

TULARE COUNTY AGREEMENT NO. _____

COUNTY OF TULARE
CAMPUS PROBATION OFFICER AGREEMENT
PORTERVILLE UNIFIED SCHOOL DISTRICT

THIS AGREEMENT ("Agreement") is entered into as of _____, between the COUNTY OF TULARE, a political subdivision of the State of California ("COUNTY"), and PORTERVILLE UNIFIED SCHOOL DISTRICT ("SCHOOL DISTRICT"). COUNTY and SCHOOL DISTRICT are each a "Party" and together are the "Parties" to this Agreement, which is made with reference to the following:

- A. The SCHOOL DISTRICT desires to benefit from the services of Probation Officer(s) employed by the COUNTY for its Campus Probation Officer Program;
- B. The parties are willing to enter into this Agreement upon the terms and conditions set forth;
- C. Both parties intend for this agreement to replace and supersede all existing contracts for the provision of Probation Officer services for the Campus Probation Officer Program.

THE PARTIES AGREE AS FOLLOWS:

- 1. **TERM:** This Agreement becomes effective as of **July 1, 2018** and expires at 11:59 PM on June 30, 2019 unless earlier terminated as provided below, or unless the Parties extend the term by a written amendment to this Agreement.
- 2. **SERVICES:** See attached **Exhibit A**
- 3. **PAYMENT FOR SERVICES:** See attached **Exhibit B**
- 4. **INSURANCE:** Before approval of this Agreement by COUNTY, SCHOOL DISTRICT must file with the Clerk of the Board of Supervisors evidence of the required insurance as set forth in the attached **Exhibit C**.
- 5. **GENERAL AGREEMENT TERMS AND CONDITIONS:** COUNTY'S "General Agreement Terms and Conditions" are hereby incorporated by reference and made a part of this Agreement as if fully set forth herein. COUNTY'S "General Agreement Terms and Conditions" can be viewed at <http://tularecountycounsel.org/default/index.cfm/public-information/>
- 6. **ADDITIONAL EXHIBITS:** SCHOOL DISTRICT shall comply with the terms and conditions of the Exhibits listed below and identified with a checked box, which are by this reference made a part of this Agreement.

<input type="checkbox"/>	Exhibit D	Additional terms and conditions for federally-funded contracts. This Exhibit can be viewed at: http://tularecountycounsel.org/default/index.cfm/public-information/
<input type="checkbox"/>	Exhibit __	[Insert name of any other exhibit needed and attach]

- 7. **NOTICES:** (a) Except as may be otherwise required by law, any notice to be given must be written and must be either personally delivered, sent by facsimile transmission or sent by first class mail, postage prepaid and addressed as follows:

COUNTY:

Marichu A. Baker, Fiscal Manager
Tulare County Probation Department
221 South Mooney Boulevard, Room 206
Phone No.: (559)-713-2765
Fax No.: (559)-713-2765

With a Copy to:

COUNTY ADMINISTRATIVE OFFICER
2800 Wes Burrel Avenue
Visalia, California 93291
Phone No.: (559)-636-5005
Fax No.: (559)-733-6318

SCHOOL DISTRICT:

Nate Nelson, Assistant Superintendent, Business
600 West Grand Avenue
Porterville, California 93257
Phone No.: (559)-793-2400
Fax No.: (559)-781-8386

(b) Notice personally delivered is effective when delivered. Notice sent by facsimile transmission is deemed to be received upon successful transmission. Notice sent by first class mail will be deemed received on the fifth calendar day after the date of mailing. Either Party may change the above address by giving written notice under this section.

8. **AUTHORITY:** SCHOOL DISTRICT represents and warrants to COUNTY that the individual(s) signing this Agreement on its behalf are duly authorized and have legal capacity to sign this Agreement and bind SCHOOL DISTRICT to its terms. SCHOOL DISTRICT acknowledges that COUNTY has relied upon this representation and warranty in entering into this Agreement.
9. **COUNTERPARTS:** The Parties may sign this Agreement in counterparts, each of which is an original and all of which taken together form one single document.

[THIS SPACE LEFT BLANK INTENTIONALLY; SIGNATURES FOLLOW ON NEXT PAGE]

THE PARTIES, having read and considered the above provisions, indicate their agreement by their authorized signatures below.

PORTERVILLE UNIFIED SCHOOL DISTRICT

Date: May 15, 2018

By 

Print Name Nate Nelson, Ed.D.

Title Assistant Superintendent, Business Services

Date: _____

By _____

Print Name _____

Title _____

[Pursuant to Corporations Code section 313, County policy requires that contracts with a Corporation be signed by both (1) the chairman of the Board of Directors, the president or any vice-president (or another officer having general, operational responsibilities), and (2) the secretary, any assistant secretary, the chief financial officer, or any assistant treasurer (or another officer having recordkeeping or financial responsibilities), unless the contract is accompanied by a certified copy of a resolution of the corporation's Board of Directors authorizing the execution of the contract. Similarly, pursuant to California Corporations Code section 17703.01, County policy requires that contracts with a Limited Liability Company be signed by at least two managers, unless the contract is accompanied by a certified copy of the articles of organization stating that the LLC is managed by only one manager.]

COUNTY OF TULARE

Date: _____

By _____

Chairman, Board of Supervisors

ATTEST: MICHAEL C. SPATA
County Administrative Officer/Clerk of the Board
of Supervisors of the County of Tulare

By _____

Deputy Clerk

Approved as to Form
County Counsel

By  5/18/18

Deputy

Matter # 2018535

EXHIBIT A

SCOPE OF WORK

1. **SERVICES TO BE PERFORMED:** The COUNTY shall provide to the SCHOOL DISTRICT three (3) Deputy Probation Officer, full-time positions. "Full-time" shall be deemed as no less than 20 hours (50%) and a maximum of 40 hours per week; with the understanding that each assigned Probation Officer will provide Probation Supervision up to a maximum of twenty five (25) high risk 602 wards within the identified school district.

Under the supervision of the Tulare County Probation Department and in cooperation with the SCHOOL DISTRICT principal and assistant principals/ deans, the Probation Officer(s) shall perform the following activities:

- a. Assist with the supervision of students who are on formal or informal probation on the campuses in the district(s);
- b. Provide counseling for individuals and groups of at-risk students identified by the SCHOOL DISTRICT in an effort to prevent those students from entering the juvenile justice system;
- c. Assist SCHOOL DISTRICT personnel in evaluating students through the School Attendance Review Board (SARB) process;
- d. Provide oral or written reports at the request of the SCHOOL DISTRICT site or district administration;
- e. Work in cooperation with the other officers in the Tulare County Probation Department, Delinquency Prevention and Early Intervention Unit, and local law enforcement in a team effort to enhance available resources to meet the purpose of this Agreement;
- f. Act as a liaison between the SCHOOL DISTRICT and parents/ guardians with students on probation and other at-risk students identified by the SCHOOL DISTRICT;
- g. Assist SCHOOL DISTRICT personnel in matters related to severe school attendance problems;
- h. Attend district collaborative meetings and assist in planning community activities;
- i. Abide by all school regulations;
- j. Perform other duties under the direction of the Probation Department and in cooperation with SCHOOL DISTRICT principal and assistant principal/ dean;
- k. Perform the above described duties during the regular school year and during the summer school session.

EXHIBIT B

PAYMENT FOR SERVICES

1. **PAYMENT FOR SERVICES:** The SCHOOL DISTRICT agrees to reimburse the COUNTY for fifty percent (50%) of all costs of the three (3) full-time Probation Officers' salary, benefits, communication and transportation costs, including Workers' Compensation insurance and retirement contributions, and the COUNTY agrees to pay the balance of said cost. The COUNTY will bill the SCHOOL DISTRICT at the end of each quarter for the costs and expenses incurred during the quarter, and the SCHOOL DISTRICT shall pay the invoice within thirty (30) days of receipt.

EXHIBIT C

SCHOOL DISTRICT NON-PROFESSIONAL SERVICES INSURANCE REQUIREMENTS

SCHOOL DISTRICT shall provide and maintain insurance for the duration of this Agreement against claims for injuries to persons and damage to property which may arise from, or in connection with, performance under the Agreement by the SCHOOL DISTRICT, his agents, representatives, employees and sub-SCHOOL DISTRICTS, if applicable.

A. Minimum Scope & Limits of Insurance

1. Commercial General Liability coverage of \$1,000,000 on an occurrence basis, including products and completed operations, property damage, bodily injury and personal & advertising injury (occurrence Form CG 00 01). If a general aggregate applies, either the general aggregate limit shall apply separately to this project/location (ISO CG 25 03 or 25 04) or the general aggregate, either the general aggregate limit shall apply separately to this project/location (ISO CG 25 03 or 25 04) or the general aggregate limit must be no less than \$2,000,000.
2. Insurance Services Office Form Number CA 00 01 covering Automobile Liability, (any auto) of no less than \$1,000,000 per accident for bodily injury and property damage. If an annual aggregate applies it must be no less than 2,000,000.
3. Workers' Compensation insurance as required by the State of California, with Statutory Limits, and Employer's Liability Insurance with limit of no less than \$1,000,000 per accident for bodily injury or disease.

B. Specific Provisions of the Certificate

1. If any of the required insurance is written on a claims made form, the retroactive date must be before the date of the contract or the beginning of the contract work and must be maintained and evidence of insurance must be provided for at least three (3) years after completion of the contract work.
2. SCHOOL DISTRICT must submit endorsements to the General Liability reflecting the following provisions:
 - a. *The COUNTY OF TULARE, its officers, agents, officials, employees and volunteers are to be covered as additional insureds as respects: liability arising out of work or operations performed by or on behalf of the SCHOOL DISTRICT including materials, parts, or equipment furnished in connection with such work or operation.*
 - b. *For any claims related to this project, the SCHOOL DISTRICT's insurance coverage shall be primary insurance at lease as broad as ISO CG 20 01 01 13 as respects the COUNTY, its officers, agents, officials, employees and volunteers. Any insurance or self-insurance*

maintained by the COUNTY, its officers, agents, officials, employees or volunteers shall be excess of the SCHOOL DISTRICT's insurance and shall not contribute with it.

c. Each insurance policy required by this agreement shall provide that coverage shall not be canceled, except with written notice to the COUNTY.

d. SCHOOL DISTRICT hereby grants to COUNTY a waiver of any right to subrogation which any insurer of the SCHOOL DISTRICT may acquire against the COUNTY by virtue of the payment of any loss under such insurance. SCHOOL DISTRICT agrees to obtain any endorsement that may be necessary to affect this waiver of subrogation, but this provision applies regardless of whether or not the COUNTY has received a waiver of subrogation endorsement from the insurer.

3. The Workers' Compensation policy shall be endorsed with a waiver of subrogation in favor of the COUNTY for all work performed by the SCHOOL DISTRICT, its employees, agents and sub-contractors. SCHOOL DISTRICT waives all rights against the COUNTY and its officers, agents, officials, employees and volunteers for recovery of damages to the extent these damages are covered by the workers compensation and employers liability.

C. Deductibles and Self-Insured Retentions

Self-insured retentions must be declared and the COUNTY Risk Manager must approve any deductible or self-insured retention that exceeds \$100,000.

D. Acceptability of Insurance

Insurance must be placed with insurers with a current rating given by A.M. Best and Company of no less than A-: VII and a Standard & Poor's rating (if rated) of at least BBB and from a company approved by the Department of Insurance to conduct business in California. Any waiver of these standards is subject to approval by the County Risk Manager.

E. Verification of Coverage

Prior to approval of this Agreement by the COUNTY, the SCHOOL DISTRICT shall file with the submitting department, certificates of insurance with original endorsements effecting coverage in a form acceptable to the COUNTY. Endorsements must be signed by persons authorized to bind coverage on behalf of the insurer. The COUNTY reserves the right to require certified copies of all required insurance policies at any time.

COUNTY OF TULARE'S

GENERAL AGREEMENT TERMS AND CONDITIONS

(Form revision approved 01/01/2018)

1. PAYMENT DOES NOT IMPLY ACCEPTANCE OF WORK: SCHOOL DISTRICT is not entitled to any payments from COUNTY until the County Department for which services are provided under the Agreement approves services, including any furnished deliverables, as satisfying all of the requirements of this Agreement. Payments to SCHOOL DISTRICT by COUNTY shall not excuse SCHOOL DISTRICT from its obligation to replace unsatisfactory deliverables, including equipment, components, materials, or services even if the unsatisfactory character of such deliverables, equipment, components, materials, or services may not have been apparent or detected at the time such payment was made. Deliverables, equipment, components, materials and services that do not conform to the requirements of this Agreement may be rejected by COUNTY and in such case must be replaced by SCHOOL DISTRICT without delay and at no cost to the COUNTY.

2. DISALLOWANCE: If SCHOOL DISTRICT requests or receives payment from COUNTY for services hereunder, reimbursement for which is later disallowed by the State of California or United States Government, SCHOOL DISTRICT shall promptly refund the disallowed amount to COUNTY upon COUNTY'S request. At its option, COUNTY may offset the amount disallowed from any payment due or to become due to SCHOOL DISTRICT under this Agreement or any other Agreement between SCHOOL DISTRICT and COUNTY. SCHOOL DISTRICT'S obligations under this section 2 will survive the expiration or termination of this Agreement.

3. LIABILITY OF COUNTY: COUNTY'S payment obligations under this Agreement shall be limited to the payment of the compensation provided for in section 3, "PAYMENT FOR SERVICES," of this Agreement. Notwithstanding any other provision of this Agreement, in no

event shall COUNTY be liable, regardless of whether any claim is based on contract or tort, for any special, consequential, indirect or incidental damages, including, but not limited to, lost profits, arising out of or in connection with this Agreement or the services performed in connection with this Agreement.

4. QUALIFIED PERSONNEL: SCHOOL DISTRICT shall utilize only competent personnel under the supervision of, and in the employment of, SCHOOL DISTRICT (or SCHOOL DISTRICT'S authorized sub-contractors) to perform the services. SCHOOL DISTRICT will comply with COUNTY'S reasonable requests regarding assignment and/or removal of personnel, but all personnel, including those assigned at COUNTY'S request, and must be supervised by SCHOOL DISTRICT. SCHOOL DISTRICT shall commit adequate resources to allow timely completion within the project schedule specified in this Agreement.

5. INDEPENDENT SCHOOL DISTRICT STATUS: The Parties enter into this Agreement with the express understanding that SCHOOL DISTRICT will perform all services required under this Agreement as an independent SCHOOL DISTRICT. The Parties agree that the SCHOOL DISTRICT and any of its agents, employees, or officers cannot be considered agents, employees, or officers of COUNTY. SCHOOL DISTRICT agrees to advise everyone it assigns or hires to perform any duty under this Agreement that they are not employees of COUNTY. Subject to any performance criteria contained in this Agreement, SCHOOL DISTRICT will be solely responsible for determining the means and methods of performing the specified services and COUNTY will have no right to control or exercise any supervision over SCHOOL DISTRICT as to how the SCHOOL DISTRICT will perform the services. As SCHOOL DISTRICT is not COUNTY'S

employee, SCHOOL DISTRICT is responsible for paying all required state and federal taxes. In particular, COUNTY will not:

- (1) Withhold FICA (Social Security) from SCHOOL DISTRICT'S payments.
- (2) Make state or federal unemployment insurance contributions on SCHOOL DISTRICT'S behalf.
- (3) Withhold state or federal income tax from payments to SCHOOL DISTRICT.
- (4) Make disability insurance contributions on behalf of SCHOOL DISTRICT.
- (5) Obtain unemployment compensation insurance on behalf of SCHOOL DISTRICT.

Notwithstanding this independent SCHOOL DISTRICT relationship, COUNTY will have the right to monitor and evaluate the performance of SCHOOL DISTRICT to assure compliance with this Agreement.

6. COMPLIANCE WITH LAW: SCHOOL DISTRICT must provide services in accordance with applicable Federal, State, and local laws, regulations and directives. With respect to SCHOOL DISTRICT'S employees, SCHOOL DISTRICT must comply with all laws and regulations pertaining to wages and hours, state and federal income tax, unemployment insurance, Social Security, disability insurance, workers' compensation insurance, and discrimination in employment.

7. LICENSES AND PERMITS: SCHOOL DISTRICT represents and warrants that it possesses and will maintain during the term of this Agreement all licenses and permits required for its performance of the services required under this Agreement.

8. GOVERNING LAW: The laws of the State of California, without reference to California conflict of laws principles, govern this Agreement and its interpretation. The Parties agree that this Agreement is made in and will be performed in Tulare County, California.

9. RECORDS AND AUDIT: SCHOOL DISTRICT must maintain complete and accurate records with respect to the services rendered and the costs incurred under this Agreement. In addition, SCHOOL DISTRICT must maintain complete and accurate records with respect to any payments to employees or sub-contractors. All of the records must be prepared in accordance with generally accepted accounting procedures, must be clearly identified, and must be kept readily accessible. Upon request, SCHOOL DISTRICT must make the records available within Tulare County to the Auditor of Tulare County and to his or her agents and representatives, for the purpose of auditing and/or copying the records for a period of five (5) years from the date of final payment under this Agreement.

10. CONFLICT OF INTEREST:

(a) At all times during the performance of this Agreement, SCHOOL DISTRICT must comply with the law of the State of California regarding conflicts of interests and appearance of conflicts of interests, including, but not limited to, Government Code Section 1090 et seq., and the Political Reform Act, Government Code Section 81000 et seq. and regulations promulgated by the California Fair Political Practices Commission. The statutes, regulations and laws previously referenced include, but are not limited to, prohibitions against any public officer or employee, including SCHOOL DISTRICT for this purpose, from making any decision on behalf of COUNTY in which the officer, employee or consultant/SCHOOL DISTRICT has a direct or indirect financial interest. A violation can occur if the public officer, employee or consultant/SCHOOL DISTRICT participates in or influences any COUNTY decision that has the potential to confer any pecuniary benefit on SCHOOL DISTRICT or any business firm in which SCHOOL DISTRICT has an interest, with certain narrow exceptions.

(b) SCHOOL DISTRICT agrees that if any facts come to its attention that raise any questions as to the applicability of conflicts of interests laws, then it will immediately inform COUNTY and

provide all information needed for resolution of this question.

11. INSURANCE: The attached **Exhibit C** outlines the minimum scope, specifications, and limits of insurance required under this Agreement. Additional insured endorsements required as outlined in **Exhibit C** cannot be used to reduce limits available to COUNTY as an additional insured from SCHOOL DISTRICT'S full policy limits. Insurance policies cannot be used to limit liability or to limit the indemnification provisions and requirements of this Agreement or act in any way to reduce the policy coverage and limits available from the insurer(s). If SCHOOL DISTRICT fails to maintain or renew coverage, or to provide evidence of renewal, then COUNTY may consider that failure a material breach of this Agreement. COUNTY may also withhold any payment otherwise due to SCHOOL DISTRICT for failure to provide evidence of renewal until SCHOOL DISTRICT provides such evidence.

12. INDEMNIFICATION AND DEFENSE:

(a) To the fullest extent permitted by law, SCHOOL DISTRICT must indemnify, defend (at SCHOOL DISTRICT'S sole cost and expense and with legal counsel approved by COUNTY, which approval may not be unreasonably withheld), protect and hold harmless COUNTY, all subsidiaries, divisions and affiliated agencies of COUNTY, and all of their representatives, partners, designees, officers, directors, employees, consultants, agents, successors and assigns, (each, an "Indemnified Party" and collectively, the "Indemnified Parties"), from and against all claims (including, without limitation, claims for bodily injury, death or damage to property), demands, obligations, damages, actions, causes of action, suits, losses, judgments, fines, penalties, liabilities, costs and expenses (including, without limitation, attorneys' fees, disbursements and court costs, and all other professional expert or consultants' fees and costs and COUNTY general and administrative expenses) of every kind and nature whatsoever (individually, a "Claim"; collectively, "Claims") which may arise out of,

pertain to, or relate (directly or indirectly) to the negligence, recklessness, or misconduct of SCHOOL DISTRICT with respect to any work performed or services provided under this Agreement (including, without limitation, the acts, errors and/or omissions of SCHOOL DISTRICT, its principals, officers, agents, employees, vendors, suppliers, consultants, sub-consultants, SCHOOL DISTRICTS, anyone employed directly or indirectly by any of them or for whose acts they may be liable or any or all of them). SCHOOL DISTRICT'S obligation to indemnify applies unless it is finally adjudicated that the liability was caused by the sole active negligence or sole willful misconduct of an Indemnified Party. If it is finally adjudicated that liability is caused by the comparative active negligence or willful misconduct of an Indemnified Party, then SCHOOL DISTRICT'S indemnification obligation shall be reduced in proportion to the established comparative liability.

(b) The duty to defend is a separate and distinct obligation from SCHOOL DISTRICT'S duty to indemnify. SCHOOL DISTRICT shall be obligated to defend, in all legal, equitable, administrative, or special proceedings, the Indemnified Parties immediately upon tender to SCHOOL DISTRICT of the Claim in any form or at any stage of an action or proceeding, whether or not liability is established. Payment to SCHOOL DISTRICT by any Indemnified Party or the payment or advance of defense costs by any Indemnified Party cannot be a condition precedent to enforcing the Indemnified Party's rights to indemnification under this Agreement. An allegation or determination that persons other than SCHOOL DISTRICT are responsible for the Claim does not relieve SCHOOL DISTRICT from its separate and distinct obligation to defend under this section. The obligation to defend extends through final judgment, including exhaustion of any appeals. The defense obligation includes an obligation to provide independent defense counsel if SCHOOL DISTRICT asserts that liability is caused in whole or in part by the negligence or willful misconduct of an Indemnified Party. If it is

finally adjudicated that liability was caused by the comparative active negligence or willful misconduct of an Indemnified Party, then SCHOOL DISTRICT may submit a claim to the COUNTY for reimbursement of reasonable attorneys' fees and defense costs in proportion to the established comparative liability of the Indemnified Party. SCHOOL DISTRICT'S indemnification obligations under this Agreement will survive the expiration or earlier termination of this Agreement until action against the Indemnified Parties for the matter indemnified is fully and finally barred by the applicable statute of limitations or statute of repose. SCHOOL DISTRICT'S liability for indemnification under this Agreement is in addition to any liability SCHOOL DISTRICT may have to COUNTY for a breach by SCHOOL DISTRICT of any of the provisions of this Agreement. Under no circumstances may the insurance requirements and limits set forth in this Agreement be construed to limit SCHOOL DISTRICT'S indemnification obligation or other liability under this Agreement. The terms of this Agreement are contractual and the result of negotiation between the Parties.

(c) SCHOOL DISTRICT must indemnify and hold COUNTY harmless from all loss and liability, including attorneys' fees, court costs and all other litigation expenses, for any infringement of the patent rights, copyright, trade secret or any other proprietary right or trademark, and all other intellectual property claims of any person or persons in consequence of the use by COUNTY, or any of its officers or agents, of articles or services to be supplied in the performance of this Agreement.

13. TERMINATION:

(a) **Without Cause:** COUNTY may terminate this Agreement without cause by giving ninety (90) days' prior written notice to SCHOOL DISTRICT of its intention to terminate under this provision, specifying the date of termination. COUNTY will pay to SCHOOL DISTRICT the compensation earned for work satisfactorily performed and not previously paid for to the date of termination.

COUNTY will not pay lost anticipated profits or other economic loss. The payment of any compensation is subject to the restrictions on payment of compensation otherwise provided in this Agreement, and is conditioned upon receipt from SCHOOL DISTRICT of all plans, specifications and estimates, and other documents prepared by SCHOOL DISTRICT in accordance with this agreement. COUNTY will not impose sanctions on SCHOOL DISTRICT under these circumstances.

(b) **With Cause:** Either Party may terminate this Agreement immediately, by written notice to the other Party, should the other Party:

- (1) Be adjudged a bankrupt, or
- (2) Become insolvent or have a receiver appointed, or
- (3) Make a general assignment for the benefit of creditors, or
- (4) Suffer any judgment that remains unsatisfied for 30 days, and that would substantively impair the ability of the judgment debtor to perform under this Agreement, or
- (5) Materially breach this Agreement.

In addition, COUNTY may terminate this Agreement based on:

- (6) Material misrepresentation, either by SCHOOL DISTRICT or anyone acting on SCHOOL DISTRICT'S behalf, as to any matter related in any way to COUNTY'S retention of SCHOOL DISTRICT, or
- (7) Other misconduct or circumstances that, in the sole discretion of COUNTY, either impairs the ability of SCHOOL DISTRICT to competently provide the services under this Agreement, or exposes COUNTY to an unreasonable risk of liability.

For any of the occurrences except item (5) above, termination may be effected upon written notice by the terminating Party specifying the date of the termination. If SCHOOL

DISTRICT fails to perform according to the terms and conditions of this Agreement, then COUNTY may, in addition to any other remedy it may have, issue a declaration of default after 10 days written notice to SCHOOL DISTRICT.

Upon a material breach, the Agreement may be terminated after the failure of the defaulting Party to remedy the breach to the satisfaction of the non-defaulting Party within 5 days of written notice specifying the breach. If the breach is not remedied within that 5-day period, then the non-defaulting Party may terminate this Agreement on further written notice specifying the date of termination. If the nature of the breach is such that it cannot be cured within a 5-day period, then the defaulting Party may submit a written proposal within that period which sets forth a specific means to resolve the default. If the non-defaulting Party consents to that proposal in writing, which consent may not be unreasonably withheld, then the defaulting Party must immediately embark on its plan to cure the default or breach. If the default or breach is not cured within the time agreed, then the non-defaulting Party may terminate this Agreement upon written notice specifying the date of termination. COUNTY will pay to SCHOOL DISTRICT the compensation earned for work satisfactorily performed and not previously paid for to the date of termination. The payment of such compensation is subject to the restrictions on payment of compensation otherwise provided in this Agreement, and is conditioned upon receipt from SCHOOL DISTRICT of all plans, specifications and estimates, and other documents prepared by SCHOOL DISTRICT by the date of termination in accordance with this Agreement. COUNTY will not pay lost anticipated profits or other economic loss, nor will COUNTY pay compensation or make reimbursement to cure a breach arising out of or resulting from such termination. If COUNTY terminates this Agreement for cause and the expense of finishing SCHOOL DISTRICT'S scope of work exceeds the unpaid balance of the Agreement, then SCHOOL DISTRICT must pay the difference to COUNTY. COUNTY may impose sanctions

under these circumstances, which may include possible rejection of future proposals based on specific causes of SCHOOL DISTRICT'S non-performance.

(c) **Effects of Termination:** Expiration or termination of this Agreement will not terminate any obligations to indemnify, to maintain and make available any records pertaining to the Agreement, to cooperate with any audit, to be subject to offset, or to make any reports of pre-termination contract activities. Where COUNTY terminates SCHOOL DISTRICT'S services, that termination will not affect any rights of COUNTY to recover damages against SCHOOL DISTRICT.

(d) **Suspension of Performance:** Independent of any right to terminate this Agreement, the authorized representative of the COUNTY department or agency for which SCHOOL DISTRICT'S services are to be performed, may immediately suspend performance by SCHOOL DISTRICT, in whole or in part, in response to health, safety or financial emergency, or a failure or refusal by SCHOOL DISTRICT to comply with the provisions of this Agreement, until such time as the cause for suspension is resolved, or a notice of termination becomes effective.

14. LOSS OF FUNDING: It is understood and agreed that if COUNTY'S funding is either discontinued or reduced for the services to be provided hereunder, then COUNTY will have the right to terminate this Agreement under section 13 (a) ("Termination Without Cause") as of the end of the term for which funds are appropriated. Such termination shall be without penalty, liability, or expense to COUNTY of any kind, provided that COUNTY shall pay SCHOOL DISTRICT in accordance with section 13 (a) for services satisfactorily performed prior to the date of such termination and to the extent funds have been appropriated for such payment.

15. SUBMITTING FALSE CLAIMS; MONETARY PENALTIES: Under applicable federal and state law, if SCHOOL DISTRICT submits a false claim to COUNTY under this Agreement, then SCHOOL

DISTRICT will be liable to COUNTY for the statutory penalties set forth in those statutes, including but not limited to statutory fines, treble damages, costs, and attorneys' fees. SCHOOL DISTRICT will be deemed to have submitted a false claim to COUNTY if SCHOOL DISTRICT:

- (a) Knowingly presents or causes to be presented to COUNTY a false claim or request for payment or approval;
- (b) Knowingly makes, uses, or causes to be made or used a false record or statement to get a false claim paid or approved by COUNTY;
- (c) Conspires to defraud COUNTY by getting a false claim allowed or paid by COUNTY;
- (d) Knowingly makes, uses, or causes to be made or used a false record or statement to conceal, avoid, or decrease an obligation to pay or transmit money or property to COUNTY; or
- (e) Is a beneficiary of an inadvertent submission of a false claim to COUNTY, later discovers the falsity of the claim, and fails to disclose the false claim to COUNTY within a reasonable time after discovery of the false claim.

16. FORM DE-542: If SCHOOL DISTRICT is an individual, SCHOOL DISTRICT acknowledges that this Agreement is subject to filing obligations under Unemployment Insurance Code Section 1088.8. Accordingly, COUNTY has an obligation to file a report with the Employment Development Department, which report will include SCHOOL DISTRICT'S full name, social security number, address, the date this Agreement was executed, the total amount of the Agreement, its expiration date or whether it is ongoing. SCHOOL DISTRICT agrees to cooperate with COUNTY to make that information available and to complete Form DE-542. Failure to provide the required information may, at COUNTY'S option, prevent approval of this Agreement, or be grounds for termination by COUNTY.

17. WORKS FOR HIRE: SCHOOL DISTRICT acknowledges that all work(s) under this Agreement are "work(s) for hire" within the meaning of the United States Copyright Act (Title 17 United States Code) and hereby assigns to COUNTY all rights and interests SCHOOL DISTRICT may have in the work(s) it prepares under this Agreement, including any right to derivative use of the work(s). All software and related materials developed by SCHOOL DISTRICT in performance of this Agreement for COUNTY will be the sole property of COUNTY, and SCHOOL DISTRICT hereby assigns and transfers all its right, title, and interest therein to COUNTY. SCHOOL DISTRICT will execute all necessary documents to enable COUNTY to protect COUNTY'S intellectual property rights under this section.

18. WORK PRODUCT: All work product, equipment, or materials created for COUNTY or purchased by COUNTY under this Agreement belong to COUNTY and SCHOOL DISTRICT must immediately deliver them to COUNTY at COUNTY'S request upon termination or completion of this Agreement.

19. TIME OF ESSENCE: The Parties agree that time is of the essence under this Agreement, unless they agree otherwise in writing.

20. CONFIDENTIALITY: SCHOOL DISTRICT may not use or disclose any information it receives from COUNTY under this Agreement that COUNTY has previously identified as confidential or exempt from mandatory public disclosure except as necessary to carry out the purposes of this Agreement or as authorized in advance by COUNTY. Unless required to do so by law, including, but not limited to, the Ralph M. Brown Act or the California Public Records Act, COUNTY may not disclose to third parties any information it receives from SCHOOL DISTRICT that SCHOOL DISTRICT has previously identified as confidential. If COUNTY determines that it must disclose any information that SCHOOL DISTRICT previously identified as confidential, then it shall promptly give SCHOOL DISTRICT written notice

of its intention to disclose such information and the authority for such disclosure. SCHOOL DISTRICT shall have period of five (5) calendar days thereafter within which to seek a protective court order to prevent such disclosure or to notify COUNTY that it will not seek such an order. COUNTY shall cooperate with SCHOOL DISTRICT in any efforts to seek such a court order. COUNTY shall not disclose the information until the five (5) day period has expired without a response from SCHOOL DISTRICT, or SCHOOL DISTRICT has notified COUNTY that it will not seek such an order, or SCHOOL DISTRICT has sought and a court has declined to issue a protective order for such information. If SCHOOL DISTRICT seeks a protective order for such information, SCHOOL DISTRICT shall defend and indemnify COUNTY from any and all loss, injury, or claim arising from COUNTY'S withholding of the information from the requestor. This includes any attorney's fees awarded to the requestor. The duty of COUNTY and SCHOOL DISTRICT to maintain confidentiality of information under this section continues beyond the term of this Agreement.

21. ASSIGNMENT/SUBCONTRACTING: Unless otherwise provided in this Agreement, COUNTY is relying on the personal skill, expertise, training and experience of SCHOOL DISTRICT and SCHOOL DISTRICT'S employees and no part of this Agreement may be assigned or subcontracted by SCHOOL DISTRICT without the prior written consent of COUNTY, which consent COUNTY may grant, delay, deny, or condition in its absolute discretion.

22. DISPUTES AND DISPUTE RESOLUTION: SCHOOL DISTRICT shall continue with its responsibilities under this Agreement during any dispute. If a dispute arises out of or relating to this Agreement, or the breach of the Agreement, and if the dispute cannot be settled through negotiation, then the Parties agree first to try in good faith to settle the dispute by non-binding mediation, to be held in Tulare County, California, before resorting to litigation or some other dispute resolution procedure, unless the Parties mutually agree otherwise. The Parties

must mutually select the mediator, but in case of disagreement, then the Parties will select the mediator by lot from among two nominations provided by each Party. The Parties will split equally all costs and fees required by the mediator; otherwise each Party will bear its own costs of mediation. If mediation fails to resolve the dispute within 30 days, then either Party may pursue litigation to resolve the dispute.

23. PROPERTY TAXES: Under the terms of California Revenue and Taxation Code section 107.6 (possessory interest tax), SCHOOL DISTRICT'S possession or use of any COUNTY-owned real property under this Agreement may create a "possessory interest" in the real property. If a possessory interest is created, then it may be subject to property taxation and SCHOOL DISTRICT may be subject to the payment of property taxes on that possessory interest.

24. FURTHER ASSURANCES: Each Party will execute any additional documents and perform any further acts that may be reasonably required to effect the purposes of this Agreement.

25. CONSTRUCTION: This Agreement reflects the contributions of all Parties and so the provisions of Civil Code section 1654 will not apply to address and interpret any alleged uncertainty or ambiguity.

26. HEADINGS: Section headings are provided for organizational purposes only and do not in any manner affect the scope, meaning, or intent of the provisions under the headings.

27. NO THIRD-PARTY BENEFICIARIES INTENDED: Unless specifically set forth, the Parties to this Agreement do not intend to provide any other party with any benefit or enforceable legal or equitable right or remedy.

28. WAIVERS: The failure of either Party to insist on strict compliance with any provision of this Agreement will not be considered a waiver of any right to do so, whether for that breach or any

later breach. The acceptance by either Party of either performance or payment will not be considered a waiver of any preceding breach of the Agreement by the other Party.

29. ORDER OF PRECEDENCE: In the event of any conflict or inconsistency between or among the body of the Agreement (which includes these "General Agreement Terms and Conditions") and any Exhibit, Schedule, or Attachment, then the terms and conditions of the body of the Agreement shall prevail.

30. CONFLICT WITH LAWS OR REGULATIONS/ SEVERABILITY: This Agreement is subject to all applicable laws and regulations. If any provision of this Agreement is found by any court or other legal authority, or is agreed by the Parties to be, in conflict with any code or regulation governing its subject matter, only the conflicting provision will be considered null and void. If the effect of nullifying any conflicting provision is such that a material benefit of the Agreement to either Party is lost, then the Agreement may be terminated at the option of the affected Party. In all other cases, the remainder of the Agreement will continue in full force and effect.

31. ENTIRE AGREEMENT: This Agreement represents the entire agreement between SCHOOL DISTRICT and COUNTY as to its subject matter and no prior oral or written understanding will be of any force or effect. No part of this Agreement may be modified without the written consent of both Parties.

32. ASSURANCES OF NON-DISCRIMINATION: SCHOOL DISTRICT must not discriminate in employment or in the provision of services based any characteristic or condition upon which discrimination is prohibited by state or federal law or regulation. The Parties recognize that both SCHOOL DISTRICT and COUNTY have the

responsibility to protect COUNTY employees and clients from unlawful activities, including discrimination and sexual harassment in the workplace. Accordingly, SCHOOL DISTRICT agrees to provide appropriate training to its employees regarding discrimination and sexual harassment issues, and to promptly and appropriately investigate any allegations that any of its employees may have engaged in improper discrimination or harassment activities. COUNTY, in its sole discretion, has the right to require SCHOOL DISTRICT to replace any employee who provides services of any kind to COUNTY under this Agreement with other employees where COUNTY is concerned that its employees or clients may have been or may be the subjects of discrimination or harassment by such employees. COUNTY'S right to require replacement of employees under this section does not preclude COUNTY from terminating this Agreement with or without cause as provided for under this Agreement.

33. DRUG-FREE WORKPLACE POLICY: SCHOOL DISTRICT acknowledges that under the Federal Drug-Free Workplace Act of 1989 and the California Drug-Free Workplace Act of 1990, the unlawful manufacture, distribution, dispensation, possession, or use of a controlled substance is prohibited on COUNTY premises. SCHOOL DISTRICT agrees that any violation of this prohibition by SCHOOL DISTRICT, its employees, agents, or assigns will be deemed a material breach of this Agreement.

34. RECYCLED PAPER CONTENT: To the extent SCHOOL DISTRICT'S services under this Agreement include printing services, pursuant to Public Contract Code section 22153 SCHOOL DISTRICT shall use paper that meets the recycled content requirements of Public Contract Code section 12209.