

STANDARD AGREEMENT rev Dec. 2019
Purchases from Governmental Entities

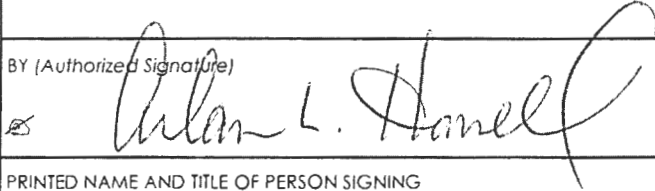
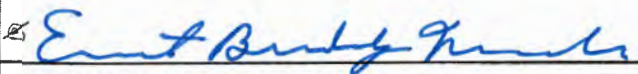
AGREEMENT NUMBER
10-2020-DUI-O

1. In this agreement ("Agreement"), the terms "Contractor" and "County" refer to **County of Fresno**, and the term "Court" refers to the **Superior Court of California, County of Fresno**.
2. This Agreement is effective as of **October 1, 2020** ("Effective Date") and expires on **September 30, 2021** ("Expiration Date"). This Agreement includes one or more options to extend through **September 30, 2025**.
3. The maximum amount the Court may pay Contractor under this Agreement is **\$227,606** (the "Contract Amount") for the initial term. If options are exercised, the Contract Amount will be revised accordingly.
4. The purpose or title of this Agreement is: **DUI Treatment Court Staffing**.

The purpose or title listed above is for administrative reference only and does not define, limit, or construe the scope or extent of this Agreement.

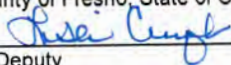
5. The parties agree that this Agreement, made up of this coversheet, the appendixes listed below, and any attachments, contains the parties' entire understanding related to the subject matter of this Agreement, and supersedes all previous proposals, both oral and written, negotiations, representations, commitments, writing and all other communications between the parties.

Appendix A – Scope of Services
Appendix B – Payment Provisions
Appendix C – General Provisions
Appendix D – Defined Terms
Appendix E – Unruh Civil Rights Act and FEHA Certification

COURT'S SIGNATURE	CONTRACTOR'S SIGNATURE
Superior Court of California, County of Fresno	County of Fresno
BY (Authorized Signature) 	BY (Authorized Signature) 
PRINTED NAME AND TITLE OF PERSON SIGNING Arlan L. Harrell, Presiding Judge	PRINTED NAME AND TITLE OF PERSON SIGNING Ernest Buddy Mendes, Chairman Board of Supervisors
DATE EXECUTED 3 NOVEMBER 2020	DATE EXECUTED November 24, 2020
ADDRESS 1100 Van Ness Avenue Fresno, CA 93724-0002	ADDRESS 2281 Tulare, Room #301 Fresno, CA 93721-2105

ATTEST:

BERNICE E. SEIDEL
Clerk of the Board of Supervisors
County of Fresno, State of California

By 
Deputy

APPENDIX A

Scope of Services

1. Background and Purpose. Fresno County has a high number of *Driving While Impaired* (DWI) or *Driving under Intoxication* (DUI) cases. In order to prevent recidivism, the court hopes to provide treatment rather than simply incarceration for defendants in these cases. Defendants who wish to enter DUI Treatment Court must agree to plead guilty to their DUI criminal charges. Once the court accepts their pleas, defendants are sentenced and enter the DUI Treatment Court program in lieu of incarceration.

The DUI Treatment Court program will take a minimum of 12 months and consist of two tracks, during which participants attend court regularly, engage in substance use disorder treatment and mental health therapy, attend self-help groups such as Narcotics Anonymous/Alcoholics Anonymous, check in with their probation officers regularly, and participate in frequent drug testing. The frequency of treatment sessions and court appearances in each track is based on the individual participant's progress or relapse.

The Court and County will each provide staff to assist in the success of this new treatment court. The Court will provide one fulltime staff, the DUI Court Coordinator. The County Behavioral Health Department will provide one fulltime Case Manager and the Probation Department will provide one fulltime Deputy Probation Officer and one part-time Probation Technician. Probation Department staff will report directly to the Probation Services Manager of the Drug Suppression Unit and the Adult Probation Services Division Director.

2. Services.

2.1 Description of Services. The services ("Services") will be as detailed below, listed by staff responsibilities.

Contractor shall perform the following Services:

A. The **Case Manager** shall be responsible for:

- Assisting participants in removing any barriers to achieving sobriety and meeting the many requirements of participating in the DUI court;
- Administering the DUI-RANT (Risk And Needs Triage) assessment tool to determine participants' treatment, social service, transportation, and other needs;
- Actively engaging and maintaining court participants and their families in restorative services;
- Working with the court Coordinator and the Deputy Probation Officer to keep the DUI court continuously apprised of participants' status;
- Serving as a liaison between the judges presiding over the DUI Court, the justice agencies that form the DUI Court collaborative team, treatment providers, community-based organizations, the Dept. of Behavioral Health, and the participants;
- Conducting court intakes and mental health screens for new participants entering the DUI Court;
- Coordinating referrals to mental health and substance use treatment, wrap around services, and other supportive programs as necessary;
- Participating in court development activities that increase access, build capacity and remove barriers for DUI Court participants that need substance use disorder and mental health rehabilitative treatment and support services;

- Establishing and maintaining confidential electronic, web-based and hard copy case files for DUI Court participants for purposes of case management and outcome tracking; and
- Providing written results to Court from the DUI-RANT assessment tool.

B. The Deputy Probation Officer ("DPO") will be responsible for conducting the probation supervision aspect of the DUI treatment court. The DPO shall be responsible for the following Services:

- Monitoring activities and whereabouts of program participants and other pertinent information;
- Participating in DUI Court activities and meetings;
- Working in collaboration with local law enforcement agencies, other governmental agencies, and community-based organizations;
- Representing the Probation Department in court proceedings;
- Preparing court reports, correspondence, and maintaining Probation records;
- Acting as a resource or source of support to program participants and providing informal counseling and guidance;
- Installing and supervising participants on alcohol monitoring equipment;
- Testing participants for substance use as necessary;
- Conducting field work including home contacts, searches, warrant service, and multi-agency operations;
- Enforcing the orders of the Court and conditions of probation, including using sanctions and rewards correlating to participant compliance;
- Administering DUI Rant assessments on a limited basis; and
- Conducting related work as directed by Chief Probation Officer or designee.

C. The Probation Technician ("PT") will be responsible for the following Services:

- Assisting the assigned DPO in monitoring activities and whereabouts of program participants and other pertinent information;
- Assisting with preparing Probation documents and maintaining Probation records;
- Working in collaboration with local law enforcement agencies, other governmental agencies, and community-based organizations;
- Participating in DUI Court activities and meetings;
- Administering drug and alcohol tests to program participants;
- Assisting with installing and monitoring participants on alcohol monitoring equipment; and
- Conducting related work as directed by Chief Probation Officer or designee.

The PT may also be assigned special projects by his/her supervisor, and may administer DUI Rant assessments on a limited basis.

2.2 Description of Deliverables. Contractor shall deliver to the Court the following work products ("Deliverables"):

- DUI-RANT results (Case Manager)
- Reports of Violations of Probation (DPO)
- Other written reports the Court deems necessary for the participant's success in the program.

2.3 Acceptance Criteria. The Services and Deliverables must meet the following acceptance criteria or the Court may reject the applicable Services or Deliverables. Contractor will not be paid for any rejected Services or Deliverables.

- Contractor will attend all meetings and court dates, as scheduled, as well as report on the Services as provided above (Services); and
- Contractor shall provide written reports by due dates (Deliverable), as required by Judge.

2.4 Project Managers. The Court's project manager is: Vidal Fernandez, DUI Court Coordinator. The Court may change its project manager at any time upon notice to Contractor without need for an amendment to this Agreement. Contractor's project managers are: the Director of the Department of Behavioral Health and the Chief Probation Officer. Subject to written approval by the Court, Contractor may change its project manager without need for an amendment to this Agreement.

2.5 Service Warranties. Contractor warrants that: (i) the Services will be rendered with promptness and diligence and will be executed in a workmanlike manner, in accordance with the practices and professional standards used in well-managed operations performing services similar to the Services; and (ii) Contractor will perform the Services in the most cost-effective manner consistent with the required level of quality and performance. Contractor warrants that each Deliverable will conform to and be performed in accordance with the requirements of this Agreement and all applicable specifications and documentation.

2.6 Resources. Contractor is responsible for providing any and all facilities, materials and resources (including personnel, equipment and software) necessary and appropriate for performance of the Services and to meet Contractor's obligations under this Agreement.

2.7 Commencement of Performance. This Agreement is of no force and effect until signed by both parties and all Court required approvals are secured. Any commencement of performance prior to Agreement approval shall be at Contractor's own risk.

3. Acceptance or Rejection. All Services and Deliverables are subject to acceptance by the Court. The Court may reject any Services or Deliverables that (i) fail to meet applicable acceptance criteria, (ii) are not as warranted, or (iii) are performed or delivered late (without prior consent by the Court). If the Court rejects any Service or Deliverable (other than for late performance or delivery), Contractor shall modify such rejected Service or Deliverable at no expense to the Court to correct the relevant deficiencies and shall redeliver such Service or Deliverable to the Court within ten (10) business days after the Court's rejection, unless otherwise agreed in writing by the Court. Thereafter, the parties shall repeat the process set forth in this section until the Court accepts such corrected Service or Deliverable.

APPENDIX B

Payment Provisions

1. **General.** Subject to the terms of this Agreement, Contractor shall invoice the Court, and the Court shall compensate Contractor, as set forth in this Appendix B. The amounts specified in this Appendix shall be the total and complete compensation to be paid to Contractor for its performance under this Agreement. Contractor shall bear, and the Court shall have no obligation to pay or reimburse Contractor for, any and all other fees, costs, profits, taxes or expenses of any nature which Contractor incurs.
2. **Compensation for Services.**

Amount. Contractor will invoice the Court for Actual Services that are performed pursuant to this agreement; those annual amounts Not To Exceed:

 - Case Manager, FT \$ 72,629 (includes salary and benefits)
 - Probation Officer, FT \$129,994 (includes salary and benefits)
 - Probation Technician, PT \$ 24,983 (includes salary and benefits)
3. **Expenses.** No expenses relating to the Services and Deliverables shall be reimbursed by the Court.
4. **Invoicing and Payment**
 - 4.1 **Invoicing.** Contractor shall submit invoices for Actual work to the Court in arrears no more frequently than monthly. Contractor's invoices must include information and supporting documentation acceptable to the Court. Contractor shall adhere to reasonable billing guidelines issued by the Court from time to time.
 - 4.2 **Payment.** The Court will pay each correct, itemized invoice received from Contractor after acceptance of the applicable Services, in accordance with the terms of this Agreement.

Notwithstanding any provision in this Agreement to the contrary, payments to Contractor are contingent upon the timely and satisfactory performance of Contractor's obligations under this Agreement.
 - 4.3 **No Implied Acceptance.** Payment does not imply acceptance of Contractor's invoice or Services. Contractor shall immediately refund any payment made in error. The Court shall have the right at any time to set off any amount owing from Contractor to the Court against any amount payable by the Court to Contractor under this Agreement.
5. **Taxes.** Unless otherwise required by law, the Court is exempt from federal excise taxes and no payment will be made for any personal property taxes levied on Contractor or on any taxes levied on employee wages. The Court shall only pay for any state or local sales, service, use, or similar taxes imposed on the Services rendered or equipment, parts or software supplied to the Court pursuant to this Agreement.

APPENDIX C

General Provisions

1. Provisions Applicable to Services

1.1 Qualifications. Contractor shall assign to this project only persons who have sufficient training, education, and experience to successfully perform Contractor's duties. If the Court is dissatisfied with any of Contractor's personnel, for any or no reason, Contractor shall replace them with qualified personnel.

1.2 Turnover. Contractor shall endeavor to minimize turnover of personnel Contractor has assigned to perform Services.

2. Contractor Certification Clauses. Contractor certifies that the following representations and warranties are true. Contractor shall cause its representations and warranties to remain true during the Term. Contractor shall promptly notify the Court if any representation and warranty becomes untrue. Contractor represents and warrants as follows:

2.1 Authority. Contractor has authority to enter into and perform its obligations under this Agreement, and Contractor's signatory has authority to bind Contractor to this Agreement.

2.2 Not an Expatriate Corporation. Contractor is not an expatriate corporation or subsidiary of an expatriate corporation within the meaning of PCC 10286.1, and is eligible to contract with the Court.

2.3 No Gratuities. Contractor has not directly or indirectly offered or given any gratuities (in the form of entertainment, gifts, or otherwise), to any Court Personnel with a view toward securing this Agreement or securing favorable treatment with respect to any determinations concerning the performance of this Agreement.

2.4 No Conflict of Interest. To the best of Contractor's knowledge, Contractor has no interest that would constitute a conflict of interest under PCC 10365.5, 10410 or 10411; Government Code sections 1090 et seq. or 87100 et seq.; or California Rules of Court, rule 10.103 or 10.104, which restrict employees and former employees from contracting with the Court.

2.5 No Interference with Other Contracts. To the best of Contractor's knowledge, this Agreement does not create a material conflict of interest or default under any of Contractor's other contracts.

2.6 No Litigation. To the best of Contractor's knowledge, no suit, action, arbitration, or legal, administrative, or other proceeding or governmental investigation is pending or threatened that may adversely affect Contractor's ability to perform the Services.

2.7 Compliance with Laws Generally. To the best of Contractor's knowledge, Contractor complies in all material respects with all federal, state, and local laws, rules, and regulations in regards to its actions under this Agreement.

2.8 Drug Free Workplace. Contractor provides a drug free workplace as required by California Government Code sections 8355 through 8357.

2.9 No Harassment. Contractor does not engage in unlawful harassment, including sexual harassment, with respect to any persons with whom Contractor may interact in the performance of this Agreement, and Contractor takes all reasonable steps to prevent harassment from occurring.

- 2.10 Non-infringement.** To the best of Contractor's knowledge, the Services and Deliverables, and Contractor's performance under this Agreement do not infringe, or constitute an infringement, misappropriation or violation of, any third party's intellectual property right.
- 2.11 Nondiscrimination.** Contractor complies with the federal Americans with Disabilities Act (42 U.S.C. 12101 et seq.), and California's Fair Employment and Housing Act (Government Code sections 12990 et seq.) and associated regulations (Code of Regulations, title 2, sections 7285 et seq.). Contractor does not unlawfully discriminate against any employee or applicant for employment because of age (40 and over), ancestry, color, creed, disability (mental or physical) including HIV and AIDS, marital or domestic partner status, medical condition (including cancer and genetic characteristics), national origin, race, religion, request for family and medical care leave, sex (including gender and gender identity), and sexual orientation. Contractor will notify in writing each labor organization with which Contractor has a collective bargaining or other agreement of Contractor's obligations of nondiscrimination.
- 2.12 National Labor Relations Board Orders.** To the best of Contractor's knowledge, no more than one, final unappealable finding of contempt of court by a federal court has been issued against Contractor within the immediately preceding two-year period because of Contractor's failure to comply with an order of a federal court requiring Contractor to comply with an order of the National Labor Relations Board. Contractor swears under penalty of perjury that this representation is true.

3. Insurance

County shall maintain applicable self-insurance coverage for its workers compensation, public liability and automobile liability exposures while providing services for Court under the terms and conditions of the Agreement. These self-insurance programs do not limit County's liability with Court or limit Court's right to seek indemnification from County for liability arising from its performance in accordance with the terms and conditions of this Agreement.

- 4. Indemnity.** Contractor will defend (with counsel satisfactory to the Court or its designee), indemnify and hold harmless the Court, Judicial Branch Entities and the Judicial Branch Personnel against all claims, losses, and expenses, including attorneys' fees and costs, that arise out of or in connection with (i) an act or omission of Contractor, its agents, employees, independent contractors, or subcontractors in the performance of this Agreement, (ii) a breach of a representation, warranty, or other provision of this Agreement, and (iii) infringement of any trade secret, patent, copyright or other third party intellectual property. Court will defend (with counsel satisfactory to the County or its designee), indemnify and hold harmless the County and County Personnel against all claims, losses, and expenses, including attorneys' fees and costs, that arise out of or in connection with (i) an act or omission of Court, its agents, employees, independent contractors, or subcontractors in the performance of this Agreement, (ii) a breach of a representation, warranty, or other provision of this Agreement, and (iii) infringement of any trade secret, patent, copyright or other third party intellectual property.

This indemnity applies regardless of the theory of liability on which a claim is made or a loss occurs. This indemnity will survive the expiration or termination of this Agreement, and acceptance of any Services or Deliverables. Neither party shall make any admission of liability or other statement on behalf of an indemnified party or enter into any settlement or other agreement which would bind an indemnified party, without the indemnified party's prior written consent, which consent shall not be unreasonably withheld; and the indemnified party shall have the right, at its option and expense, to participate in the defense and/or settlement of a claim through counsel of its own choosing. Each party's duties of indemnification exclude

indemnifying a party for that portion of losses and expenses that are finally determined by a reviewing court to have arisen out of the sole negligence or willful misconduct of the indemnified party. Pursuant to Government Code section 895.4, the parties agree to use principles of comparative fault when apportioning any and all losses that may arise out of the performance of this Agreement.

5. **Option Term.** Unless Section 2 of the Coversheet indicates that an Option Term is not applicable, the parties may extend this Agreement for up to four (4) one-year terms, at the end of which Option Terms this Agreement shall expire. In order to exercise an Option Term, the Court must send Notice to Contractor at least thirty (30) days prior to the end of the Initial Term, the Notice of which will be accepted and countersigned by Contractor. The Chief Probation Officer or his/her designee is authorized to execute such written approval on behalf of the County.

6. Termination

- 6.1 **Termination for Convenience.** Either party may terminate, in whole or in part, this Agreement for convenience upon thirty (30) days prior written Notice. After receipt of such Notice, and except as otherwise directed by the Court, the party receiving the Notice shall immediately: (a) stop Services as specified in the Notice.

- 6.2 **Termination for Cause.** Either party may terminate this Agreement, in whole or in part, immediately "for cause" if (i) the non-terminating party fails or is unable to meet or perform any of its duties under this Agreement, and this failure is not cured within ten (10) days following Notice of default (or in the opinion of the terminating party, is not capable of being cured within this cure period); (ii) the non-terminating party makes or has made under this Agreement any representation, warranty, or certification that is or was incorrect, inaccurate, or misleading.

- 6.3 **Termination for Changes in Budget or Law.** The Court's payment obligations under this Agreement are subject to annual appropriation and the availability of funds. Expected or actual funding may be withdrawn, reduced, or limited prior to the expiration or other termination of this Agreement. Funding beyond the current appropriation year is conditioned upon appropriation of sufficient funds to support the activities described in this Agreement. The Court may terminate this Agreement or limit Contractor's Services (and reduce proportionately Contractor's fees) upon Notice to Contractor without prejudice to any right or remedy of the Court if: (i) expected or actual funding to compensate Contractor is withdrawn, reduced or limited; or (ii) the Court determines that Contractor's performance under this Agreement has become infeasible due to changes in applicable laws.

6.4 Rights and Remedies of the Court.

- A. **Nonexclusive Remedies.** All remedies provided in this Agreement may be exercised individually or in combination with any other available remedy. Contractor shall notify the Court immediately if Contractor is in default, or if a third party claim or dispute is brought or threatened that alleges facts that would constitute a default under this Agreement. If Contractor is in default, the Court may do any of the following: (i) withhold all or any portion of a payment otherwise due to Contractor, and exercise any other rights of setoff as may be provided in this Agreement or any other agreement between a Judicial Branch Entity and Contractor; (ii) require Contractor to enter into nonbinding mediation; (iii) exercise, following Notice, the Court's right of early termination of this Agreement as provided herein; and (iv) seek any other remedy available at law or in equity.

B. Delivery of Materials. In the event of any expiration or termination of this Agreement, Contractor shall promptly provide the Court with all originals and copies of the Deliverables, including any partially-completed Deliverables-related work product or materials, and any Court-provided materials in its possession, custody, or control. In the event of any termination of this Agreement, the Court shall not be liable to Contractor for compensation or damages incurred as a result of such termination; provided that if the Court's termination is not for cause, the Court shall pay any fees due under this Agreement for Services performed or Deliverables completed and accepted as of the date of the Court's termination Notice.

6.5 Survival. Termination or expiration of this Agreement shall not affect the rights and obligations of the parties which arose prior to any such termination or expiration (unless otherwise provided herein) and such rights and obligations shall survive any such termination or expiration. Rights and obligations which by their nature should survive shall remain in effect after termination or expiration of this Agreement, including any section of this Agreement that states it shall survive such termination or expiration.

7. Assignment and Subcontracting. Contractor may not assign or subcontract its rights or duties under this Agreement, in whole or in part, whether by operation of law or otherwise, without the prior written consent of the Court. Consent may be withheld for any reason or no reason. Any assignment or subcontract made in contravention of the foregoing shall be void and of no effect. Subject to the foregoing, this Agreement will be binding on the parties and their permitted successors and assigns.

8. Notices. Notices must be sent to the following address and recipient:

If to Court:	If to the Contractor:
Vidal Fernandez DUI Court Coordinator 1100 Van Ness Avenue, 8 th Floor Fresno CA 93724-0002	Kirk Haynes Chief Probation Officer 3333 E. American Avenue Fresno, CA 93725-9248

Either party may change its address for Notices by giving the other party Notice of the new address in accordance with this section. Notices will be considered to have been given at the time of actual delivery in person, three (3) days after deposit in the mail as set forth above, or one (1) day after delivery to an overnight air courier service.

9. Provisions Applicable to Certain Agreements. The provisions in this section are *applicable only to the types of orders specified in the first sentence of each subsection*. If this Agreement is not of the type described in the first sentence of a subsection, then that subsection does not apply to the Agreement.

9.1 Union Activities Restrictions. *If the Contract Amount is over \$50,000, this section is applicable.* Contractor agrees that no Court funds received under this Agreement will be used to assist, promote or deter union organizing during the Term. If Contractor incurs costs, or makes expenditures to assist, promote or deter union organizing, Contractor will maintain records sufficient to show that no Court funds were used for those expenditures. Contractor will provide those records to the Attorney General upon request.

9.2 Domestic Partners, Spouses, Gender, and Gender Identity Discrimination. *If the Contract Amount is \$100,000 or more, this section is applicable.* Contractor is in compliance with, and throughout the Term will remain in compliance with: (i) PCC 10295.3 which places

limitations on contracts with contractors who discriminate in the provision of benefits on the basis of marital or domestic partner status; and (ii) PCC 10295.35, which places limitations on contracts with contractors that discriminate in the provision of benefits on the basis of an employee's or dependent's actual or perceived gender identity.

- 9.3 Child Support Compliance Act.** *If the Contract Amount is \$100,000 or more, this section is applicable.* Contractor recognizes the importance of child and family support obligations and fully complies with (and will continue to comply with during the Term) all applicable state and federal laws relating to child and family support enforcement, including disclosure of information and compliance with earnings assignment orders, as provided in Family Code section 5200 et seq. Contractor provides the names of all new employees to the New Hire Registry maintained by the California Employment Development Department.
- 9.4 Priority Hiring.** *If the Contract Amount is over \$200,000 and this Agreement is for services (other than Consulting Services), this section is applicable.* Contractor shall give priority consideration in filling vacancies in positions funded by this Agreement to qualified recipients of aid under Welfare and Institutions Code section 11200 in accordance with PCC 10353.
- 9.5 Federal Funding Requirements.** *If this Agreement is funded in whole or in part by the federal government, this section is applicable.* It is mutually understood between the parties that this Agreement may have been written for the mutual benefit of both parties before ascertaining the availability of congressional appropriation of funds, to avoid program and fiscal delays that would occur if this Agreement were executed after that determination was made. This Agreement is valid and enforceable only if sufficient funds are made available to the Court by the United State Government for the fiscal year in which they are due and consistent with any stated programmatic purpose, and this Agreement is subject to any additional restrictions, limitations, or conditions enacted by the Congress or to any statute enacted by the Congress that may affect the provisions, terms, or funding of this Agreement in any manner. The parties mutually agree that if the Congress does not appropriate sufficient funds for any program under which this Agreement is intended to be paid, this Agreement shall be deemed amended without any further action of the parties to reflect any reduction in funds. The Court may invalidate this Agreement under the termination for convenience or cancellation clause (providing for no more than thirty (30) days' Notice of termination or cancellation), or amend this Agreement to reflect any reduction in funds.

10. Miscellaneous Provisions.

- 10.1 Independent Contractor.** Contractor is an independent contractor to the Court. No employer-employee, partnership, joint venture, or agency relationship exists between Contractor and the Court. Contractor has no authority to bind or incur any obligation on behalf of the Court. If any governmental entity concludes that Contractor is not an independent contractor, the Court may terminate this Agreement immediately upon Notice.
- 10.2 GAAP Compliance.** Contractor maintains an adequate system of accounting and internal controls that meets Generally Accepted Accounting Principles.
- 10.3 Audit.** Contractor must allow the Court or its designees to review and audit Contractor's (and any subcontractors') documents and records relating to this Agreement, and Contractor (and its subcontractors) shall retain such documents and records for a period of four (4) years following final payment under this Agreement. If an audit determines that Contractor (or any subcontractor) is not in compliance with this Agreement,

Contractor shall correct errors and deficiencies by the twentieth (20th) day of the month following the review or audit. If an audit determines that Contractor has overcharged the Court five percent (5%) or more during the time period subject to audit, Contractor must reimburse the Court in an amount equal to the cost of such audit. This Agreement is subject to examinations and audit by the State Auditor for a period three (3) years after final payment.

- 10.4 Licenses and Permits.** Contractor shall obtain and keep current all necessary licenses, approvals, permits and authorizations required by applicable law for the performance of the Services. Contractor will be responsible for all fees and taxes associated with obtaining such licenses, approvals, permits and authorizations, and for any fines and penalties arising from its noncompliance with any applicable law.
- 10.5 Confidential Information.** During the Term and at all times thereafter, Contractor will: (a) hold all Confidential Information in strict trust and confidence, (b) refrain from using or permitting others to use Confidential Information in any manner or for any purpose not expressly permitted by this Agreement, and (c) refrain from disclosing or permitting others to disclose any Confidential Information to any third party without obtaining the Court's express prior written consent on a case-by-case basis. Contractor will disclose Confidential Information only to its employees or contractors who need to know that information in order to perform Services hereunder and who have executed a confidentiality agreement with Contractor at least as protective as the provisions of this section. The provisions of this section shall survive the expiration or termination of this Agreement. Contractor will protect the Confidential Information from unauthorized use, access, or disclosure in the same manner as Contractor protects its own confidential or proprietary information of a similar nature, and with no less than the greater of reasonable care and industry-standard care. The Court owns all right, title and interest in the Confidential Information. Contractor will notify the Court promptly upon learning of any unauthorized disclosure or use of Confidential Information and will cooperate fully with the Court to protect such Confidential Information. Upon the Court's request and upon any termination or expiration of this Agreement, Contractor will promptly (a) return to the Court or, if so directed by the Court, destroy all Confidential Information (in every form and medium), and (b) certify to the Court in writing that Contractor has fully complied with the foregoing obligations. Contractor acknowledges that there can be no adequate remedy at law for any breach of Contractor's obligations under this section, that any such breach will likely result in irreparable harm, and that upon any breach or threatened breach of the confidentiality obligations, the Court shall be entitled to appropriate equitable relief, without the requirement of posting a bond, in addition to its other remedies at law.
- 10.6 Ownership of Deliverables.** Unless otherwise agreed in this Agreement, Contractor hereby assigns to the Court ownership of all Deliverables, any partially-completed Deliverables, and related work product or materials. Contractor agrees not to assert any rights at common law, or in equity, or establish a copyright claim in any of these materials. Contractor shall not publish or reproduce any Deliverable in whole or part, in any manner or form, or authorize others to do so, without the written consent of the Court.
- 10.7 Order of Preference.** Any conflict among or between the documents making up this Agreement will be resolved in accordance with the following order of precedence (in descending order of precedence): (i) Appendix C - General Provisions; (ii) the Coversheet; (iii) Appendix B - Pricing and Payment; (iv) Appendix A - Statement of Work; and (v) any exhibits to the Agreement.

- 10.8 Publicity.** Contractor shall not make any public announcement or press release about this Agreement without the prior written approval of the Court. However, this Agreement, including its contents, shall be subject to public disclosure by Contractor pursuant to the Ralph M. Brown Act (Government Code sections 54950 et seq.), the California Public Records Act (Government Code sections 6250 et seq.), and all other applicable laws pertaining to disclosure by public entities, and Contractor shall not be limited in any manner whatsoever with respect to its public disclosure of this Agreement, including the contents of this Agreement.
- 10.9 Choice of Law and Jurisdiction.** California law, without regard to its choice-of-law provisions, governs this Agreement. The parties shall attempt in good faith to resolve informally and promptly any dispute that arises under this Agreement. Jurisdiction for any legal action arising from this Agreement shall exclusively reside in state or federal courts located in California, and the parties hereby consent to the jurisdiction of such courts.
- 10.10 Negotiated Agreement.** This Agreement has been arrived at through negotiation between the parties. Neither party is the party that prepared this Agreement for purposes of construing this Agreement under California Civil Code section 1654.
- 10.11 Amendment and Waiver.** Except as otherwise specified in this Agreement, no amendment or change to this Agreement will be effective unless expressly agreed in writing by a duly authorized officer of the Court. A waiver of enforcement of any of this Agreement's terms or conditions by the Court is effective only if expressly agreed in writing by a duly authorized officer of the Court. Any waiver or failure to enforce any provision of this Agreement on one occasion will not be deemed a waiver of any other provision or of such provision on any other occasion.
- 10.12 Force Majeure.** Neither party shall be liable to the other for any delay in or failure of performance, nor shall any such delay in or failure of performance constitute default, if such delay or failure is caused by a force majeure. Force majeure, for purposes of this paragraph, is defined as follows: acts of war and acts of god, such as earthquakes, floods, and other natural disasters, such that performance is impossible.
- 10.13 Follow-On Contracting.** No person, firm, or subsidiary who has been awarded a Consulting Services agreement may submit a bid for, nor be awarded an agreement for, the providing of services, or any other related action that is required, suggested, or otherwise deemed appropriate in the end product of this Agreement.
- 10.14 Severability.** If any part of this Agreement is held unenforceable, all other parts remain enforceable.
- 10.15 Headings; Interpretation.** All headings are for reference purposes only and do not affect the interpretation of this Agreement. The word "including" means "including, without limitation." Unless specifically stated to the contrary, all references to days herein shall be deemed to refer to calendar days.
- 10.16 Time of the Essence.** Time is of the essence in Contractor's performance under this Agreement.
- 10.17 Counterparts.** This Agreement may be executed as an electronic transaction (documents scanned and sent via email) and will have the same effect and validity as signed original counterparts.

APPENDIX D

Defined Terms

As used in this Agreement, the following terms have the indicated meanings:

"Agreement" is defined on the Coversheet.

"Contractor" is defined on the Coversheet.

"Confidential Information" means: (i) any information related to the business or operations of the Court, including information relating to the Court's personnel and users; and (ii) all financial, statistical, personal, technical and other data and information of the Court (and proprietary information of third parties provided to Contractor) which is designated confidential or proprietary, or that Contractor otherwise knows, or would reasonably be expected to know, is confidential. Confidential Information does not include information that Contractor demonstrates to the Court's satisfaction that: (a) Contractor lawfully knew prior to the Court's first disclosure to Contractor, (b) a third party rightfully disclosed to Contractor free of any confidentiality duties or obligations, or (c) is, or through no fault of Contractor has become, generally available to the public.

"Contract Amount" is defined on the Coversheet.

"Coversheet" refers to the first page of this Agreement.

"Deliverables" is defined in Appendix A.

"Effective Date" is defined on the Coversheet.

"Expiration Date" is the later of (i) the day so designated on the Coversheet, and (ii) the last day of any Option Term.

"Initial Term" is the period commencing on the Effective Date and ending on the Expiration Date designated on the Coversheet.

"Judicial Branch Entity" or **"Judicial Branch Entities"** means any California superior or appellate court, the Judicial Council of California, and the Habeas Corpus Resource Center.

"Judicial Branch Personnel" means members, justices, judges, judicial officers, subordinate judicial officers, employees, and agents of the Court or any Judicial Branch Entity.

"Notice" means a written communication from one party to another that is (a) delivered in person, (b) sent by registered or certified mail, or (c) sent by overnight air courier, in each case properly posted and fully prepaid to the appropriate address and recipient set forth in Appendix C.

"Option Term" means a period, if any, through which this Agreement may be or has been extended by the Court.

"PCC" refers to the California Public Contract Code.

"Services" is defined in Appendix A.

"Term" comprises the Initial Term and any Option Terms.

APPENDIX E

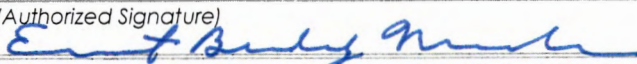
UNRUH CIVIL RIGHTS ACT AND CALIFORNIA FAIR EMPLOYMENT AND HOUSING ACT CERTIFICATION

Pursuant to Public Contract Code (PCC) section 2010, the following certifications must be provided when (i) submitting a bid or proposal to the Court for a solicitation of goods or services of \$100,000 or more, or (ii) entering into or renewing a contract with the Court for the purchase of goods or services of \$100,000 or more.

CERTIFICATIONS:

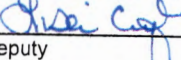
1. Contractor is in compliance with the Unruh Civil Rights Act (Section 51 of the Civil Code);
2. Contractor is in compliance with the California Fair Employment and Housing Act (Chapter 7 (commencing with Section 12960) of Part 2.8 of Division 3 of the Title 2 of the Government Code);
3. Contractor does not have any policy against any sovereign nation or peoples recognized by the government of the United States, including, but not limited to, the nation and people of Israel, that is used to discriminate in violation of the Unruh Civil Rights Act (Section 51 of the Civil Code) or the California Fair Employment and Housing Act (Chapter 7 (commencing with Section 12960) of Part 2.8 of Division 3 of Title 2 of the Government Code); **and**
4. Any policy adopted by a person or actions taken thereunder that are reasonably necessary to comply with federal or state sanctions or laws affecting sovereign nations or their nationals shall not be construed as unlawful discrimination in violation of the Unruh Civil Rights Act (Section 51 of the Civil Code) or the California Fair Employment and Housing Act (Chapter 7 (commencing with Section 12960) of Part 2.8 of Division 3 of Title 2 of the Government Code).

The certifications made in this document are made under penalty of perjury under the laws of the State of California. I, the official named below, certify that I am duly authorized to legally bind the Contractor to the certifications made in this document.

Contractor Name (Printed) County of Fresno		Federal ID Number [REDACTED]
By (Authorized Signature) 		
Printed Name and Title of Person Signing Ernest Buddy Mendes, Chairman, Board of Supervisors		
Date Executed 11/24/2020	Executed in the County of <u>Fresno</u> in the State of <u>California</u>	

ATTEST:

BERNICE E. SEIDEL
Clerk of the Board of Supervisors
County of Fresno, State of California

By 
Deputy