the agreement to \$99,900; and

WHEREAS, COUNTY and CONTRACTOR entered into a Second Amendment to Agreement P-16-162-L dated August 1, 2018, (hereinafter "Amendment II") revising Attachment A to include primary pre-employment psychological screening and special compulsory psychological evaluation services for Correctional Officer candidates; and

WHEREAS, COUNTY and CONTRACTOR entered into a Third Amendment to Agreement P-16-162-L dated effective September 20, 2018, (hereinafter "Amendment III") revising Attachment A to correct an error from Amendment II regarding listed rates; and

WHEREAS, COUNTY and CONTRACTOR now desire to amend Procurement Agreement P-16-162-L, as amended by Amendment I, Amendment II and Amendment III, to increase the maximum compensation under the agreement to \$75,000, annually for the periods April 12, 2019 through April 11, 2020 and, if the term is extended, April 12, 2020 through April 11, 2021, an amount in excess of the County Purchasing Agent's contracting authority, and, therefore, requires Board of Supervisor approval; and

WHEREAS, COUNTY and CONTRACTOR intend that, upon execution, this Agreement shall replace and supersede Agreement P-16-162-L, including the First, Second and Third Amendments.

NOW, THEREFORE, in consideration of their mutual covenants and conditions, the parties

1 hereto agree as follows:

2 1. OBLIGATIONS OF THE CONTRACTOR

3 A. CONTRACTOR shall perform the services as described in Exhibit "A" attached
4 hereto and by this reference incorporated herein.

5 2. TERM

6 This Agreement is effective the 12th day of April, 2016 and shall terminate on the 11th
7 day of April, 2020. This Agreement may be extended for no more than one (1) additional (12) month period
8 upon written approval of both parties no later than thirty (30) days prior to the first day of the next twelve
9 (12) month extension period. The Director of Human Resources or his or her designee is authorized to
10 execute such written approval on behalf of COUNTY based on CONTRACTOR's satisfactory performance.

11 3. TERMINATION

12 A. Non-Allocation of Funds - The terms of this Agreement, and the services to be
13 provided thereunder, are contingent on the approval of funds by the appropriating government agency.
14 Should sufficient funds not be allocated, the services provided may be modified, or this Agreement
15 terminated, at any time by giving the CONTRACTOR thirty (30) days advance written notice.

16 B. Breach of Contract - The COUNTY may immediately suspend or terminate this
17 Agreement in whole or in part, where in the determination of the COUNTY there is:

- 18 a) An illegal or improper use of funds;
19 b) A failure to comply with any term of this Agreement;
20 c) A substantially incorrect or incomplete report submitted to the
21 COUNTY;
22 d) Improperly performed service.

23 In no event shall any payment by the COUNTY constitute a waiver by the COUNTY of any
24 breach of this Agreement or any default which may then exist on the part of the CONTRACTOR. Neither
25 shall such payment impair or prejudice any remedy available to the COUNTY with respect to the breach or
26 default. The COUNTY shall have the right to demand of the CONTRACTOR the repayment to the
27 COUNTY of any funds disbursed to the CONTRACTOR under this Agreement, which in the judgment of
28 the COUNTY were not expended in accordance with the terms of this Agreement. The CONTRACTOR

1 shall promptly refund any such funds upon demand.

2 C. Without Cause - Under circumstances other than those set forth above, this
3 Agreement may be terminated by COUNTY upon the giving of thirty (30) days advance written notice of an
4 intention to terminate to CONTRACTOR.

5 4. COMPENSATION/INVOICING: COUNTY agrees to pay CONTRACTOR and
6 CONTRACTOR agrees to receive compensation at the rates identified in Exhibit "A". CONTRACTOR shall
7 submit monthly invoices to the County of Fresno, Department of Human Resources, 2220 Tulare St., 14th
8 Floor, Fresno, CA 93721, Attn: Employment Services.

9 In no event shall services performed under this Agreement be in excess of \$99,900
10 during the period April 12, 2016 through April 11, 2019. In no event shall services performed under this
11 Agreement be in excess of Seventy-Five Thousand and No/100 Dollars (\$75,000) during each of the
12 following twelve (12) month periods: April 12, 2019 through April 11, 2020, and April 12, 2020 through April
13 11, 2021. It is understood that all expenses incidental to CONTRACTOR'S performance of services under
14 this Agreement shall be borne by CONTRACTOR. Payments by COUNTY shall be in arrears, within forty-
15 five (45) days after receipt and verification of CONTRACTORS' invoices by the COUNTY for services
16 provided during the preceding month. If an invoice submitted by the CONTRACTOR contains
17 discrepancies/inaccuracies, it will not be processed. The CONTRACTOR will be required to submit a
18 revised and accurate invoice for payment to be processed. If CONTRACTOR should fail to comply with any
19 provision of this Agreement, COUNTY shall be relieved of its obligation for further compensation.

20 5. INDEPENDENT CONTRACTOR: In performance of the work, duties and obligations
21 assumed by CONTRACTOR under this Agreement, it is mutually understood and agreed that
22 CONTRACTOR, including any and all of the CONTRACTOR'S officers, agents, and employees will at all
23 times be acting and performing as an independent contractor, and shall act in an independent capacity and
24 not as an officer, agent, servant, employee, joint venturer, partner, or associate of the COUNTY.
25 Furthermore, COUNTY shall have no right to control or supervise or direct the manner or method by which
26 CONTRACTOR shall perform its work and function. However, COUNTY shall retain the right to administer
27 this Agreement so as to verify that CONTRACTOR is performing its obligations in accordance with the
28 terms and conditions thereof.

1 CONTRACTOR and COUNTY shall comply with all applicable provisions of law and
2 the rules and regulations, if any, of governmental authorities having jurisdiction over matters the subject
3 thereof.

4 Because of its status as an independent contractor, CONTRACTOR shall have
5 absolutely no right to employment rights and benefits available to COUNTY employees. CONTRACTOR
6 shall be solely liable and responsible for providing to, or on behalf of, its employees all legally-required
7 employee benefits. In addition, CONTRACTOR shall be solely responsible and save COUNTY harmless
8 from all matters relating to payment of CONTRACTOR'S employees, including compliance with Social
9 Security withholding and all other regulations governing such matters. It is acknowledged that during the
10 term of this Agreement, CONTRACTOR may be providing services to others unrelated to the COUNTY or
11 to this Agreement.

12 6. MODIFICATION: Any matters of this Agreement may be modified from time to time
13 by the written consent of all the parties without, in any way, affecting the remainder.

14 7. NON-ASSIGNMENT: Neither party shall assign, transfer or sub-contract this
15 Agreement nor their rights or duties under this Agreement without the prior written consent of the other
16 party.

17 8. HOLD HARMLESS: CONTRACTOR agrees to indemnify, save, hold harmless, and
18 at COUNTY'S request, defend the COUNTY, its officers, agents, and employees from any and all costs and
19 expenses (including attorney's fees and costs), damages, liabilities, claims, and losses occurring or
20 resulting to COUNTY in connection with the performance, or failure to perform, by CONTRACTOR, its
21 officers, agents, or employees under this Agreement, and from any and all costs and expenses (including
22 attorney's fees and costs), damages, liabilities, claims, and losses occurring or resulting to any person, firm,
23 or corporation who may be injured or damaged by the performance, or failure to perform, of
24 CONTRACTOR, its officers, agents, or employees under this Agreement.

25 9. INSURANCE

26 Without limiting the COUNTY's right to obtain indemnification from CONTRACTOR or
27 any third parties, CONTRACTOR, at its sole expense, shall maintain in full force and effect, the following
28 insurance policies or a program of self-insurance, including but not limited to, an insurance pooling

1 arrangement or Joint Powers Agreement (JPA) throughout the term of the Agreement:

2 A. Commercial General Liability

3 Commercial General Liability Insurance with limits of not less than Two Million
4 Dollars (\$2,000,000) per occurrence and an annual aggregate of Four Million Dollars (\$4,000,000). This
5 policy shall be issued on a per occurrence basis. COUNTY may require specific coverages including
6 completed operations, products liability, contractual liability, Explosion-Collapse-Underground, fire legal
7 liability or any other liability insurance deemed necessary because of the nature of this contract.

8 B. Automobile Liability

9 Comprehensive Automobile Liability Insurance with limits of not less than One
10 Million Dollars (\$1,000,000.00) per accident for bodily injury and for property damages. Coverage should
11 include any auto used in connection with this Agreement.

12 C. Professional Liability

13 If CONTRACTOR employs licensed professional staff, (e.g., Ph.D., R.N.,
14 L.C.S.W., M.F.C.C.) in providing services, Professional Liability Insurance with limits of not less than One
15 Million Dollars (\$1,000,000.00) per occurrence, Three Million Dollars (\$3,000,000.00) annual aggregate.
16 This coverage shall be issued on a per claim basis. Contractor agrees that it shall maintain, at its sole
17 expense, in full force and effect for a period of three years following the termination of this Agreement, one
18 or more policies of professional liability insurance with limits of coverage as specified herein.

19 D. Worker's Compensation

20 A policy of Worker's Compensation insurance as may be required by the California
21 Labor Code.

22 Additional Requirements Relating to Insurance

23 CONTRACTOR shall obtain endorsements to the Commercial General Liability
24 insurance naming the County of Fresno, its officers, agents, and employees, individually and collectively, as
25 additional insured, but only insofar as the operations under this Agreement are concerned. Such coverage
26 for additional insured shall apply as primary insurance and any other insurance, or self-insurance,
27 maintained by COUNTY, its officers, agents and employees shall be excess only and not contributing with
28 insurance provided under CONTRACTOR's policies herein. This insurance shall not be cancelled or

1 changed without a minimum of thirty (30) days advance written notice given to COUNTY.

2 CONTRACTOR hereby waives its right to recover from COUNTY, its officers,
3 agents, and employees any amounts paid by the policy of worker's compensation insurance required by
4 this Agreement. CONTRACTOR is solely responsible to obtain any endorsement to such policy that may be
5 necessary to accomplish such waiver of subrogation, but CONTRACTOR's waiver of subrogation under
6 this paragraph is effective whether or not CONTRACTOR obtains such an endorsement.

7 Within Thirty (30) days from the date CONTRACTOR signs and executes this
8 Agreement, CONTRACTOR shall provide certificates of insurance and endorsement as stated above for all
9 of the foregoing policies, as required herein, to the County of Fresno, (Paul Nerland, Director of Human
10 Resources, 2220 Tulare St., 14th Floor, Fresno, CA, 93721), stating that such insurance coverage have
11 been obtained and are in full force; that the County of Fresno, its officers, agents and employees will not be
12 responsible for any premiums on the policies; that for such worker's compensation insurance the
13 CONTRACTOR has waived its right to recover from the COUNTY, its officers, agents, and employees any
14 amounts paid under the insurance policy and that waiver does not invalidate the insurance policy; that such
15 Commercial General Liability insurance names the County of Fresno, its officers, agents and employees,
16 individually and collectively, as additional insured, but only insofar as the operations under this Agreement
17 are concerned; that such coverage for additional insured shall apply as primary insurance and any other
18 insurance, or self-insurance, maintained by COUNTY, its officers, agents and employees, shall be excess
19 only and not contributing with insurance provided under CONTRACTOR's policies herein; and that this
20 insurance shall not be cancelled or changed without a minimum of thirty (30) days advance, written notice
21 given to COUNTY.

22 In the event CONTRACTOR fails to keep in effect at all times insurance coverage as
23 herein provided, the COUNTY may, in addition to other remedies it may have, suspend or terminate this
24 Agreement upon the occurrence of such event.

25 All policies shall be issued by admitted insurers licensed to do business in the State of
26 California, and such insurance shall be purchased from companies possessing a current A.M. Best, Inc.
27 rating of A FSC VII or better.

28 10. AUDITS AND INSPECTIONS: The CONTRACTOR shall at any time during business

1 hours, and as often as the COUNTY may deem necessary, make available to the COUNTY for examination
2 all of its records and data with respect to the matters covered by this Agreement. The CONTRACTOR
3 shall, upon request by the COUNTY, permit the COUNTY to audit and inspect all of such records and data
4 necessary to ensure CONTRACTOR'S compliance with the terms of this Agreement.

5 If this Agreement exceeds ten thousand dollars (\$10,000.00), CONTRACTOR shall be
6 subject to the examination and audit of the Auditor General for a period of three (3) years after final
7 payment under contract (Government Code Section 8546.7).

8 11. NON-DISCRIMINATION: During the performance of this Agreement, CONTRACTOR
9 shall not unlawfully discriminate against any employee or candidate on the basis of race, ethnicity, gender,
10 sexual orientation, religion, color, national origin, ancestry, disability, medical condition, marital status, age
11 or sex pursuant to all applicable State and Federal statutes and regulations.

12 12. NOTICES: The persons and their addresses having authority to give and receive
13 notices under this Agreement include the following:

<u>COUNTY</u>	<u>CONTRACTOR</u>
COUNTY OF FRESNO	Kent Kawagoe, Ph.D.
Department of Human Resources	5740 N. Palm, Ste. 105
2220 Tulare Street, 14 th Floor	Fresno, CA 93704
Fresno, CA 93721	

14 All notices between the COUNTY and the CONTRACTOR provided for or permitted
15 under this Agreement must be in writing and delivered either by personal service, by first-class United
16 States mail, by an overnight commercial courier service, or by telephonic facsimile transmission. A notice
17 delivered by personal service is effective upon service to the recipient. A notice delivered by first-class
18 United States mail is effective three COUNTY business days after deposit in the United States mail,
19 postage prepaid, addressed to the recipient. A notice delivered by an overnight commercial courier service
20 is effective one COUNTY business day after deposit with the overnight commercial courier service, deliver
21 fees prepaid, with deliver instructions given for the next day delivery, addressed to the recipient. A notice
22 delivered by telephonic facsimile is effective when transmission to the recipient is completed (but, if such
23 transmission is completed outside of COUNTY business hours, then such delivery shall be deemed to be
24 effective at the next beginning of a COUNTY business day), provided that the sender maintains a machine
25 record of the completed transmission. For all claims arising out of or related to this Agreement, nothing in
26
27
28

1 this section establishes, waives, or modifies any claims presentation requirements or procedures provided
2 by law, including but not limited to the Government Claims Act (Division 3.6 of Title 1 of the Government
3 Code, beginning with section 810).

4 13. GOVERNING LAW: Venue for any action arising out of or related to this Agreement
5 shall only be in Fresno County, California.

6 The rights and obligations of the parties and all interpretation and performance of this
7 Agreement shall be governed in all respects by the laws of the State of California.

8 14. DISCLOSURE OF SELF-DEALING TRANSACTIONS

9 This provision is only applicable if the CONTRACTOR is operating as a corporation
10 (a for-profit or non-profit corporation) or if during the term of the agreement, the CONTRACTOR
11 changes its status to operate as a corporation.

12 Members of the CONTRACTOR's Board of Directors shall disclose any self-dealing
13 transactions that they are a party to while CONTRACTOR is providing goods or performing services
14 under this agreement. A self-dealing transaction shall mean a transaction to which the CONTRACTOR
15 is a party and in which one or more of its directors has a material financial interest. Members of the
16 Board of Directors shall disclose any self-dealing transactions that they are a party to by completing and
17 signing a Self-Dealing Transaction Disclosure Form, attached hereto as Exhibit "B" and incorporated
18 herein by reference, and submitting it to the COUNTY prior to commencing with the self-dealing
19 transaction or immediately thereafter.

20 15. ENTIRE AGREEMENT: This Agreement constitutes the entire agreement between the
21 CONTRACTOR and COUNTY with respect to the subject matter hereof and supersedes all previous
22 Agreement negotiations, proposals, commitments, writings, advertisements, publications, and
23 understanding of any nature whatsoever unless expressly included in this Agreement. This Agreement
24 replaces and supersedes Procurement Agreement No. P-16-162-L, including the First, Second and Third
25 Amendments to Procurement Agreement No. P-16-162-L.

26 16. CONFIDENTIALITY

27 All services performed by CONTRACTOR under this Agreement shall be in strict
28 conformance with all applicable Federal, State of California and/or local laws and regulations relating to

1 confidentiality.

2 IN WITNESS WHEREOF, the parties hereto have executed this Agreement as of the day and
3 year first hereinabove written.


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5 ///

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7 ///

8 **CONTRACTOR**

9 
10 _____
11 Kent Kawagoe, Ph.D.

11 Mailing Address
12 5740 N. Palm, Ste. 105
13 Fresno, CA 93704

COUNTY OF FRESNO



Nathan Magsig, Chairman of the Board of
Supervisors of the County of Fresno

ATTEST:
Bernice E. Seidel
Clerk of the Board of Supervisors
County of Fresno, State of California

By:



Deputy

20 **FOR ACCOUNTING USE ONLY:**

21 Fund/Subclass: 0001/10000
22 ORG No.: 10100400
23 Account No.: 7295

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SCOPE OF WORK

Description of Work/Services to be Performed

Upon request, the contractor shall personally review and provide a report of a County applicant's suitability for employment based on the review of Pre-employment Psychological Suitability Screening Reports from the County's contracted psychologist and/or the applicant's appeal psychologist/psychiatrist.

Suitability Recommendations for peace officer/public safety position candidates must clearly determine whether the candidate is psychologically suitable relative to applicable Government Code, Penal Code, P.O.S.T. standards, and the duties and essential functions (as detailed in the applicable County job description/specification and essential functions inventory form) of the job classification. It is expected that this determination will apply P.O.S.T. criteria found at CCR Title 11, Division 2, utilizing P.O.S.T. recommended testing and scoring procedures, and interpretation methodology, as described in the P.O.S.T. Administrative Manual, Commission Regulation 1955 and the Peace Officer Psychological Screening Manual.

The contractor shall, upon request, perform special services related to appeals of suitability screenings conducted for County. Special services include, but are not limited to: participating in authorized feedback sessions and case reviews; providing expert testimony in administrative and legal proceedings related to appeals of suitability screenings conducted; consulting with County regarding such appeals or County concerns regarding the suitability screening process; and rendering an opinion as to whether a candidate/employee is a qualified individual with a disability, as defined by California State/Federal law, which includes suggestions to accommodate such individuals.

Written Report Review and Recommendation

Using the County-approved format, the Contractor shall prepare a written review and recommendation for suitability for employment report in accordance with Commission Regulation 1955 for each candidate. The report shall detail test results reported by the previous Pre-Employment Psychological evaluation(s), summarize how the previous Psychologist(s)/Psychiatrist(s) reached their decision(s), provide a clear statement as to whether the individual's satisfy the POST Psychological Screening Dimension criteria and provide supporting details for the recommendation.

Timeframes

Contractor shall send final written reports on the results of each review performed within ten(10) working days after the review was conducted. The reports shall be furnished in a sealed envelope marked "Confidential" and delivered by U.S. mail to the County or using a secured email.

Medical Records

The Contractor shall hold all candidate/employee psychological *screenings* and patient records in strict confidence pursuant to applicable statutes including but not limited to the California Confidentiality of Medical Information Act (as amended) and the federal Health Information Portability and Privacy Act (HIPAA), as amended.

Records generated as a result of County-sponsored reviews are the property of the County. If the County subsequently executes an agreement for psychological review services with a different provider, Contractor shall, upon request by County, transfer all records to that new provider at no charge within thirty (30) working days of the request.

Invoices

Contractor must provide monthly invoices for services rendered the previous month in the following format:

- Invoice date
- Amount due
- Payment remittance address; contact information
- List of services provided for invoice period including, but not limited to, the following as applicable:
 - Candidate's/Employee name
 - Type of screening
 - Job classification
 - Date service rendered

Fee Schedule

1. Pre-employment Psychological Evaluation Appeals (Third Opinion Evaluation): \$750.00
(Includes test materials, test interpretation, clinical review, review of records, second interview to review previous findings by the first two evaluators, summary report, and administrative costs).
2. Preparation of a failure report: \$100.00
3. Re-testing for Invalid Profiles: \$50.00

4. Failure to show for appointment: \$200.00
5. Feedback session: \$75.00
6. Deposition and court testimony hourly rate: \$300.00
7. Court preparation and standby hourly rate: \$150.00

SELF-DEALING TRANSACTION DISCLOSURE FORM

In order to conduct business with the County of Fresno (hereinafter referred to as "County"), members of a contractor's board of directors (hereinafter referred to as "County Contractor"), must disclose any self-dealing transactions that they are a party to while providing goods, performing services, or both for the County. A self-dealing transaction is defined below:

"A self-dealing transaction means a transaction to which the corporation is a party and in which one or more of its directors has a material financial interest"

The definition above will be utilized for purposes of completing this disclosure form.

INSTRUCTIONS

- (1) Enter board member's name, job title (if applicable), and date this disclosure is being made.
- (2) Enter the board member's company/agency name and address.
- (3) Describe in detail the nature of the self-dealing transaction that is being disclosed to the County. At a minimum, include a description of the following:
 - a. The name of the agency/company with which the corporation has the transaction; and
 - b. The nature of the material financial interest in the Corporation's transaction that the board member has.
- (4) Describe in detail why the self-dealing transaction is appropriate based on applicable provisions of the Corporations Code.
- (5) Form must be signed by the board member that is involved in the self-dealing transaction described in Sections (3) and (4).

Exhibit B

(1) Company Board Member Information:			
Name:		Date:	
Job Title:			
(2) Company/Agency Name and Address:			
(3) Disclosure (Please describe the nature of the self-dealing transaction you are a party to):			
(4) Explain why this self-dealing transaction is consistent with the requirements of Corporations Code 5233 (a):			
(5) Authorized Signature			
Signature:		Date:	