

MEMORANDUM OF UNDERSTANDING
2014-2015 SUPERIOR COURT SERVICES AGREEMENT

THIS AGREEMENT is entered into as of July 1, 2014 between the COUNTY OF TULARE, referred to as the County, and the SUPERIOR COURT OF TULARE COUNTY, referred to as the Court, with reference to the following:

A. The Lockyer-Isenburg Trial Court Funding Act of 1997 (commonly known as the "Trial Court Funding Act"), as set out and incorporated in Government Code section 77001 et seq., provides that services and supplies relating to court operations shall be considered Trial Court Operations; and

B. The Trial Court Funding Act provides that a county may bill trial courts, such as the Court, for the costs, both direct and indirect, of its services and supplies provided to the trial courts for Trial Court Operations;

C. The Court desires, and the County is willing to provide, county general services and supplies as specified below to the Court for Trial Court Operations pursuant to the term and conditions set out below:

D. The parties have agreed as to the amount of any indirect or overhead costs together with the method of calculating the indirect or overhead costs of services to be provided.

ACCORDINGLY, IT IS AGREED:

1. **TERM:** This Agreement shall be in effect as of July 1, 2014, and shall terminate on June 30, 2015, unless terminated sooner as provided in this Agreement.
2. **SERVICES:** The County will provide to the Court the following services:
 - a) Internal Services,

- b) Fleet Services,
- d) Any other temporary services the Court requests and the County is willing to provide, including telecommunications, mail, courier, copier, and custodial, but use of such services on a temporary basis will not activate the provisions of Government Code § 77212 as to either party.

3. COST OF SERVICES: The County shall be compensated for the services as provided in Exhibit "A."

4. DOCUMENTATION AND RECONCILIATION OF INDIRECT AND OVERHEAD COSTS: The parties acknowledge and agree that Exhibit "B" documents how the County shall determine indirect costs and overhead costs, and that the County shall continue to calculate such costs consistent with such method of calculation unless the parties otherwise agree. The parties further agree that after the fourth quarter of the fiscal year the service departments shall reconcile the charges billed to the Court and all other departments serviced. In the event such reconciliation results in a finding that the Court has been overcharged for services during the term, the County shall adjust its rates to reimburse the Court for the amount of the overcharge. In the event such reconciliation results in a finding that the Court has been undercharged for services during the term, the Court shall pay the County for the amount of the undercharge.

5. METHOD OF PAYMENT: Except as otherwise provided, the County shall bill the Court within 30 days of the month in which the services were provided. The Court shall make payment within 30 days.

6. SPECIAL PROVISIONS FOR 2014-2015 ONLY: The County wishes to support the restructuring of pre-trial phases through the funding of (4) critical courtroom clerk positions

in the Preliminary Hearing courtroom. The positions are two (2) Senior Courtroom Clerks, and two (2) Courtroom Clerks. The County will transfer to the Court a lump sum sufficient to pay the salary and benefits of the position through June 30, 2015, up to a maximum of no more than \$262,252, for the fiscal year 2014/2015. If the Court does not expend the entire sum on the positions (e.g., the incumbents might take an unpaid leave or the position might become vacant), the Court shall reimburse the County for the remainder promptly after June 30, 2015. The provisions of this Agreement in regard to records kept by and audits of the County in regard to its services and costs shall apply to the Court in regard to these positions.

7. COMPLIANCE WITH LAW: The County shall provide services in accordance with applicable Federal, State and local laws, regulations and directives. With respect to the County's employees, the County shall 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.

8. RECORDS AND AUDIT: The County shall maintain complete and accurate records with respect to the services rendered and the costs incurred under this Agreement. In addition, the County shall maintain complete and accurate records with respect to any payments to employees or subcontractors. All such records shall be prepared in accordance with generally accepted accounting procedures, shall be clearly identified, and shall be kept readily accessible.

9. INDEPENDENT CONTRACTOR STATUS: This Agreement is entered into by both parties with the express understanding that the County will perform all services required under this Agreement as an independent contractor. Nothing in this Agreement shall be

construed to constitute the County or any of its agents, employees or officers as an agent, employee or officer of the Court.

10. TERMINATION: Subject to Government Code § 77212, the County may give notice to the Court at least ninety (90) days prior to the end of the applicable fiscal year that it will no longer provide a specific service, except that the County shall reasonably cooperate with the Court to ensure that a vital service for the Court shall be available from the County or other entities that provide such services. The termination of the specified service(s) shall be effective on the first day of the succeeding fiscal year.

Subject to Government Code § 77212, the Court may give notice to the County at least ninety (90) days prior to the end of the applicable fiscal year that it will no longer use a specific service or services.

The right to terminate this Agreement under this provision may be exercised without prejudice to any other right or remedy to which the terminating party may be entitled at law or in equity.

As to Temporary Services requested by the Court (including telecommunication, mail, courier, copier and custodial services), the Court may terminate such services by providing to the County sixty (60) days prior written notice of such termination. As to termination of such temporary services, the parties specifically waive the notice provisions provided in Government Code § 77212.

11. ENTIRE AGREEMENT REPRESENTED: This Agreement represents the entire agreement between the County and the Court as to its subject matter and no prior oral or written understanding shall be of any force or effect. No part of this Agreement may be modified without the written consent of both parties.

12. 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.

13. NOTICES: Except as may be otherwise required by law, any notice to be given shall be written and shall be either personally delivered, sent by facsimile transmission or sent by first class mail, postage prepaid and addressed as follows:

| | | | |
|----------------|---|-----------------|---|
| COUNTY: | Board of Supervisors County Administration Building 2800 West Burrel Visalia, CA 93291 | Copy To: | Tulare County Auditor/Controller 221 South Mooney Blvd. County Civic Center, 101E Visalia, CA 93291 |
|----------------|---|-----------------|---|

(Fax No.: (559) 733-6898 /Confirming No.: (559) 636-5000)

COURT: Tulare County Superior Court
221 South Mooney Blvd.
County Civic Center, Room 303
Visalia, CA 93219

(Fax No.: (559) 737-4290 /Confirming No.: (559) 730-5000)

Notice delivered personally or sent by facsimile transmission is deemed received upon receipt. Notice sent by first class mail shall be deemed received on the fourth day after the date of mailing. Either party may change the above address by giving written notice pursuant to this paragraph.

14. CONSTRUCTION: This Agreement reflects the contributions of both parties, and accordingly the provisions of Civil Code section 1654 shall not apply to address and interpret any uncertainty.

15. 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.

16. GOVERNING LAW: This Agreement shall be interpreted and governed under the laws of the State of California without reference to California conflicts of law principles. The parties agree that this contract is made in and shall be performed in Tulare County California.

17. WAIVERS: The failure of either party to insist on strict compliance with any provision of this Agreement shall not be considered a waiver of any right to do so, whether for that breach or any subsequent breach. The acceptance by either party of either performance or payment shall not be considered to be a waiver of any preceding breach of the Agreement by the other party.

18. EXHIBITS AND RECITALS: The Recitals and the Exhibits to this Agreement are fully incorporated into and are integral parts of this Agreement.

19. 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 upon by the parties, to be in conflict with any code or regulation, the conflicting provision shall 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, the Agreement may be terminated at the option of the affected party. In all other cases, the remainder of the Agreement shall continue in full force and effect.

20. FURTHER ASSURANCES: Each party agrees to execute any additional documents and to perform any further acts which may be reasonably required to effect the purposes of this Agreement.

21. ASSURANCES OF NON-DISCRIMINATION: The County expressly agrees that it will not discriminate in employment or in the provision of services on the basis of any

characteristic or condition upon which discrimination is prohibited by state or federal law or regulation.

22. DISPUTE RESOLUTION: If a dispute arises out of or relating to this agreement, or the breach thereof, and if said dispute cannot be settled through negotiation, the parties agree first to try in good faith to settle the dispute by non-binding mediation before resorting to litigation or some other dispute resolution procedure, unless the parties mutually agree otherwise. The mediator shall be mutually selected by the parties, but in case of disagreement, the mediator shall be selected by lot from among two nominations provided by each party. All costs and fees required by the mediator shall be split equally by the parties, otherwise each party shall bear its own costs of mediation. If mediation fails to resolve the dispute within 30 days, either party may pursue litigation to resolve the dispute.

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

COUNTY OF TULARE

Date: _____

By _____
Chairman, Board of Supervisors

ATTEST: JEAN M. ROUSSEAU
County Administrative Officer/Clerk of the Board
of Supervisors of the County of Tulare

By _____
Deputy Clerk

Approved as to Form
County Counsel

By _____
Deputy

TULARE COUNTY SUPERIOR COURT

Date: _____

By _____

Judge of the Superior Court

BBG/20121508/502319

Exhibit A
 Projected Court Cost - FY 2014/15

| Service | 810 - Direct Bill Estimate | Collections - Direct Bill Estimate |
|--------------------|----------------------------|------------------------------------|
| Copier | \$2,815 | \$0 |
| Courier | \$14,734 | \$0 |
| Custodial | \$0 | \$0 |
| Grounds | \$0 | \$476 |
| Invensys | \$0 | \$110 |
| Mail | \$108,104 | \$45,120 |
| Maintenance | \$0 | \$2,061 |
| Motor Pool | \$0 | \$0 |
| Print | \$52,768 | \$12,725 |
| Telecommunications | \$0 | \$0 |
| Utilities | \$0 | \$2,658 |

Exhibit B

FY 2014/15

| | Tulare County Courts | Law Library | Collections | Judicial Council | Unallowable |
|--------------------|----------------------|-------------|-------------|------------------|-------------|
| | Direct Charges | | | Indirect Charges | |
| Chevron | \$0 | \$0 | \$0 | \$0 | \$0 |
| Copier | \$0 | \$2,815 | \$0 | \$0 | \$1,894 |
| Courier | \$13,877 | \$857 | \$0 | \$0 | \$0 |
| Custodial | \$0 | \$0 | \$0 | \$0 | \$36,240 |
| Grounds | \$0 | \$0 | \$476 | \$0 | \$61,429 |
| Invensys | \$0 | \$0 | \$110 | \$8,710 | \$5,896 |
| Mail | \$108,104 | \$6 | \$45,114 | \$0 | \$159 |
| Maintenance | \$0 | \$0 | \$2,061 | \$198,372 | \$123,209 |
| Motor Pool | \$2,795 | \$0 | \$0 | \$0 | \$369 |
| Print | \$52,768 | \$103 | \$12,622 | \$0 | \$15,000 |
| Telecommunications | \$0 | \$0 | \$0 | \$0 | \$1,718 |
| Utilities | \$0 | \$0 | \$2,658 | \$253,876 | \$156,761 |